

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2673/DEL/2016 (A.Y 2011-12)
I.T.A. No. 2674/DEL/2016 (A.Y 2012-13)
(THROUGH VIDEO CONFERENCING)**

DSIIDC Ltd. N-36, Bombay Life Building Connaught Circus New Delhi AAACDE1257F (APPELLANT)	Vs	Pr. Commissioner of Income Tax-03 New Delhi (RESPONDENT)
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Appellant by	Sh. H. P. Agarwal, CA
Respondent by	Sh. Sushma Singh, CIT DR

Date of Hearing	06.07.2021
Date of Pronouncement	09.09.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against the separate orders dated 30/03/2016 passed by Principal Commissioner of Income Tax-03, New Delhi for assessment year 2011-12 & 2012-13 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 2673/DEL/2016 (A.Y 2011-12)

1(i) *That on facts and circumstances of the case Pr. CIT was not justified in holding assessment order passed u/s 143(3) as erroneous and prejudicial to the interest of revenue.*

(ii) *That statutory claim u/s 801 A(4) was allowed in the original assessment after consideration of facts and legal provisions and as such there is no case*

for assuming jurisdiction u/s 263 of Income Tax Act, 1961.

(iii) That Pr. CIT has admitted that there is no charge of lack of enquiry or application of mind on the part of AO while accepting the claim in the assessment order passed u/s 143(3) of I.T. Act, 1961 and as such order u/s 263 is merely on the basis of change of opinion and not sustainable on facts and under the law.

(iv) That claim u/s 80IA(4) is based on facts and legal provisions and there is no infirmity in accepting the same in the original assessment.

2. That the assessee craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice.

3. That the order of Pr. CIT is not justified on facts and same is bad in law.

I.T.A. No. 2674DEL/2016 (A.Y 2012-13)

1(i) That on facts and circumstances of the case Pr. CIT was not justified in holding assessment order passed u/s 143(3) as erroneous and prejudicial the interest of revenue.

(ii) That statutory claim u/s 80IA(4) was allowed in the original assessment after consideration of facts and legal provisions and as such there is no case for assuming jurisdiction u/s 263 of Income Tax Act, 1961.

(iii) That Pr. CIT has admitted that there is no charge of lack of enquiry or application of mind on the part of AO while accepting the claim in the assessment order passed u/s 143(3) of I.T. Act, 1961 and as such order u/s 263 is merely on the basis of change of opinion and not sustainable on facts and under the law.

(iv) That claim u/s 80IA(4) is based on facts and legal provisions and there is no infirmity in accepting the same in the original assessment.

2. That the assessee craves leave to add, amend, alter or forgo any or all of the grounds as may be necessary and in the interest of justice

3. That the order of Pr. CIT is not justified on facts and same is bad in law.

3. The assessee is a State Corporation. During the year under consideration, the Corporation is acting as a Developing and Collecting agency for various schemes i.e. Low Cost Housing Scheme, re locations scheme, Narela Scheme and CETP Scheme on behalf of the Government of NCT Delhi and also providing infrastructure Services under Delhi State Industrial Operation and Maintenance Act, 2010. The assessee filed original e-return on 30/09/2011 declaring income of Rs. 22,77,90,022/-. Later on, the assessee filed revised e-return on 21/06/2012 declaring income of Rs. 20,78,45,459/-. The case was selected for scrutiny under CASS norms and notice u/s 143(2) was issued and duly served upon the assessee. Further, notice u/s 142(1) along with detailed questionnaire was issued which was served upon the assessee. In response to notice u/s 143(2) and 142(1) Deputy Accountant Manager (Taxation) and AR of the assessee attended the proceedings and furnished copy of profit and loss account, balance sheet and tax audit report. The assessee claimed deduction u/s 80IA(4) to the extent of Rs.111.47 crore as per certificate of Chartered Accountant and submitted that under Delhi State Industrial Operation and Maintenance Act, 2010, the assessee is operating and managing 29 Industrial Sheds and 4 flatted factory complex which are in the nature of infrastructural projects in terms of provisions of Section 80IA(4). The Assessing Officer vide assessment order dated 31/1/2014 accepted the claim of the assessee.

4. The show cause notice u/s 263 of the Income Tax Act, was issued on 29/2/2016 by the Principal Commissioner of Income Tax thereby observing that the assessment order dated 27/2/2015 to the extent of grant of deduction u/s 80IA(4) of the Act has not been made in accordance with the provisions of the Act and due taxes have not been levied. The Principal Commissioner of Income Tax vide order dated 30/03/2016 u/s 263 of the Act held that the assessment order for Assessment Year 2011-12 & 2012-13 is erroneous in so far as it is pre-judicial to the interest of the Revenue to the extent of grant of deduction u/s 80IA (4) of the Act arising from maintenance of an Industrial Sheds, ground rent, sale of flats and Industrial Sheds and Housing Project for

EWS and directed the Assessing Officer to withdraw the same.

5. Being aggrieved by the order of the Principal CIT u/s 263, the assessee is in appeal before us.

6. The Ld. AR submitted that in the original assessment, the Assessing Officer has raised specific queries regarding the claim u/s 80IA (4) which can be seen from questionnaire No. 14 issued during the assessment proceedings. The Ld. AR pointed out the audit objections and also pointed out the letter regarding the audit objection which was dropped later on 2/2/2016 in relation to 80IA(4) deduction claimed. The Ld. AR submitted that the Principal CIT has only formed second opinion which is not permissible u/s 263 of the Act and reiterated explanation of Section 263. The Ld. AR relied upon the following decisions:-

1. Narayan Tatu Rane Vs. ITO[2016] 70 Taxmann 227 (Mumbai-Trib.)
2. CIT v. Ashish Rajpal [2009] 320ITR 674 (Delhi) (HC)
3. CIT v. Vikas Polymers [2010] 194 Taxmann 57 (Delhi) (HC)
4. Salora International Ltd. v. Addl. CIT [2005] 2 SOT 705 (Delhi) (Trib.)
5. Malabar Industrial Co. Ltd. v. CIT 243 ITR 83 (SC)
6. CIT v. Sohana Woollen Mills [2008] 296 ITR 238 (P&H) (HC)
7. CIT v. Sunbeam Auto Ltd. 332 ITR 167 (Delhi) (HC)
8. CIT v. Honda Siel Power Products Ltd. 333 ITR 547 (Delhi) (HC)
9. Surinder Kumar Jain v. ITO, (Delhi Trib.), I.T.A. No. 2481 / DEL /2014

7. The Ld. DR submitted that the Assessing Officer has not taken cognizance of the actual definition of infrastructure project as per Section 80IA (4) and without looking into the fulfillment of the conditions under the said Section has simplicitor allowed the claim. Therefore, the Principal Commissioner of Income Tax has rightly held the order to be erroneous and prejudicial to the interest of the Revenue. The Ld. DR further submitted that

the explanation which was referred to by the Ld. AR is not applicable in the present case as the amendment took place in 2015. The Ld. DR further submitted that the Assessing Officer had not discussed the issue of Section 80IA (4) in detail and simply accepted the submissions of the Assessee. It is held in various decisions that incorrect assumption of fact and law makes the order erroneous as well as prejudicial to interest of Revenue. The Ld. DR submitted that the present case is covered by the decision of the Hon'ble Apex Court in case of Deniel Merchants Private Limited & Anr. Vs. Income Tax Officer (Appeal No. 2396/2017 order dated 29.11.2017). The Ld. DR also relied upon following decision of the various Hon'ble High Courts and Tribunal:

- (a) Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)
- (b) Rajmandir Estates (P) Ltd. vs. PCIT (2016) 386 ITR 162 (Cal.)
- (c) Rajmandir Estates (P.) Ltd. vs. PCIT (2017) 245 Taxman 127 (SC)
- (d) Shree Manjunathesware Packing Products & Camphor Works vs. CIT (1998) 231 ITR 53 (SC)

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has raised only a query before completion of assessment u/s 143 (3) relating to claim of 80IA(4). However, the Assessing Officer has not given any cogent finding. Thus, the observation of the Principal Commissioner of Income Tax that the assessment order is erroneous and prejudicial to the interest of the Revenue does have footing. The Ld. DR's contention that the activities for which claim u/s 80IA (4) was claimed does not come under the purview of infrastructure project specifically Clause (b) is also correct proposition. Although the assessee has given the details relating to infrastructure projects, these are included in the definition of infrastructure project u/s 80IA of the Act, amended position which come into effect from 01/04/2015. The A.O has not applied the proper interpretation of Section 80IA(4) in consonance with evidence. Thus, the

Principal Commissioner of Income Tax has rightly invoked Section 263 of the Act. The case laws cited by the Ld. AR will not be applicable in the present case as the facts in the present case are different. In fact the Hon'ble Supreme Court in Malabar Industrial Company Ltd. vs. CIT (243 ITR 83)(SC) has held that the Commissioner has to satisfy himself of both the conditions i.e. the order is erroneous and prejudicial to the interest of revenue. Both these tests have been seen by the Principal Commissioner of Income Tax in the present case and aptly applies in the present case. It is also held by the Hon'ble Apex Court that the provisions cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous and prejudicial to the interest of the Revenue that the section will be attracted. Thus, the Principal CIT has looked into the aspect of the Assessment Order in the present case to the extent of erroneous and prejudicial to the interest of Revenue and thus, Section 263 of the Act is attracted in the present case. Section 263 of the Act is not invoked simply for correcting mistake or error committed by the Assessing Officer in the present case. It can be observed that the Pr. CIT has considered all the contentions of the assessee and thereafter rightly came to the conclusion that the Assessing Officer failed to look into the correct applicability of Section 80IA(4) in respect of the assessee's claim which amounts to erroneous and prejudicial to the interest of the revenue. The present case is covered by the decision of the Hon'ble Apex Court in case of Deniel Merchants Private Limited & Anr. Vs. Income Tax Officer (Appeal No. 2396/2017 order dated 29.11.2017). The Hon'ble Supreme Court held as under:

"In all these cases, we find that the Commissioner of Income Tax had passed an order under Section 263 of the Income Tax Act, 1961 with the observations that the Assessing Officer did not make any proper inquiry while making the assessment and accepting the explanation of the assessee(s) insofar as receipt of share application money is concerned. On that basis the Commissioner of Income Tax had, after setting aside the order of the Assessing Officer, simply directed the Assessing Officer to carry thorough and detailed inquiry. It is this order which is upheld by the High Court. We

*see no reason to interfere with the order of the High Court.
The Special Leave Petitions are dismissed.”*

Thus, in the present case the Assessing Officer has not properly adjudicated the issue as per law and, therefore, the Pr. CIT has rightly invoked Section 263 of the Act and passed the order. Therefore, the Order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax is just and proper. There is no need to interfere with the same. The appeal of the assessee is dismissed.

9. In result, both the appeals of the assessee are dismissed.

Order pronounced in the Open Court on this 09th Day of September, 2021.

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 09/09/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

