

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.401/Kol/2017
Assessment Year :2012-13

Damadar Valley Corporation, DVC Towers (4 th Floor), VIP Road,Kolkata-54 [PAN No.AABCD 0541 M]	V/s.	DCIT, Circle-9, Aayakar Bhawan, P-7, Chowringhee Square Kolkata-69
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Akkal Dudhwewala, FCA
प्रत्यर्थी की ओर से/By Respondent	Md. Usman CIT-DR
सुनवाई की तारीख/Date of Hearing	17-01-2018
घोषणा की तारीख/Date of Pronouncement	21-02-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

The assessee has filed this appeal dispute the order of Pr. Commissioner of Income Tax-3, Kolkata passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 12.01.2017 set aside the assessment order date30.03.2015 for assessment year 2012-13 with a direction to re-do the assessment in respect of issue therein.

Shri Akkal Dudhwewala, Ld. Authorized Representative appeared on behalf of assessee and Md. Usman, Ld. Departmental Representative appeared on behalf of Revenue.

2. The assessee has raised the following grounds:-

“1. For that on the facts and in the circumstances of the case, the CIT was unjustified in law in holding the assessment order u/s 143(3) passed for the A.Y. 2012-13 to be erroneous in so far as it was prejudicial to the interest of

the revenue even though the assessment order was neither erroneous nor prejudicial to the interest of the revenue.

2. For that on the facts and in the circumstances of the case, the CIT was unjustified in law in revising the assessment order on the ground of lack of enquiry with regard to issue of allowability of prior period expense even though in the show cause notice the assessment order was not considered by the CIT to be erroneous on the ground of lack of enquiry.

3. For that on the facts and in the circumstances of the case, the CIT having held the assessment order to be erroneous on the ground that the AO wrongly allowed the deduction for prior period expense, he was wholly unjustified in ultimately setting aside the assessment on the ground entirely different than the ground on which the revision proceeding was initiated.

4. For that on the facts and in the circumstances of the case, the CIT was unjustified in law in holding the assessment order to be erroneous on the ground of lack of enquiry with regard to allowability of prior period expense even though the facts on record established that the liability had crystallized during the relevant year, no deduction for the trading liability was admittedly allowed in the earlier year and the tax rates for earlier and current year being the same no prejudice was caused to the interest of the revenue and in that view of the matter invocation of proceedings u/ s 263 was unjustified.

5. For that on the facts and in the circumstances of the case, the order of the CIT u/s 263 be cancelled and the order of the AO u/s 143(3) be restored.

6. For that the appellant craves leave to submit additional grounds and/or amend or alter the grounds already taken either at the time of hearing of the appeal or before.”

3. Though assessee has raised as many as six grounds of appeal, however as per our considered view the sole and substantial ground of appeal is that Ld. Pr. CIT erred in holding the order of Assessing Officer erroneous in so far as prejudicial to the interest of Revenue.

4. Briefly stated facts of the case are that assessee in the present case is a corporation established under the Central Act of 1948. It is owned by the Central Government, the state of Bihar and West Bengal. The assessee is engaged in the business of generation and distribution of Power, Irrigation & Flood control. The activities the assessee is governed by Damodar Valley Corporation Act 1948, a Central Legislation. The assessee, in the year under consideration has filed its ITR electronically on 27.09.2012 declaring total

income at NIL. Subsequently the case was selected for scrutiny u/s 143(3) of the Act and accordingly notices were issued under section 143(2)/142(1) to the assessee. The assessment was framed by the AO u/s 143(3) of the Act after making certain additions / disallowances to the total income of the assessee at Rs. (-) 1,010,98,86,395/- vide order dated 30/03/2015.

5. Subsequently, the Ld. Pr. CIT u/s 263 of the Act observed that the assessee has claimed prior period expenses of Rs.39,34,86,241/- which was allowed by the AO during assessment proceedings. However, the Id. Pr.CIT was of the view that the allowance of the prior period expenses by the AO has resulted under assessment of income. Accordingly, Ld Pr. CIT issued notice under section 263 of the Act dated 09/09/2016 which is reproduced below:-

*“3. During the course of assessment it was noticed that a sum of Rs.849,15,30,993/- had been debited to arrive at net loss of Rs.858,06,62073/- and the computation had been initiated with the same net loss to arrive at the total loss of Rs.1035,72,53,747/- for the AY 2012-13. It was observed from the submission made by the assessee in course of assessment proceedings that prior period expenditure comprised contribution to pension and gratuity fund (**past year**) of Rs.733,00,00,000/- past year consumer outstanding of Rs.14,87,32,993/- and aforesaid expenses of Rs.61,93,11,759/-. The aforesaid prior period expenses aggregating to Rs.809,80,44,752/- has been added back in course of computation of income for the AY 2012-13 and the same had also been accepted in assessment. This has resulted in allowance of debit of past years’ to be extent of Rs.39,34,86,241/- (849,15,30,993 – 809,80,44,752). Omission to add back the same resulted in over assessment of loss to the extent of Rs.39,34,86,241/-.*

*In view of the above facts & circumstances, I am of the opinion that the assessment order made u/s.143(3) dated 30/03/2015 for the AY 2012-13 is erroneous sin so far as it is prejudicial to the interest of Revenue. You are therefore given an opportunity to make your submission personally or through duly Authorized representative **on 22/09/2016 at 11.03 a.m. before me at Room No.4/2A, Aayakar Bhawan, 4th Floor** and / or submit written submission as to why the above assessment made u/s 143(3) dated 30/03/2015 for 2012-13 should not be revised u/s. 264 of the IT Act, 1961.”*

The assessee in compliance to the notice issued u/s 263 of the Act by Ld. Pr. CIT made the submission as reproduced hereunder:-

“We have carefully considered the reasons set out in the show cause notice and submit that the assessment order passed u/s 143(3) by the AO for the AY

2012-13 was neither erroneous nor prejudicial to the Revenue's interest. Before we furnish our reply on legal issue it is first necessary to set out the factual background with regard to the sum of Rs.39,34,86,241/- which was debited in the assessee's financial books under the head "**prior period expenditure**". Damodar Valley Corporation (DVC) , the assessee herein is a corporation established under the Central Act of 1948. It is principally engaged in the business of generation and distribution of power. The assessee operates Hydro and Thermal power stations which are set up at various locations in the States of Jharkhand and West Bengal. For the Thermal Plants the principal raw material is "**coal**" which the assessee principally sources from subsidiaries of Coal India Ltd (CIL) which is another public sector undertaking of the Govt. of India. For sourcing of coal, DVC enters into comprehensive Coal Supply Agreement with CIL in terms of which subsidiaries of Coal India Ltd supply the coal to various plants of DVC. Since CIL enjoys almost monopoly status in coal mining and supply business in India like any other consumer; DVC has to make advance payments to subsidiaries of CIL based on the estimated monthly supply of coal. Since the assessee's power plans critically depend on the regular supply of quality coal the assessee has to make payment to CIL on advance basis. The fuel section of DVC's power plants undertake regular review of the coal supplies made by the subsidiaries of CIL. Based on their assessment of Coal requirement of DVC is intimated to CIL on monthly basis and based thereon advances are also paid by DVC's Head Office at Kolkata to CIL or to its subsidiaries. At the time when the advances are paid individual account of CIL is debited in the books maintained at Kolkata head office. The amounts so paid appear in the HO's books under the category "**Advance**". On receipt of advance the supply orders are released and accordingly the subsidiaries of Coal India despatch the coal to different plant locations of DVC. At the relevant time the subsidiaries of CIL raise invoices on DVC's concerned power project. In the books of the respective projects the supply of coal is initially accounted. However before the bill for coal supply is approved and passed for payment the said bill goes through a detailed process of verification and for this purpose numerous checks and balances are put in place by the assessee. This process ensures that the quantity and quality of the coal supplied is thoroughly checked before the bills are approved for payments, Through these checks and balances it is ensured that the coal supply was of the grade prescribed in the Purchase Order. The verification process also involves physical inspection of the coal supplied so to ensure that not only the coal supplied is of desired quality but the quantity of the coal supplied is also as per invoice and Agreement. Coal is physically inspected to ensure that the moisture content is of the desired level, there is no shortage of quantity, percentage of stone does not cross prescribed limit, the size of coal supplied is within the desired parameters and there are no instances of breakages etc. Once the concerned project office inspects the coal supplied on various parameters it then recommends to head office whether the bill is passed for the full invoiced value or any deductions or recoveries are to be made from the invoiced amounts. Based on recommendation of the project office the head office then takes up the matter with Coal India Ltd with regard to assessee's claims.

Just as the assessee Corporation sources its coal requirement from subsidiaries of CIL, the assessee company supplies electricity to various collieries and office establishments of CIL's subsidiaries for which the assessee raises invoices on CIL's subsidiaries. Just as the assessee raises claims for shortage, quality difference, etc on CIL, the said company and its subsidiaries raises counter claims on DVC for any disruptions or frequency variations etc in the power supply to the collieries. The claims raised by the subsidiaries are then taken up by CIL with assessee's head office at Kolkata. In the above circumstances therefore there is an ongoing process of settlement of claims and disputes between the assessee-company and CIL arising on account of supply of coal and supply of power. Since both the corporations are Central Public undertaking, there is a hierarchical system through which the dispute resolution is required to proceed. For the purpose of resolving the disputes and claims teams comprising of departmental heads is formed which vets the claims of the respective parties after obtaining internal reports. Thereafter in the joint sitting of the representatives parties the reconciliation statement is drawn up by both sides. The unsettled issues are then carried and placed before Senior Hierarchy of both the companies and ultimately in high level joint reconciliatory meeting the disputes and claims between the 2 companies stand resolved. Since the dispute Resolution mechanism requires involvement of senior functionaries of both public sector companies, the settlement procedure spills over or stretches more than one accounting year.

During FY 2010-11 a joint reconciliation of claims and counter claims was arrived at between representative of Bharat Coking Coal Ltd (BCCL) and the assessee in respect of coal supplies made by BCCL to assessee's Mejia Thermal Power Plant (MTPP). The joint reconciliation was carried out in the month of December 2010 in meeting attended by the representatives of BCCL & DVC. A copy of the Joint reconciliation Statement signed and executed in December 2010 is enclosed for your ready reference and record. After the joint reconciliation was arrived at, the same was sent to the fuel section of MTPP for final approval and onward recommendation to the head office for passing requisite accounting entries in the assessee's books. Inadvertently however the senior account executives of the assessee posted at MTPP were deputed on election duty as the West Bengal Assembly Elections were held in early 2011. Since the concerned account executive of the assessee was on election duty; necessary recommendations for passing the entries in the books to give accountings effect to the settlement with BCCL could only be issued in the FY 2011-12. As soon the head office of the assessee at Kolkata received the recommendation from MTPP giving accounting effect to the settlement of BCCL was given by passing entries in the financial books of DVC. Your goodself will thus note that the process of settlement of dispute with BCCL attained finality only in FY 2011-12 and accordingly the entries were passed by the assessee in its books of accounts in FY 2011-12 and therefore the deduction was rightly claimed and allowed in the assessment of AY 2012-13.

Reference in this regard is made to the decision of the jurisdictional Calcutta High Court in the case of CIT v. Todi Tea Co. Ltd. (105 Taxman 697). In the decided case the assessee had entered into a supply agreement. The

assessee subsequently violated the terms of the agreement and therefore the vendor raised a claim for compensation for breach of contract. The assessee disputed the claim of the vendor. The dispute was however settled in the subsequent financial year and the assessee agreed to pay a certain amount of compensation. The said payment was claimed as deduction in the subsequent year in which the liability was created in the books. The AO however disallowed the said expense holding it to be expenditure pertaining to earlier year. On appeal the High Court held that since the assessee was following the mercantile system of accounting, the assessee could claim the deduction of the liability created in its books on the basis of admission of liability. The Court held that the assessee had agreed to pay the compensation only in the previous year relevant to the assessment year in question and created that liability in its books. It was therefore held that the assessee would be entitled to deduction of liability to pay in which liability is created in its books. Similar view was expressed by other coordinate Benches of Calcutta High Court in the cases of CIT vs. ShewbuxJahurilal (46 ITR 688)&CIT vs. Roberts McLean & Co. Ltd. (111 ITR 489).

Applying the ratio laid down in the above cited judicial precedents to the facts of the assessee's case, it is submitted that though the settlement between the assessee and BCCL was in respect of supplies made in the earlier years such fact by itself did not mean that the expenditure was crystallized in the earlier years when supply of coal was received. Even though the supplies were made and received in the prior years, there were unresolved disputes between the two parties on several counts. There were claims and counter claims by each party which required resolution in joint consultation. It is material to submit that assessee as well as BCCL had continuous and ongoing trading transactions between them. Resolution of disputes arising from the trading transactions is therefore an on ongoing process and it is not a one time phenomenon. The disputes arising in the ordinary course of business need to be settled periodically. In respect of disputed sums, liability stand, crystallized only when the parties to the dispute jointly come together and resolve the disputes through dispute resolution mechanism mutually agreed by the parties. In case of dues arising from settlement reached by mutual consent liability of an assessee gets crystallized only when the parties arrive at mutually accepted terms and associate procedures are complied with. In the assessee's case the documents on record will show that such settlement was arrived at the meeting jointly conducted between BCCL & DVC representatives in December 2010 and thereafter the accounting effect to the settlement was given in the accounts for the year ended 31.03.2012. In the facts & circumstances set out in the foregoing, it shall be appreciated that the liability to pay Rs.39,34,86,241 / -had attained finality only in the relevant FY 2011-12. Accordingly such sum which was debited in the assessee's financial books under the head "**prior period expenditure**" had been rightly claimed by the assessee and allowed by the AO as deduction from the profits of the business for the relevant year. It is further material to submit that the amount claimed as deduction in AY 2012-13 pertained to supply of coal. The consumption of coal is a prerequisite for carrying on assessee's business of power generation. Cost of coal supply is always allowed as deduction in computing assessee's business income. In the year in which the coal was

supplied the assessee had not claimed deduction for its entire cost since the dispute between assessee and BCCL was not resolved and the full liability had not crystallized. You will thus appreciate that no deduction was allowed to the assessee even though the coal was supplied and consumed in the earlier years and therefore to the extent of unsettled amount the company's income was assessed. It is therefore submitted that since the assessee was not allowed deduction for the full value of coal purchased in the year of supply then in the year in which the liability was settled and the same should be allowed as deduction since in the earlier years the assessee was not allowed any deduction for such cost.

For the reasons set out in the foregoing, it is therefore prayed that the proceedings u/s 263 may kindly be dropped and/ or cancelled.

However, Ld. CIT disregarded the contention of the assessee and held the order of the AO as erroneous and prejudicial to the interest of Revenue by observing as under:- “

“5. I have carefully and dispassionately considered the facts and circumstances of the case. During the course of scrutiny assessment proceedings, the AO has not made any inquiry on the issue of prior period expenses of Rs.39,34,86,241/-. The AO has erroneously allowed prior period expenses of Rs.39,34,86,241/-, pertaining to BCCL for past years dues inspite of the fact that a joint reconciliation between DVC and BCCL for the FY 2009-10 was completed in December, 2010 and as such the same should have been accounted for in the FY 2011-12. Such prior period expenditure pertained to FYrs. 2008-09 and 2009-10. Durig the assessment proceedings, the AO has failed to conduct inquiries ad no such relevant details were called by the Assessing Officer. The impugned assessment order has been passed allowing prior period expenses of Rs.39,34,86,241/- without inquiring into the claim and without verification.

6. Hon'ble Delhi High Court in the case of GEE VEE Enterprise Vs. Addl. CIT reported in 99 ITR 375, 386 (Del). Has held that the CIT may consider the order of the Assessing Officer to be erroneous not only if it contain some apparent error of reasoning or of law of fact on the face of it, but also because the Assessing Officer has failed to make enquiries which are called for in the circumstance of the case and it is an order which simply accepted what the assessee has stated in his return of income on the said issue. It is not necessary for the CIT to make further enquiries before cancelling the assessment order. The Commissioner can regard the order erroneous on the ground that the Assessing Officer should have made further enquiries.

7. the Hon'ble Karnataka High Court in the case of Thalibai F. Jain Vs. ITO 101 ITR 1, 6 (Karn.)has held that where no enquiries made by the Assessing Officer on the relevant issue, assessment must be held to be prejudicial to the interest of the revenue and what is prejudicial to the interest of the revenue must be held to be erroneous though the converse may not always be true.

*8. Hon'ble Supreme Court in the case of Malabar Industrial Co. Pvt. Ltd. vs. CIT reported in (2000) 243 ITR 83, 87-88 (SC) affirming the Hon'ble Kerala High Court decision (198 ITR 611) has held that the phrase “**Prejudicial to***

the Interests of the Revenue" is of wide import and is not confined to only loss of taxes. If the AO has accepted the claim of the assessee without any enquiries then such assessment order passed by the AO was held to be erroneous.

9. The Assessing Officer failed to make relevant enquiry in this case. He has failed to examine the books of a/cs, maintained by the assessee on the said issues. In fact, it is the case of non enquiry with reference to prior period expenses pertaining to F.Yrs. 2008-09 & 2009-10. In this regard it is mentioned that mere non enquiry would also render a particular order passed by lower authority as erroneous and prejudicial to the interest of Revenue. This position has been clearly confirmed by Hon'ble Supreme Court in the case of Rampyari Devi Sarogi v. CIT [1968] 67 ITR 84 & Smt.Tara Devi Aggarwal. v. CIT [1973] 88 ITR 323 (SC) the reasoning for this proposition has been explained by Hon'ble Delhi High Court in the case of Gee Vee Enterprise v. Addl. CIT [1975] 99 ITR 375 in the following para:-

'It is not necessary for the Commissioner to make further inquiries before cancelling the assessment order of the income-tax Officer. The Commissioner can regard the order as erroneous on the ground that in the circumstances of the case the Income-tax Officer should have made further inquiries before accepting the statements made by the assessee in his return. The reason is obvious. The position and function of the Income-tax Officer is very different from that of civil court. The statements made in the pleading proved by the minimum amount of evidence may be adopted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which come before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "**erroneous**" in section 263 includes the failure to make such an enquiry. The order becomes erroneous because such an enquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct.'

10. Further to this, it is noticed that there is no appeal right available to the Revenue from the order of assessment passed by Assessing Officer and i.e. why revisionary powers have been given to the Commissioner and such power were held to be of wide amplitude by the Hon'ble Supreme Court in the case of CIT v..Shree Manjunatheswar Packing Products & Camphor Works [1998] 231 ITR 53/96 Taxman 1. Therefore, normally when Assessing Officer has not made any enquiry on a particular issue, then such order in view of the above detailed discussion has to be construed as erroneous and prejudicial to the interest of Revenue and therefore, the impugned assessment order is erroneous and prejudicial to the interest of Revenue as Assessing Officer has failed to make any enquiry.

11. It may be further noticed, that in order to provide clarity on the issue of "erroneous in so far as it is prejudicial to the interest of the revenue", a new explanation has been inserted to clarify that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner.

(a) The order is passed without making inquiries or verification which, should have been made;

(b) The order is passed allowing any relief without inquiring into the claim;

(c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) The order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

This amendment takes effect from 01.6.2015.

12. In view of the above, the assessment order in this case dated 09.09.2015 is set-aside to the file of the Assessing Officer with a direction to pass a fresh assessment order after considering the aforesaid observations and as per law and after giving an opportunity of being heard to the assessee."

Being aggrieved by the order of CIT, the assessee is in appeal before us.

6. The Id. AR before us filed a paper book which is running from Pages 1 to 48 and submitted that Ld. Pr.CIT held the order of AO as erroneous and prejudicial to the interest of revenue on the ground that the AO has failed to verify details of the prior period items as claimed by it in its financial statement. But there was no allegation in the notice issued by Ld. Pr.CIT that there was no verification of the prior period items done by the AO during assessment proceedings. Thus the Id. Pr. CIT erred in holding the order of AO as erroneous and prejudicial to the interest of revenue on account of non-verification of the prior period expenses. He requested the Bench to confirm the assessment order.

On the other hand, The Ld DR submitted that prior period items are not allowable as deduction but the AO without verifying the same has allowed during assessment proceeding. The Id. DR vehemently relied on the order of Id. Pr.CIT and requested the Bench to decide the issue on merit.

7. We have considered the rival submissions and also perused the relevant material available. We have also given careful thought to the case

laws and relevant statutory provisions referred to and relied upon by both the sides in support of their arguments. The assessment order passed by the AO u/s 143(3) of the Act was considered by the Ld. Pr. CIT to be erroneous and prejudicial to the interest of Revenue on the ground that the AO has allowed the prior period expenses which are otherwise not eligible for deduction. Accordingly a notice u/s 263 of the Act was issued by Id. Pr. CIT by pointing out the defects/ errors on merits in the order of the A.O.

7.1 In compliance thereto the assessee made a detailed reply and tried to justify that there was no error in the order of the AO. It was explained that the prior period expenses were crystallized during the year therefore the same was claimed in the year under consideration.

However the Id. Pr. CIT in his order without pointing out any error in the reply of the assessee held that the order is erroneous in so far prejudicial to the interest of Revenue on the ground that AO failed to verify necessary facts.

However we note that in the identical facts & circumstances the Hon'ble Delhi High Court in the case of [ITO vs D.G. Housing Project Ltd.](#) reported in 343 ITR 329 has held as under :

"in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under Section 263 is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous."

The principles laid down by the Hon'ble Delhi High Court are squarely applicable to the case on hand. In the instant case, the allegation raised by the Id. Pr.CIT in the notice issued u/s 263 of the Act that the AO allowed the prior period items which were ineligible for deduction. But the Id. Pr.CIT in his impugned order has changed the stand and held the order of AO as erroneous & prejudicial to the interest of Revenue due to lack of enquiry

conducted by the AO during assessment proceedings without affording reasonable opportunity to the assessee.

7.2 We also find support & guidance from the recent judgment of the Hon'ble Supreme Court in the case of *CIT v. Amitabh Bachchan* reported in [384 ITR 200](#) where it was concluded that the Id CIT can proceed to adjudicate other issues other than what is mentioned in the original show cause notice. But the same could be done only after affording opportunity of being heard to the assessee to address on the new issue taken up by the Id CIT. The relevant extract of the order is reproduced below :

“What is contemplated by section 263, is an opportunity of hearing to be afforded to the assessee. Failure to give such an opportunity would render the revisional order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice”

It is undisputed fact that no opportunity was afforded to the assessee in the instant case by the Id CIT to address on the aspect of 'lack of enquiry' on the allowability of prior period expenses. We hold that the Id CIT erred in concluding that lack of enquiry with regard to allowability of prior period expenses on the part of the Id AO would automatically make the order of Id AO erroneous and prejudicial to the interest of the revenue in the facts and circumstances of the case in as much as no opportunity of hearing was given to the assessee in that regard.

7.3 We also find that the Hon'ble Tribunal in the case of *Sarda Mines Pvt. Ltd. Vs. DCIT* in **I.T.A. No. 868/Kol/2017** Assessment Year: 2012-13 vide order dated 14-12-2017 has held as under :

“in as much as notice under [section 263](#) pointing out the errors in the order of the A.O. was issued by the Ld. Principal CIT on 10.03.2017 and a detailed reply to the said notice was filed by the assessee on 24.03.2017 submitting that there were no errors as alleged in the notice under [section 263](#) in the order of assessment passed by the A.O. on merits. Immediately thereafter i.e. on 28.03.2017, the Principal CIT passed the impugned order under [section 263](#) without giving any finding or conclusion as to how the order of the A.O. was erroneous on merits in respect of issues raised in the notice under [section 263](#) and set aside the same on the ground of lack of enquiry by the A.O. without putting the assessee on notice. In our opinion, the ratio of the

decision rendered by the coordinate bench of this Tribunal in the case of Infinity Infotech Park Ltd. (supra) thus is squarely applicable in the present case and applying the same, we hold that the impugned order passed by the Ld. Principal CIT under [section 263](#) is liable to be quashed.”

In view of the aforesaid findings and in the facts and circumstances of the case and respectfully following the various judicial precedents relied upon on the impugned issue, we have no hesitation in quashing the impugned order passed by the Id Pr.CIT u/s 263 of the Act and accordingly allow the grounds raised by the assessee.

8. In the result, assessee's appeal stands allowed.

Order pronounced in the open court 21/02/2018

Sd/-

(न्यायिक सदस्य)

(N.V.Vasudevan)

(Judicial Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 21/02/2018 कोलकाता ।

Sd/-

(लेखा सदस्य)

(Waseem Ahmed)

(Accountant Member)

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Damodar Valley Corporation, DVC Towers 4th Floor, VIP Rd.Kol-54
2. प्रत्यर्थी/Respondent-DCIT, Circle-9, Aayakar Bhawan, P-7, Chowringhee Sq. Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।