

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAIPUR BENCH, RAIPUR**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
& SHRI RAM LAL NEGI, JUDICIAL MEMBER)**

**ITA. No: 32/RPR/2014  
(Assessment Year: 2009-10)**

<b>Manilal Dayalji &amp; Company Gola Bidi Works, Sadar Bazar, Dhamtari (C.G.) (Appellant)</b>	<b>V/S</b>	<b>The Commissioner of Income Tax, Raipur (C.G)  (Respondent)</b>
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**PAN: AAPPT0319Q**

**Appellant by : Shri R. B. Doshi, C.A.  
Respondent by : Shri P.K. Mishra, D.R.**

**(आदेश)/ORDER**

Date of hearing : 07-03-2018  
Date of Pronouncement : 09 -03-2018

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER**

1. With this appeal, the assessee has challenged the validity of the order of the ld.CIT, Raipur dated 18.03.2014 framed u/s. 263 of the Act.

2. The assessee contends that the ld. CIT has wrongly assumed the jurisdiction u/s. 263 of the Act, when the assessment order dated 23.12.2011 framed u/s. 143(3) of the Act is neither erroneous nor prejudicial to the interest of the revenue.
3. We have given a thoughtful consideration to the rival submissions and with the assistance of the ld. Counsel, we have carefully considered the relevant documentary evidences brought on record in the light of Rule 18(6) of the ITAT Rules.
4. Vide order dated 23.12.2011, the returned income of Rs. 5,63,43,150/- was assessed at Rs. 5,68,07,060/-. Assuming the jurisdiction bestowed upon him by the provisions of Section 263 of the Act. The ld. CIT issued notice dated 22.01.2014 which is as under:-

To,  
M/s. Manilal Dayalji & Company  
Gola Bidi Works, Amapara, Ward,  
Sadar Bazar, Raipur.  
PAN : AAGFM4587N

Date: 22.01.2014

**SUBJECT: NOTICE U/S 263 OF INCOME-TAX ACT, 1961 FOR A.Y. 2009-10  
REGARDING –**

*On examination of your Income tax records for the above assessment year, I find that the order passed u/s 143(3) on 23.12.2011 of the Income tax Act 1961 is erroneous in so far as it is prejudicial to the interest of revenue in the following manner:*

*On verification of your record it is found that:*

- (i) *You have claimed deduction of Rs. 15,68,225/- u/s 801B. The claim was twenty five percent of profit of the Pradhanpalli unit. As per IT Act 1961, a small scale industrial undertaking (SSI), to claim the; deduction u/s 801B should produce form IOCCB duly filled. You have neither produced*

*certificate from competent authority regarding SSI nor submitted mandatory IOCCB form duly filled in all respect. Thus, the claim of deduction u/s 80 1B at Rs.15,68,225/- should have been disallowed by the Assessing Officer*

- (ii) *It. is further seen that you have received IT refund for A.Yr.2006-07 amounting to Rs.45,25,130/- which includes interest component of Rs.1,94,864/-. The interest income of Rs. 1,94,864/- has not been offered for taxation which resulted in under assessment of income by Rs. 1.94.864/-.*

*In view Of these facts, the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue. In these circumstances, it is proposed to take remedial action under section 263 of the IT Act, 1961. You are, therefore, requested to show cause as to why remedial action u/s 263 should not be taken. Your case is fixed for hearing on 28.01.2014 at 12.15 P.M. at the Office of the Commissioner of Income-Tax. Central Revenue Building, Civil Lines, Raipur.*

*Please note that in case of non-appearance or non-receipt of any written submission, if will be submitted that you have no objection to the proposed action u/s 263 of the I.T. Act. 1961.*

5. A perusal of the afore-stated facts shows that the first allegation of the ld. CIT is that the assessee has neither produced certificate from competent authority nor has submitted the audit report in form 10CCB.
6. Insofar as the non submission of the audit report is concerned, the Hon'ble High Court of Madhya Pradesh in the case of Medicaps Ltd. 323 ITR 554 has upheld the findings of the Tribunal which held that the audit report is procedural and directory in nature and the same can be filed at the appellate stage. It is a fact that the audit report was made available to the ld. CIT during the proceedings u/s. 263 of the Act.
7. ITAT Mumbai Bench in the case of Kewal Kiran Clothing Pvt. Ltd. in ITA No. 2173/Mum/2009 had the occasion to consider an identical issue wherein

- the claim of deduction u/s. 80IB of the Act was for the tenth year and held that since the assessee has filed the audit report before the ld. CIT, no adverse inference should be drawn in proceedings u/s. 263 of the Act.
8. Most importantly, the claim of deduction u/s. 80IB of the Act is for the tenth year which means that the A.O. had allowed the claim of deduction in previous nine years. Therefore, we have no hesitation to hold that the assumption of jurisdiction u/s. 263 of the Act is bad in law.
  9. Insofar as the allegation that the assessee is not registered as an SSI Unit is concerned, we find that u/s. 80IB (14) clause G, there is no such requirement. Therefore, it cannot be said that the assessment order is erroneous and prejudicial to the interest of the revenue to this extent also.
  10. Insofar as the interest on I.T. refund is concerned, we find that the assessee has furnished the copy of interest account before the ld. CIT showing that the assessee has already credited the interest amount to interest account. Therefore, there is no question of any under assessment.
  11. Considering the facts of the case in totality, we set aside the order of the ld. CIT and restore that of the A.O. framed u/s. 143(3) of the Act.
  12. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in Open Court on - 03- 2018

Sd/-

Sd/-

**(RAM LAL NEGI)**  
**JUDICIAL MEMBER True Copy**  
RAIPUR: Dated 09 /03/2018

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**