

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'G', NEW DELHI**

**Before Sh. H. S. Sidhu, Judicial Member
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 2176/Del/2017 : Asstt. Year : 2012-13

T.I. Steels Pvt. Ltd., H.No. 98A, Block-AF, Shalimar Bagh, New Delhi-110088	Vs	Income Tax Officer, Ward-25(1), New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AABCT9896R		

**Assessee by : Sh. Mohit Sachdeva, Adv.
Revenue by : Sh. S. S. Rana, CIT DR**

Date of Hearing: 04.07.2019	Date of Pronouncement: 08.07.2019
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ORDER

Per B. R. R. Kumar, Accountant Member:

The assessee has raised following effective grounds of appeal:

"1. That the order of Ld. Pr. CIT-09 is erroneous in facts and in law and is based on extraneous consideration and against the provision of the Act.

3. That the Ld. PCIT erred in directing the AO to examine as to whether the eligibility under Section 80IC of the Act provided to the Appellant is to be disqualified on the ground that audit report under Section 10CCB was not filed at the time of assessment, even though it has been held by various high court that non filing of audit report in 10CCB does not make the order erroneous and prejudicial."

2. The assessee filed e-return declaring Nil income for the assessment year 2012-13 on 01.10.2012 which was subsequently selected for assessment u/s 143(3) of the Income Tax Act, 1961 which was completed on 09.03.2015. The Id. Pr. CIT having observed that the assessee has claimed deduction u/s 80IC of the Act amounting to Rs.115,81,440/- for

the unit in Himachal Pradesh and the AO has allowed this deduction without examination or even calling for Form No. 10CCB of the deduction has invoked provisions of Section 262 of the Act for revision of the assessment order.

3. Accordingly, notice dated 05.12.2016 was issued to the assessee and the assessee has attended the office of the Id. Pr. CIT on 30.12.2016. Before the Id. Pr. CIT, the assessee has submitted that Form No. 10CCB was not called by the Assessing Officer and the time of the assessment proceedings. The assessee has filed Form No. 10CCB before the Id. Pr. CIT during the proceedings u/s 263 of the Act. However, the Id. Pr. CIT held that since the audit report in the prescribed Form No. 10CCB has not been furnished along with the return and hence no deduction should be allowed in accordance with the provisions of Section 80IC(7) r.w.s. 80IA(7) of the Act and set aside the assessment with the directions to the AO to reframe assessment after examining the validity and allowability of deduction u/s 80IC of the Act as claimed by the assessee.

4. Before us, it was argued by the Id. AR based on the judgment of the Hon'ble High Court of Judicature at Delhi in the case of Contimeters Electrical Pvt. Ltd. 317 ITR 249 that the filing of Form No. 10CCB. Further, the Id. AR relied on the Judgment of the Hon'ble Gujarat High Court in the case of Zenith Processing Mills 219 ITR 721 that filing of the audit report in Form 10CCB is only mandatory and even when filed before the Id. Pr. CIT, it should have been considered as sufficient compliance of furnishing of such proof of claiming of deduction.

5. Against the arguments of the Id. AR, the Id. representative of the Revenue argued that while examination of the allowability of the deduction is the job of the Assessing Officer, the factum that this matter has not

been examined even primarily makes it a fit case for revision u/s 263 of the Act has filed written arguments which are as under:

In this regard, it is humbly submitted that Explanation 2 has been inserted in Section 263 of I.T. Act by Finance Act 2015 w.e.f. 01.06.2015 which is reproduced below:

Explanation 2.—For the purposes of this section, it is hereby declared 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 which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.*

In the above case, it is humbly submitted that the following decision may kindly be considered with regard to validity of proceedings u/s 263 of I.T. Act:

1. Hon'ble Supreme Court in the case of Deniel Merchants Pvt. Ltd. vs. ITO (Appeal No. 2396/2017) dated 29.11.2017. (copy enclosed). In this group of cases, Hon'ble Supreme Court has dismissed SLPs in cases where AO 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. The relevant judgement of Hon'ble Calcutta High Court in this case is also enclosed.

2. CIT Vs Ballarpur Industries Ltd. f20171 85 taxmann.com 10 (Bombay)

Hon'ble Bombay High Court held that where Assessing Officer allowed claim of deduction under section 80HHC without

examining said claim with reference to unabsorbed depreciation and investment allowance as referred to in sections 32 and 32A respectively, Commissioner was justified in invoking revision under section 263

3. Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC) (Copy Enclosed)

where Hon'ble Supreme Court held that where Assessing Officer had accepted entry in statement of account filed by assessee, in absence of any supporting material without making any enquiry, exercise of jurisdiction by Commissioner under section 263(1) was justified

4. Rajmandir Estates (P.) Ltd. Vs PCIT |70 taxmann.com 124 (Calcutta)/[2016] 240 Taxman 306 (Calcutta)/[2016] 386 ITR 162 (Calcutta)/[2016] 287 CTR 512] (Copy enclosed)

Where Hon'ble Calcutta High Court held that where assessee with a small amount of authorised share capital, raised a huge sum on account of premium and chose not to go in for increase of authorised share capital merely to avoid payment of statutory fees and Assessing Officer passed assessment order without carrying out requisite enquiry into increase of share capital including premium received by assessee, Commissioner was justified in treating assessment order as erroneous and prejudicial to interest of revenue

5. Rajmandir Estates (P.) Ltd. Vs PCIT f20171 77 taxmann.com 285 (SC)/r20171 245 Taxman 127 (SC)

Hon'ble Supreme Court has dismissed SLP against High Court's ruling that where assessee with a small amount of authorised share capital, raised huge sum on account of premium, exercise of revisionary powers by Commissioner opining that this could be a case of money laundering was justified

187 ITR412 (Allahabad)/ri9901 90 CTR 113 (Allahabad) (copy enclosed)

Assessee received certain amount by way of refund of excise duty and claimed that he had placed this amount in suspense account as a large part of this amount was claimed by one G and a suit and also a writ petition filed by G in this regard were pending before Courts and, thus, this amount did not constitute his income. ITO accepted assessee's claim without making proper enquiries. Commissioner acting under section 263, set aside assessment order on ground that it was clearly erroneous and also prejudicial to revenue inasmuch as claim of assessee was accepted without proper enquiries and directed ITO to make fresh assessment after making proper enquiries and

recording a finding. Order upheld 7. Shoreline Hotel (P.) Ltd. Vs CIT T20181 98 taxmann.com 234 (Bombay)

Hon'ble Bombay High Court held that where on basis of information received from Sales Tax authorities, Assessing Officer found that assessee was beneficiary of bogus purchase bills and assessee could not produce any material purchased by it nor it could ensure presence of supplier, Assessing Officer was unjustified in limiting addition under section 69C on basis of GP ratio

6. We have considered the arguments of both the parties and find that the case of Ballarpur Industries Ltd. is not applicable to the facts of the case. After the assessee filed the report in Form 10CCB before the Id. Pr. CIT, the Id. Pr. CIT has not brought anything on record whether there were any incongruencies in the said report. Nullifying or set aside of the assessment order will serve any fruitful purpose unless it is determined by the Id. Pr. CIT that the assessee is not eligible for deduction after going through the audit report and bringing out as to how it is erroneous and prejudicial to the interest of Revenue. We find no such attempt has been made by the Id. Pr. CIT to determine the loss to the revenue. The Id. Pr. CIT has set aside the order with the directions to reframe the assessment after examining the validity and allowability of the deduction u/s 80IC of the Act as claimed by the assessee. In the instant case the assessee has already prepared a separate profit & Loss account for each fiscal unit and claimed the profits from these fiscal units as eligible for deduction under chapter VI-A. Now it remains to be seen whether the profits & gains have been correctly computed as if these units are the only source of income. These are submitted in Form 10CCB. The Principal Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass

such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment. The word record is further explained that as under:

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

7. Further, the PCIT cannot remand the matter to the Assessing Officer for further enquiries or to decide whether the findings recorded are erroneous without a finding that the order is erroneous and how that is so. A mere remand to the Assessing Officer implies that the PCIT has not decided whether the order is erroneous but has directed the Assessing Officer to decide the aspect which is not permissible. Reliance is placed on the judgment in the case of ITO v. DG Housing Projects [2012] 343 ITR 329 (Delhi) (HC) wherein it was held that the findings recorded by the Tribunal are correct as the CIT has not gone into and has not given any reason for observing that the order passed by the Assessing Officer was erroneous.It was also in that case that the said finding will be correct, if the CIT had examined and verified the said transaction himself and given a finding on merits.

8. The ratio of the judgment is applicable to the present case. What is to be examined primarily is that whether the assessee is eligible for

deduction or not by way of earning profit by manufacturing activity in the backward areas, Himachal Pradesh in this case which has not been carried out by the Revenue except refusing the allowability of deduction on hyper technical ground which cannot be accepted.

9. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Open Court on 08/07/2019).

Sd/-

(H. S. Sidhu)
Judicial Member

Sd/-

(B. R. R. Kumar)
Accountant Member

Dated: 08/07/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	<u>Initial</u>	
1.	Draft dictated on	08.07.2019		PS
2.	Draft placed before author	08.07.2019		PS
3.	Draft proposed & placed before the			JM/AM