IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai

Before Shri Pramod Kumar, Vice president
and Shri Ravish Sood, Judicial Member

ITA No.292/Mum/2019
(Assessment Years: 2014-15)

Solarfield Energy Private Limited, Hinduja House, 171, Dr. Annie Besent Road, Worli, Mumbai – 400018	Vs.	Pr. Commissioner of Income Tax-2 Room No. 344, Aayakar Bhavan, M.K. Road, Mumbai - 400020
PAN – AAOCS4380A		
(Appellant)		**(Respondent)**

Appellant by: Shri Jehangir Mistri, Senior Advocate
Respondent by: Shri Sandeep Raj, CIT D.R

Date of Hearing: 20.10.2020
Date of Pronouncement: 07.01.2021

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee company is directed against the order passed by the Principal Commissioner of Income Tax-2, Mumbai (for Short 'PCIT') under Sec. 263 of the Income Tax Act, 1961 (for short 'Act') dated 26.11.2018 for A.Y. 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. On the facts and circumstances of the case, and in law, the Principal Commissioner of Income-tax -2 ('Learned PCIT') erred in passing an order dated 26 November 2018 under section 263 of the Income-tax Act. 1961 ('Act) which was unjustified, unwarranted and bad in law.

2. On the facts and circumstances of the case, and in law, the Learned PCIT has erred in holding that the order dated 9 March 2016 passed under section 143(3) of the Act ('Order') by the Deputy Commissioner of Income-tax - 2(3)(2) ['Learned AO] was erroneous and prejudicial to the interests of revenue.

3. The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the Order passed by the Learned AO was neither erroneous nor prejudicial to the interest of the revenue and

the order dated 26 November 2018 passed by the Learned PCIT under section 263 of the Act is erroneous and bad in law.

4. The Appellant craves leave to add, amend, alter, modify or withdraw any of the above grounds of appeal."

2. Briefly stated, the assessee company which is engaged in the business of generation of solar power had e-filed its return of income for A.Y. 2014-15 on 28.11.2014, declaring a total income of Rs. 8,83,36,467/-. The return of income was initially processed as such under Sec.143(1) of the Act. Subsequently, assessment was framed by the A.O vide his order passed under Sec. 143(3), dated 23.12.2016 and the income of the assessee was determined at Rs. 9,48,50,070/- under the normal provisions and Rs. 8,01,42,810/- under Sec. 115JB of the Act.

3. After culmination of the assessment proceedings the PCIT called for the assessment records of the assessee company. On a perusal of the records, it was observed by the PCIT that the A.O while framing the assessment had allowed the assessee's claim for deduction of "forfeiting charges" of Rs. 3,85,56,552/-. It was observed by the PCIT that the assessee company had entered into an Engineering & Procurement Construction (EPC) contract with Larsen & Toubro Limited for developing a 20 MW Solar Power Plant at Charanka in Gujarat. As per the EPC contract, the assessee company had to open a "Letter of Credit" (for short "LC") in favour of Larsen & Toubro Limited and Larsen & Toubro Limited had to open a back to back LC in favour of their overseas supplier viz. M/s Sharp Corporation, Japan. It was noticed by the PCIT that M/s Sharp Corporation, Japan had in December, 2011 forfaited/discounted the LC drawn in its favour, pursuant whereto M/s Larsen & Toubro Limited had sought reimbursement of the forfaiting charges of Rs. 10,39,44,239/- borne by it from the assessee company. Observing, that as the assessee after taking over the solar power plant from the EPC contractor had capitalised the same in its books of accounts on 09.07.2012, the PCIT was of the view that the aforesaid forfaiting charges would also have been capitalised by the assessee. In the backdrop of his aforesaid observations the PCIT held

a conviction that now when the forfaiting charges had been capitalised by the assessee in its books of account, therefore, the raising of a separate claim for deduction of the said charges by the assessee in its profit and loss account which thereafter was allowed by the A.O while framing the assessment had resulted in a double deduction. Apart from that, the PCIT was also of the view that since the LC was opened for the purpose of developing a capital asset, therefore, the forfaiting charges could not have been allowed as a revenue expenditure. On the basis of his aforesaid observations the PCIT held a conviction that the allowing of the assessee's claim for deduction of forfaiting charges by the A.O had rendered the assessment order as erroneous insofar it was prejudicial to the interest of the revenue. Backed by his aforesaid conviction the PCIT issued a 'Show cause' notice (SCN) to the assessee and called upon it to put forth an explanation as to why the assessment order passed by the A.O under Sec. 143(3), dated 23.12.2016 may not be revised under Sec. 263 of the Act. In reply, the assessee objected to the exercise of jurisdiction by the PCIT under Sec. 263 of the Act. It was inter alia submitted by the assessee that as the assessee's claim for deduction of forfaiting charges of Rs. 3,85,56,552/- was allowed by the A.O after examining all the relevant documents and satisfying himself as regards the assessee's entitlement towards claim of the said deduction, therefore, the jurisdiction of the PCIT to revise the assessment order under Sec. 263 was clearly ousted. To sum up, it was the claim of the assessee that the order passed by the A.O was neither erroneous nor prejudicial to the interest of the revenue since the same was passed after due examination of the facts in detail. On merits, it was submitted by the assessee that the forfaiting charges of Rs.3,85,56,552/- incurred by the assessee during the year under consideration had not been capitalised to the solar power plant. Elaborating on its aforesaid claim, it was submitted by the assessee that it had only capitalised the forfaiting charges of Rs.2,77,81,845/- [Rs.1,72,18,406/- incurred during F.Y.2011-12 and Rs.1,05,63,439/- incurred during the period from 01.04.2012 to 08.07.2012] as the same related to the period prior to commencement of its commercial

business operations. Accordingly, it was inter alia submitted by the assessee that its claim for deduction of forfaiting charges of Rs. 3,85,56,552/- paid to Larsen & Toubro Limited had not resulted in any double deduction. It was further submitted by the assessee that as the forfaiting charges in question were incurred post commencement of its business operations, the same, not being in the nature of a capital expenditure could not have been capitalised to the solar power plant account.

4. The PCIT after deliberating on the contentions advanced by the assessee was however not persuaded to subscribe to the same. Being of the view that the assessee company had capitalised the forfaiting charges, the PCIT held a conviction that the allowing of the assessee's claim for deduction of the same as an expenditure debited in the profit & loss account had resulted in a double deduction to the assessee company. Further, the PCIT was of the view that as the LC was opened to develop a capital asset ,therefore, the amount of forfaited charges could not have been allowed as a revenue expenditure. Being of the view that as the A.O had failed to examine as to whether the payment of forfaiting charges was as per the terms of the EPC contract, and also, as to whether the same was in the nature of revenue or capital expenditure, the PCIT held a conviction that the allowance of the same as a deduction by the A.O de hors the necessary verifications had rendered the assessment order passed by him under Sec.143(3), dated 23.12.2016 as erroneous insofar it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act. In the backdrop of his aforesaid observations the PCIT 'set aside' the assessment order passed by the A.O under Sec. 143(3), dated 23.12.2016 with a direction to him to allow the assessee's claim of deduction of forfaiting charges after due verification and enquiries and re-compute the total income accordingly.

5. Aggrieved, the assessee has assailed the impugned order passed by the PCIT under Sec. 263 of the Act, dated 26.11.2018 in appeal before us. As observed by us hereinabove, the PCIT had exercised his revisional

jurisdiction, for the reason, that he held a conviction that the allowing of the assessee's claim for deduction of forfeiting charges of Rs.3,85,55,552/- by the A.O had therein rendered the assessment order as erroneous insofar it was prejudicial to the interest of the revenue within the meaning of Sec.263 of the Act. Also, we find, that the PCIT was of the view that the forfaiting charges incurred by the assessee post commencement of its business operations being in the nature of a capital expenditure could not have been allowed as a deduction to the assessee.

6. For a fair appreciation of the issue under consideration we shall briefly cull out the facts therein involved. As can be gathered from the records, the assessee is a wholly owned subsidiary company of "Kiran Energy Solar Power Private Limited" (for short 'KESPPL'). KESPPL had signed a power project agreement with Gujarat Urja Vikas Nigam Limited for developing and operating 20 MW Solar Power Plant. KESPPL had for the purpose of developing a 20 MW Solar Photovoltaic Power Plant entered into an Engineering Procurement & Construction (EPC) contract dated 09.03.2011 with Larsen & Toubro Limited. Subsequently, a "Novation agreement" dated 13.09.2011 was executed between, viz. (i). KESPPL (original party); (ii). M/s Larsen & Toubro Limited (continuing party); and (iii). Solarfield Energy Private Limited i.e the assessee company (new party). As per the aforesaid "agreement" the original party, viz. KESPPL had assigned its rights and obligations under the EPC contract to the assessee company i.e the new party. Also, pursuant to the aforesaid "agreement" the continuing party, viz. M/s Larsen & Toubro Limited had discharged the original party, viz. KESPPL from the EPC contract on the basis that the assessee company had undertaken to perform, discharge and observe the terms of the EPC contract as if it had executed the EPC contract in place of the original party, viz. KESPPL. Upon the completion of the works and carrying out the necessary performance test in accordance with the terms and specifications of the EPC contract the assessee company after taking over the Solar Power Plant from

its EPC contractor had capitalised the same and had commenced its commercial operations with effect from 09.07.2012. As per the EPC contract the assessee company had opened an irrevocable foreign currency Letter of Credit (for short 'LC') in favour of M/s Larsen & Toubro Limited and M/s Larsen & Toubro Limited had opened a back to back LC in favour of their overseas supplier viz. M/s Sharp Corporation, Japan. Costs incurred by M/s Larsen & Toubro Limited in connection with the LC (having a usance period of 33 months) that was opened in favour of their overseas supplier, viz. M/s Sharp Corporation, Japan were required to be reimbursed by the assessee company. M/s Sharp Corporation, Japan in the month of December, 2011 forfaited the LC that was drawn in their favour by Larsen & Toubro Limited. Based on the forfaiture of the LC by M/s Sharp Corporation, Japan, Larsen & Toubro Limited incurred a forfaiting expenditure/charges of Rs.10,39,44,239/-. Accordingly, Larsen & Toubro Limited raised a claim on the assessee company for reimbursement of the aforesaid forfaiting charges borne by it, which thereafter were paid by the assessee company.

7. In the backdrop of the aforesaid facts, we shall now deal with the inferences that had been drawn by the PCIT on the basis of which the assessment framed by the A.O under Sec. 143(3), dated 23.12.2016 had been revised by treating the same as erroneous and prejudicial to the interest of the revenue within the meaning of Sec.263 of the Act. On a perusal of the order passed by the PCIT under Sec. 263 of the Act, we find that he was of the view that the assessee company had capitalised the forfaiting charges of Rs.3,85,56,552/- to the solar power plant account. Backed by his aforesaid conviction, the PCIT was of the view that now when the forfaiting charges had been capitalised by the assessee company, the allowance of the same as a deduction as claimed by the assessee in its profit and loss account under the head forfaiting charges had resulted in a double deduction to the assessee. On a perusal of the records to which our attention was drawn by the ld. A.R in the course of hearing of the appeal, we find that the aforesaid observation of

the PCIT is absolutely misconceived. As observed by us hereinabove, the assessee company had commenced its commercial operations from 9th July, 2012. We find that the forfaiting charges of Rs.2,77,81,845/- [Rs.1,72,18,406/- relatable to the F.Y. 2011-12 AND Rs.1,05,63,439/- relatable to the period from 1st April, 2012, to 8th July, 2012] which were incurred by the assessee company prior to commencement of its commercial business operations were capitalised to the solar power plant. However, the forfaiting charges of Rs.3,85,56,552/- relatable to the year under consideration had not been capitalised by the assessee company to the solar power plant. To sum up, though the assessee company had capitalised the forfaiting charges incurred by it for the period prior to commencement of its commercial business operations, however, those related to the post commencement period had not been capitalised to the solar power plant. In the backdrop of the aforesaid facts, we are of the considered view that the PCIT had erroneously observed that the assessee company had capitalised the forfaiting charges of Rs.3,85,56,552/- relatable to the year under consideration. On being confronted the ld. D.R could not rebut the aforesaid factual position. Accordingly, we are unable to subscribe to the view taken by the PCIT that the allowance of the forfaiting charges of Rs.3,85,56,552/- paid by the assessee company to Larsen & Toubro Limited had resulted in a double deduction.

8. We shall now advert to the observation of the PCIT that the A.O while framing the assessment had failed to make inquiries and verifications as regards the entitlement of the assessee towards claim for deduction of forfaiting charges of Rs.3,85,56,552/- relatable to the year under consideration. Rebutting the aforesaid observation of the PCIT, the ld. A.R had taken us through the relevant pages of the assessee's paper book (for short 'APB'). In order to impress upon us that exhaustive queries as regards the assessee's entitlement towards claim for deduction of forfaiting charges of Rs.3,85,56,552/- was raised by the A.O in the course of the assessment proceedings and the same were from time to time duly replied by the

assessee to his satisfaction, the ld. A.R had drawn our attention to the various queries that were raised by the A.O as well as the replies filed by the assessee in context of the aforesaid issue in question during the course of the assessment proceedings. It is the claim of the ld. A.R that as the A.O only after vetting the assessee's claim for deduction of forfaiting charges of Rs.3,85,56,552/- had allowed the same while framing the assessment, therefore, the PCIT had exceeded his jurisdiction and revised the assessment order only for the purpose of substituting his view as against that arrived at by the A.O. In order to buttress his aforesaid claim the ld. A.R had taken us through the relevant pages of the assessee's 'Paper book' (for short "APB"). On a perusal of the records, we find that the assessee had debited forfaiting charges of Rs.3,85,56,552/- in his profit and loss account for the year under consideration. As per the records, the assessee vide letters dated 24.10.2016 and 10.11.2016 had furnished with the A.O the complete details of the forfaiting charges of Rs.3.85 cores which were debited by it in its profit and loss account for the year under consideration. In fact, a reference of the aforesaid letters is found in the letter dated 22.12.2016 that was filed by the assessee with the A.O. Apart from that, the assessee had also furnished a photocopy of the "Support Services Agreement", dated 31.03.2012 that was entered into between the assessee company and its holding company, viz. M/s Kiran Energy Solar Power Private Limited. Further, the assessee had in the course of the assessment proceedings placed on record a letter issued by M/s Larsen & Toubro Limited, dated 27.07.2012, wherein the latter had called upon the assessee to reimburse the LC forfaiting charges aggregating to Rs.10,39,44,239/-. Along with the aforesaid letter the assessee had also filed the bifurcated details of the LC charges of Rs.10,39,44,239/- that was made available to it by M/s Larsen & Toubro Limited. Further, the assessee vide its letter dated 24.10.2016 addressed to the A.O had in compliance to a query raised by him furnished the complete details of the forfaiting charges of Rs.3,85,56,552/- that was debited in its profit and loss account for the year under consideration, along with the basis as per which the amount relatable to

the year under consideration was worked out. The bifurcated details of the forfaiting charges that were attributed/related by the assessee to the year under consideration along with the "time basis" that was adopted for working out the aforesaid amount as was furnished by the assessee with the A.O as an "annexure" to its reply dated 24.10.2016 is reproduced as under :

Forfaiting Charges Paid (USD)	20,28,868
Forfaiting Charges Paid (INR)	10,39,44,239
Date of LC opened by the Company	20 Oct-11
Date of LC maturity	30-Jun-14
Date of financial year beginning	1-Apr-13
Date of financial year end	31-Mar-14
Period of LC (Days)	984
No. Of days from Date of LC Opening & Date of financial year beginning No. Of days during the year 2013-14	528 365

Particular	Amount Rs.	Shown under in Audited Financials
Table 2: Amortisation of forfaiting charges Total Forfaiting Charges Amortised from date of LC Opening & Date of financial year beginning	10,39,44,239 5,57,74,955	
Balance unamortized (Prepaid forfaiting Charges) – As at 31 Mar 13	4,81,69,283	Refer Note 13 & 17
Amortisation of Forfaiting Charges for F.Y.2013-14	3,85,56,552	Refer Note 22
Balance unamortized (Prepaid Forfaiting Charges)- As at 31 Mar 14	96,12,731	Refer Note 17

On a perusal of the aforesaid details, we find, that the assessee had not only furnished with the A.O the details as regards the forfaiting charges of Rs.3,85,56,552/- that were debited in its profit and loss account for the year under consideration, but in fact, had even provided the very basis as per which the aforesaid amount for the year under consideration had been worked out. On a query by the bench that as to what was meant by the term "Amortization of forfaiting charges for F.Y. 2013-14" as was mentioned against the aforesaid amount of Rs.3,85,56,552/-, it was clarified by the ld. A.R that considering the abovementioned working in toto it could safely or rather inescapably be gathered that the said amount pertained/related to the year under consideration. On a perusal of the notice issued by the A.O under Sec.

142(1), dated 19.07.2016, we find that the assessee was as per Query No. 3 specifically called upon by the A.O to furnish details of the forfaiting charges of Rs.3,85,56,552/- along with an explanation as to how the same was allowable as a deduction under Sec. 37 of the Act. Apart from that, the A.O had vide Query No. 9 directed the assessee to furnish the soft copy of PPA agreement, EPC agreement, commencement certificate etc. Further, as per a notice issued under Sec. 142(1) r.w.s.129, dated 16.12.2016 the A.O as per Query No. 1 referring to Note No. 22 of the assessee's profit and loss account for the year under consideration had called upon it to submit the details as regards the forfaiting charges of Rs.3.85 cores (wrongly mentioned in the notice as 8.35 crores). Also, we find that in compliance to the aforesaid query raised by the A.O as regards the forfaiting charges the assessee had furnished with him a "Note on forfaiting charges", which read as under:

> "Solarfield Energy Private Limited ("the Company") has entered into an Engineering, Procurement & Construction (EPC) Contract with Larsen & Toubro Limited (L&T) to develop a 20 MW Solar Power Plant at Charanka in Gujrat.
>
> In accordance with the EPC Contract, the company had to open a 'Letter of Credit' ("LC") with L&T and L&T to open a back to back LC with the supplier. The Company has to reimburse any cost in connection with the LC opened by L&T in favour of their overseas supplier Sharp Corporation, Japan, for a period of 33 months.
>
> Sharp Corporation, Japan had forfeited the said LC and discounted them in December 2011 and L&T had incurred Rs.10,39,44,239/- as forfaiting charges. L&T had subsequently claimed the reimbursement of forfaiting charges paid by them. As per the terms of the EPC contract, the company reimbursed the same to L&T Ltd.
>
> These forfaiting charges are time cost from the date of LC to the maturity date. Prepaid forfaiting charges were calculated on the amount of forfaiting charges paid to L & T."

Further, the assessee vide its letter dated 10.11.2016 had inter alia filed with the A.O a photocopy of a letter dated 27.07.2012 that was issued by M/s Larsen & Toubro Limited vis-a-vis payment of the forfaiting charges which the latter had to incur as a result of forfaiting/discounting of LC by its overseas supplier, viz. M/s Sharp Corporation, Japan. In the backdrop of the aforesaid details/documents which were furnished by the assessee in the course of the assessment proceedings in compliance to the queries which were from time to time raised by the A.O as regards the assessee's claim for deduction of forfaiting charges of Rs.3.85 crores, we are unable to subscribe to the view of

the PCIT that the A.O had summarily accepted the assessee's claim for deduction of forfaiting charges without making any verifications and inquiries as regards the same.

9. On the basis of the aforesaid facts, we concur with the contentions advanced by the ld. A.R that as the A.O in context of the allowability of the assessee's claim for deduction of forfaiting charges had in the course of the assessment proceedings arrived at a plausible view, the PCIT thereafter could not for the purpose of substituting his view as against that arrived at by the A.O validly taken recourse to proceedings u/s 263 of the Act. Our aforesaid observation is fortified by the judgement of a coordinate bench of the Tribunal, i.e ITAT, Mumbai in the case of Narayan Tatu Rane Vs. ITO, Ward 27(1)(1), Mumbai (2016) 70 taxmann.com 227 (Mum).

10. As regards the contention of the ld. D.R that the A.O had failed to record in the assessment order any finding as regards the assessee's claim for deduction of forfaiting charges of Rs. 3.85 crore, we are of the considered view that on the said standalone basis the PCIT could not have invoked his revisional jurisdiction u/s 263 of the Act. In our considered view as long as the assessment record reveals that the A.O had raised queries and carried out verifications in respect of an issue during the course of the assessment proceedings, it would suffice for concluding that he had duly applied his mind and arrived at a view on his part. Accordingly, a mere absence of a reference to a query raised by the A.O or the reply given by the assessee in compliance to the same in the body of the assessment order would not be conclusive for drawing an inference that there had been no application of mind in respect of the said issue by the A.O. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Gabrial India Ltd. (1993) 203 ITR 108 (Bom)** and that of the **Hon'ble High Court of Delhi** in the case of **CIT Vs. Vikas Polymers (2012) 341 ITR 537 (Del)**.

11. We shall now advert to the fact as to whether or not the view taken by the A.O as regards the allowability of the forfaiting charges as a revenue expenditure could be brought within the realm of a plausible view arrived at on his part. As observed by us hereinabove, the assessee had commenced its commercial operations w.e.f 09.07.2012. Accordingly, the claim for deduction of forfaiting charges of Rs.3.85 crores raised by the assessee during the year under consideration pertained to the post commencement period. In our considered view, as the aforesaid forfaiting charges were incurred by the assessee wholly and exclusively for the purpose of its business and was not in the nature a capital expenditure, the same, thus, was clearly allowable as a deduction under Sec. 37(1) of the Act. At this stage, we may herein observe that as per the settled position of law all expenditure incurred to bring an asset to use is to be capitalised. Analysing the term 'actual cost' as defined in Sec. 43(1) of the Act, the **Hon'ble Supreme Court** in the case of **Challapali Sugars Ltd. Vs. CIT (1975) 98 ITR 167 (SC)**, had held, that as per the accepted rule of accountancy all expenditure that is incurred to bring a fixed asset into existence and put it in a working condition shall be included for determining its cost. It was further observed, that in case money is borrowed by a newly started company which is in the process of constructing and erecting its plant, the interest incurred before the commencement of production on such borrowed money can be capitalised and added to the cost of the fixed asset which had been created as a result of such expenditure. In fact, the 'Explanation 8' to Sec. 43 of the Act' clearly provides that interest expenditure in connection with acquisition of an asset can no more be capitalised and therein be allowed to form part of the actual cost of such asset after the same had been put to use. Accordingly, besides the price of the plant and machinery, all other items of expenditure incurred in connection with its acquisition including interest incurred before the commencement of production on capital borrowed to acquire such asset would together constitute the cost of asset. As such, by way of an analogy it can safely be concluded that now when the assessee in the case before us had commenced its commercial

operations on 09.07.2012, thereafter, no part of the forfaiting charges could have been capitalised to the solar power plant. As regards the observation of the PCIT that the A.O had failed to consider as to whether the forfaiting charges incurred by the assessee were in the nature of a capital expenditure or a revenue expenditure, we are unable to find favour with the same. In our considered view, as the forfaiting expenditure incurred by the assessee had not resulted in any enduring benefit to the assessee company, therefore, the same could not have been considered as capital in nature. As observed by the **Hon'ble Supreme Court** in the case of **Empire Jute Co. Ltd. Vs. CIT (1980) 124 ITR 1 (SC)**, the advantage acquired by an assessee must be viewed from a commercial standpoint and if the same is in revenue field, the same constitutes a revenue expenditure. As observed by the Hon'ble Apex Court, if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure incurred would be on revenue account even though the advantage may endure for an indefinite future. In our considered view, as the forfaiting charges borne by the assessee had not brought any capital asset into existence and were incurred merely with a view to carry on the business as per the terms of the EPC contract, the same, thus, was clearly in the nature of a revenue expenditure. Be that as it may, in our considered view as the A.O while framing the assessment had after carrying out necessary verifications arrived at a plausible view and allowed the assessee's claim for deduction of forfaiting charges of Rs.3.85 crores, therefore, the PCIT stood divested of his jurisdiction to revise the assessment order for the purpose of substituting his view as against that arrived at by the A.O. As such, we are of a strong conviction that now when the A.O after making proper and detailed inquiries had arrived at a plausible view that the assessee's claim for deduction of forfaiting charges was in order, the PCIT could not have thereafter in the garb of the jurisdiction vested with him under Sec.263 of the Act directed the A.O to carry out further verifications, for the reason, that he

held a view different than that arrived at by the A.O. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT, Central-III Vs. Nirav Modi (2017) 390 ITR 292 (Bom)**. As regards the reliance placed by the ld. D.R on the judgment of the **Hon'ble Supreme Court** in the case of **Malabar Industrial Company Ltd. Vs. CIT (2000) 243 ITR 83 (SC)**, the same being distinguishable on facts would not assist the case of the revenue before us. Unlike the facts involved in the case before the Hon'ble Apex Court, as the A.O in the case before us had while framing the assessment carried out exhaustive verifications in context of the issue in question, therefore, the support drawn by the ld. D.R from the aforesaid judicial pronouncement would not assist the case of the revenue.

12. In the backdrop of our aforesaid deliberations, we are of the considered view that as the A.O while framing the assessment had after making exhaustive verifications arrived at a plausible view as regards the assessee's entitlement towards claim of deduction of the forfaiting charges of Rs.3.85 crores, therefore, the PCIT could not have invoked his revisional jurisdiction under Sec. 263 of the Act. Accordingly, not being able to persuade ourselves to subscribe to the view taken by the PCIT we 'set aside' his order passed under Sec. 263 of the Act, dated 26.11.2018 and restore the assessment order passed by the A.O under Sec. 143(3), dated 23.12.2016.

13. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 07.01.2021

Sd/-	Sd/-
Pramod Kumar	Ravish Sood
(VICE PRESIDENT)	(JUDICIAL MEMBER)

Mumbai, Date: 07.01.2021
PS: Rohit

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "G" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar
ITAT, Mumbai