

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

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI N. K. CHOUDHRY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 18/RPR/2021)

(निर्धारण वर्ष / Assessment Year : 2015-16)

M/s. Vimla Infrastructure (India) Private Limited 1 st Floor, Mohsin Market, Gurunanak Chowk, M. G. Road, Raipur (CG) - 492001	बनाम/ Vs.	Pr. Commissioner of Income Tax -1 Central Revenue Building, Civil Lines, Raipur (CG)-492001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCV2677D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Nikhilesh Begani, C.A.
प्रत्यर्थी की ओर से/Respondent by :	Shri P. K. Mishra, CIT.DR

सुनवाई की तारीख / Date of Hearing	29/07/2021
घोषणा की तारीख /Date of Pronouncement	29/09/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Principal Commissioner of Income Tax, Raipur-1 ('PCIT' in short), dated 22.03.2021 passed under s.263 of the Income Tax Act, 1961 (the Act) whereby the assessment order passed by the Assessing Officer (AO) dated 29.12.2017 under s. 143(3) of the Act concerning AY 2015-16 was sought to be set aside for reframing assessment in terms of supervisory directions.

2. The grounds of appeals raised by assessee read hereunder:

“GROUND NO.I

1. *That the Revision Order passed by the Learned Pr. Commissioner of Income Tax ("the Ld.PCIT") under section 263 of the Income Tax Act, 1961 ("the Act") is highly unjustified, bad in law, without jurisdiction & void ab initio since, the Ld.PCIT has grossly erred in concluding that the Learned Assessing Officer ("the Ld.AO") has failed to carry out the necessary enquiries and investigation in relation to the issues which pertains to the material already on record.*

Hence, it is prayed that the Order passed by the Ld.PCIT under the provisions of section 263 of the Act may please be cancelled & quashed in limine.

GROUND NO.II

2. *On the facts and in the circumstances of the case as well as in law, the Ld.PCIT has grossly erred in setting aside the assessment order passed by the Ld.AO under section 143(3) of the Act with direction to make fresh assessment on specified issues by holding that the said order is erroneous in so far as it is prejudicial to the interest of the revenue. The Ld.PCIT has failed to appreciate that the said assessment order has been passed by the Ld.AO after conducting necessary & diligent enquiries with specific emphasis on the claim of deduction u/s.80IA of the Act and conscious application of mind & deliberation to the material on record and hence, it is prayed that the order passed under section 263 of the Act being highly unjustified and not in accordance with the provisions of law, may please be cancelled.*

GROUND NO.III

3. *On the facts and in the circumstances of the case as well as in law, the Ld.PCIT has grossly erred in holding that the Ld.AO has not conducted proper enquiries in respect of admissibility of claim of deduction under the provisions of section 80IA of the Act, particularly without himself rendering any prima facie findings as to the admissibility or otherwise of the claim put forth u/s.80IA of the Act and merely directing the Ld.AO to verify the claim with reference to the assessment orders of the initial assessment years thereby principally agreeing with the submissions of the Appellant hence, the action of the Ld.PCIT is highly unjustified, unwarranted and not in accordance with the provisions of Law hence, on this issue, the original order passed is neither erroneous nor prejudicial to the interest of the revenue.*

The Ld.PCIT has failed to appreciate that factum of eligibility of deduction u/s.80-IA(4) was examined threadbare in the initial assessment years by the Assessing Officers which have achieved finality in this regard and hence, the claim of deduction u/s.80-IA of the Act could not be sought to be withdrawn in exercise of supervisory jurisdiction u/s.263 in the intervening years.

The Ld.PCIT has further failed to appreciate that there being plethora of judicial precedents wherein the claim of deduction u/s.80IA(4) had been allowed in respect of Railway Sidings treating it to be 'infrastructure facility' hence, the Ld.AO has adopted a permissible view in allowing the claim of deduction accordingly, the assessment order passed is neither erroneous nor prejudicial to the interest of the revenue.

GROUND NO.IV

4. *On the facts and in the circumstances of the case as well as in law, the Ld.PCIT in holding that the Ld.AO has not conducted proper enquiries in respect of claim of deduction u/s.80G of the Act with regard to donation given to Prime Minister National Relief Fund even after examining the donation receipts in the course of revisionary proceedings hence, the direction of the Ld.PCIT is highly unjustified, unwarranted, unsustainable, not proper on facts and not in accordance with the provisions of law hence, on this issue, the original order passed is neither erroneous nor prejudicial to the interest of the revenue."*

3. As per the grounds of appeal, the assessee has sought to challenge the jurisdiction assumed by the PCIT under s.263 of the Act and as a corollary, sought to impugn the revisional order passed by the PCIT under s.263 of the Act.

4. Briefly stated, the assessee company is engaged in the eligible business of development, operation and maintenance of an infrastructure facility viz. Railway Siding/Logistic Park/Integrated Rail System under Private Siding Agreements (PSAs) with Indian Railways at three locations:

- (i) Siliyargi (CG)- Date of Commencement of Operations : 16.04.2007 (Initial Asst. Yr. 2008-09);
- (ii) Bhupdeopur, Raigarh (CG) – Date of commencement of Operations : 02.12.2008 (Initial Asst. Yr. 2009-10); &
- (iii) Tadali, Chandrapur (MH) – Date of commencement of Operations : 01.03.2011 (Initial Asst. Yr. 2011-12).

4.1 The assessee accordingly claimed that having satisfied the prescribed conditions, deduction u/s. 80IA(4) of the Act was

claimed in various assessment years for the respective locations/sites as pointed out above. In the return of income for AY 2015-16, the assessee *inter alia* claimed deduction under s.80IA(4) of the Act for which Form No.10CCB was filed as required. The assessment was carried out by the AO under s.143(3) of the Act dated 29.12.2017 wherein the AO allowed the claim of deduction under s.80IA(4) of the Act for the various locations/sites as claimed.

5. Thereafter, the PCIT in exercise of its revisionary powers, issued show cause notice dated 22.03.2021 under s.263 of the Act requiring the assessee to show cause as to why the impugned assessment so framed under s.143(3) of the Act dated 29.12.2017 should not be modified/set aside on the ground that such order is erroneous in so far as it is prejudicial to the interest of the Revenue.

6. The PCIT was not satisfied with the reply of the assessee for dropping the proceedings under s.263 of the Act. The assessment order was accordingly set aside and remanded back to the AO to verify the following:

- “1. In respect of 80G issue: The assessee has furnished the evidence of payment of donation of Rs. 58,29,019/- in Prime Minister Relief Fund during the revision proceedings. The A.O may consider the deduction after proper verification.
2. In respect of claim u/s 80IA : The A.O. may verify Form 10CC and initial years assessment orders of each business based on the contract entered with Railways.
3. In respect of the expenditure claimed under freight / transportation expenses and railway charges:- The assessee submitted that these expenses are in the nature of expenses towards transportation of material for maintenance of sidings and some part of it is in the nature of indent charges paid to railways on behalf of its client. The A.O may consider the assessee submission after verification.”

The original assessment was thus set aside on above points and the AO was accordingly directed to pass a fresh order in terms of directions noted above.

7. Aggrieved by the aforesaid action of the PCIT, the assessee is in appeal before the Tribunal agitating the supervisory jurisdiction usurped by the PCIT under s.263 of the Act.

8. The learned counsel for the assessee broadly reiterated its detailed submissions made before the PCIT and submitted that the PCIT has mis-directed himself in law and facts in resorting the revisional jurisdiction in the instant case on vague and non-descript directions without showing any error and where the issue was properly examined in the assessment proceedings. We shall appropriately refer and deal with the various facets of the arguments in succeeding paragraphs.

9. The learned DR for the Revenue, on the other hand, relied upon the revisional order passed by the PCIT.

10. We have carefully considered the rival submissions and perused the revisional order passed by the CIT under s.263 of the Act as well as other materials referred to and relied upon by the respective parties and case laws cited.

10.1 First issue concerns improper allowance of deduction under s.80IA of the Act. As noted earlier, the assessee is engaged in the business of developing, operating and maintaining a logistic park (Railway Siding/Integrated Rail System) under an agreement with South East Central Railway, location at Silyari (C.G.), Bhupdeopur, Raigarh (CG) & Tadali, Chandrapur (Mah.). The assessee company started operations of its Logistics Park (Railway Siding) at Siliyari

with effect from 16th April, 2007 i.e. Assessment Year 2008-09, Logistics Park (Railway Siding) at Bhupdeopur, Raigarh with effect from 2nd December, 2008 i.e. Assessment Year 2009-10 & Logistics Park (Railway Siding) at Tadali, Chandrapur with effect from 1st March, 2011 i.e. Assessment Year 2011-12 i.e. in earlier assessment years. During the assessment year under reference, the assessee company has been continuing with the eligible business of Development, Operation & Maintenance of Infrastructure Facility viz. Logistic Parks (Railway Sidings/Integrated Rail Systems) on which deduction under s.80IA(4) of the Act was claimed and assessed. The assessee company was thus duly entitled to deduction from their Gross Total Income under Section 80-IA of the Income Tax Act being Developer of an Infrastructure Facility in respect of all its Railway Sidings viz. Silyari, Bhupdeopur and Tadali railway sidings since, the prescribed tax holiday period of ten consecutive assessment years beginning from the year in which the said undertakings (sidings in the instant case) have commenced their operations and chosen the initial assessment year has not been completed till the assessment year under reference. The assessee has accordingly continued its claim on the eligible deduction to the extent of Rs.15,90,24,621 /- in its return of income.

10.2 In this background, it is the case of the assessee that: (i) the assessment under reference and revision was selected for scrutiny through CASS; (ii) notice under s.142(1) of the Act was issued dated 10th July, 2017 raising multiple questions including claim of deduction 80IA of the Act seeking the details towards deduction with proper justification of claim alongwith supporting evidence. In response, the assessee filed submissions supported by the extensive documentary evidences specifically addressing the issue of justifiability of claim of deduction. A copy of assessment orders

passed under s.143(3) of the Act for earlier assessment years beginning from A.Y. 2008-09 onwards were filed wherein similar claim under s.80IA of the Act was claimed; (iii) Form No.10CCB in respect of each eligible undertaking (being Railway Sidings) with the undertaking-wise/business-wise P&L account duly audited and certified by the Chartered Accountant filed; & (iv) Separate books of accounts in respect of each undertaking were produced.

10.3 Further enquiries were made by AO in the impugned deduction. In pursuance of another notice dated 22nd October, 2020 with specific emphasis on allowability of deduction claimed under s.80IA of the Act, further clarifications were provided. Another notice under s.142(1) of the Act dated 03rd November, 2017 was seeking yet another details. It is thus the case of the assessee that the entire conspectus of the case alongwith in depth examination of complete book of accounts and separate books of accounts and Form No. 10CCB etc. was looked into. It was after careful examination of relevant clauses of agreements entered with SECR/CR in respect of Railway sidings, valuing capital costs, cost incurred towards setting up on sidings etc. the deduction claimed under s.80IA(4) of the Act was allowed after particular consideration of past assessment history consistently allowing deduction in the preceding assessment years etc. in the identical factual matrix.

10.4 It is also asserted on behalf of the assessee that once pre-requisite conditions stipulated under s.80IA of the Act is satisfied and allowed in initial assessment years, deduction could not be withdrawn under s. 143(3) of the Act until the finality achieved in initial assessment year is disturbed. Consequently, the action of AO being plausible in law could not be disturbed under s.263 of the Act. For this proposition, following decisions have been relied upon:

- (a) *CIT vs. Paul Brothers (1995) 216 ITR 548 (Bom.HC)*
- (b) *Simple Food Products (P.) Ltd. Vs. CIT (2017) 84 taxmann.com 239 (Bom.HC)*
- (c) *Manilal Dayatji & Company Vs. CIT in ITA No.32/RPR/2014 (Date Of Order : 09.03.2018) (ITAT Raipur)*
- (d) *K. Raheja IT Park (Hyderabad) Pvt. Ltd. Vs. DCIT in ITA No.691/Hyd/2016 (Date of Order: 06.05.2021) (ITAT Hyderabad)*

10.5 It is further contended that deduction u/s.80IA of the Act was allowed in the case of Private Railway Sidings treating it as eligible 'infrastructure facility' previously denied in Section 263 Orders:

- (a) *M/s. JSW Steel Ltd. vs. Pr.CIT in ITA No. 4062, 4063, 4064 & 4086/Mum/2017 (Date of Order: 02.05.2018) (ITAT Kolkata)*
- (b) *M/s. Rashmi Metaliks Ltd. vs. DCIT in ITA No. 813 to 816/Kol/2017 (Date of Order: 02.05.2018) (ITAT Kolkata)*

10.6 In this background, it is contended that in the instant case, where the necessary enquiries were conducted by the AO and the assessment order was passed after conscious application of mind, assumption of jurisdiction by PCIT is not valid having regard to the scope of revisional proceedings under s.263 of the Act as echoed in;

- (a) *Malabar Industrial Co. Ltd. Vs. CIT (2000) 243 ITR 83 (SC)*
- (b) *CIT Vs. Max India Limited (2007) 295 ITR 282 (SC)*
- (c) *CIT Vs. Kwality Steel Suppliers Complex (201 7) 395 ITR 1 (SC)*
- (d) *CIT Vs. Gabrial India Ltd. (1993) 203 ITR 108 (Bom.HC)*

10.7 It is next asserted that the instant case is not a case of lack of enquiry. The allegation of the PCIT is towards inadequacy in proper enquiry. The PCIT despite having direct and clinching evidence has not carried out even pointed out any particular error in the action of the AO and has not carried out even a minimal enquiry himself as expected from him to describe the exact nature of error. For this proposition, reliance was placed on the following decisions:

- (a) *PCIT Vs. Delhi Airport Metro Express Pvt. Ltd. (201 7) 398 ITR 8 (Del. HC)*
- (b) *ITO Vs. D.G.Housing Projects Ltd. (2012) 343 ITR 329 (Del.HC)*

(c) *Pr.CIT Vs. M/s.Brahma Centre Development Pvt. Ltd. in ITA No.116/2021 & 118/2021 (Del.HC) (Date of Judgment : 05.07.2021)*

11. On appraisal of the facts and circumstances of the case and case laws noted above, we find that AO had carried out specific enquiries with regard to deduction claimed under s.80IA(4) of the Act and it was only after he was satisfied with the propriety of the claim, the continuing deductions claimed by the assessee left undisturbed. Significantly, AY 2015-16 in question is not the first year for claim of deduction under s.80IA(4) of the Act. The assessee has claimed deduction in respect of different sites from various initial assessment years noted earlier and no change in circumstances was noted by the PCIT which is warranted in a settled point. Thus, the acceptance of continuity of claim under s.80IA(4) of the Act cannot be seen with any concern without showing deviation in facts. It is further seen that private railway sidings have been treated as eligible infrastructure facility for the purposes of Section 80IA(4) of the Act by the co-ordinate benches. Lastly, the purport of enquiry directed by the PCIT is totally unintelligible. The PCIT himself has not carried out any examination or verification of facts and has simply directed the AO to '*may verify Form 10CC and initial years assessment orders of each business based on the contract entered with Railways*'. The PCIT has merely set aside to indulge in verification of the same facts yet again without citing as to how the AO has committed any error except alleging no proper enquiry.

12. Needless to say, the assessment order can be interdicted under s.263 of the Act only where both the conditions are met i.e. order is erroneous as well as prejudicial to the interests of the Revenue. No error has been shown by the PCIT except absence of proper enquiry.

As noted, the issue of deduction has been found to be continuing since last many assessment years and necessary documentations for claim / deduction has been placed on record and examined by the AO. No inconsistency in the action of the AO has been shown which can render his action to be erroneous and prejudicial to the interest of the Revenue. It is trite that the error should be one that no debatable or a plausible view. Section 263 of the Act confers a power of revision in a superior officer and therefore, by the nature of the power, doesn't allow for supplanting or substituting the view of the AO. The appreciation of material placed before the AO is exclusively within his domain as a *quasi judicial* function, which cannot be interdicted by the superior officer while exercising powers under s.263 of the Act only on the ground that, placed on the position of AO, his appraisal would have yielded different conclusions. Though, the law is same for all, however, as no two persons possibly think alike, variance in their analysis, understanding and application of law in same or similar factual matrix by itself would not empower a superior authority to displace the view of the lower authority. This apart, in the absence of any reason showing error in the assessment order, there was no warrant for a PCIT to interfere with the order under s.143(3) of the Act. The action of the PCIT under s.263 of the Act is thus found to be without jurisdiction and consequential order thus passed is set aside.

13. As regards the claim of deduction under s.80G of the Act, it is an admitted position that the clinching evidence in the form of receipt from the donor was available before the PCIT. The PCIT has simply observed that '*the AO may consider deduction after proper verification*'. The nature of verification is not specified. Such mundane and directionless observations in the revisional

proceedings are neither here nor there, in the absence of any elaboration of the grounds for not entertaining the deduction. This ground for revisions is thus set aside.

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

Order pronounced on 29/09/2021 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-
(N. K. CHOUDHRY)
JUDICIAL MEMBER
Raipur

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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

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By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)