

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **1311 & 1312/CHNY/2018**

निर्धारण वर्ष /Assessment Years:2013-14 & 2014-15

&

आयकर अपील सं./ITA Nos.: **2093 & 954/CHNY/2019**

निर्धारण वर्ष /Assessment Years:2013-14 & 2014-15

**State Industries Promotion
Corporation of Tamilnadu Ltd.,**
No.19-A, Rukmani Lakshmipathy
Road, Egmore,
Chennai – 600 008.

The DCIT / ACIT,
v. Corporate Circle 6(2),
Chennai - 34.

PAN: AAACS 4643J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri M.Rajan, CIT

सुनवाई की तारीख/Date of Hearing

: 04.04.2022

घोषणा की तारीख/Date of Pronouncement

: 08.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

The two appeals by assessee in ITA Nos. 1311 & 1312/Chny/2018 are arising out of the combined order of the learned Principal Commissioner of Income Tax, Chennai-6, the revision orders passed u/s.263 of the Income Tax Act, 1961 (hereinafter 'the Act')

vide C.No.6119/PCIT-6/2017-18 dated 09.03.2018. The assessments were framed by the DCIT, Corporate Circle – 6(2), Chennai for the assessment years 2013-14 & 2014-15 u/s.143(3) of the Act vide orders of different dates 24.03.2016 & 30.12.2016 respectively. The two appeals in ITA Nos.2093 & 954/Chny/2019 are directed against the different orders of Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.255/2018-19/CIT(A)-15 & 35/2018-19/CIT(A)-15 dated 30.04.2019 & 31.01.2019 respectively. The consequential assessments were framed by the ACIT / DCIT, Corporate Circle – 6(2), Chennai u/s. 143(3) r.w.s. 263 of the Act, vide orders dated 20.12.2018 & 21.05.2018 for the assessment years 2013-14 & 2014-15 respectively.

ITA Nos.1311 & 1312/CHNY/2018

2. The only common issue in these two appeals of assessee against the revision order passed by PCIT u/s. 263 of the Act is as regards to the assumption of jurisdiction by PCIT u/s.263 of the Act, where the AO has conducted proper enquiries and has applied his mind and framed assessment and taken a possible view on the issue. For this assessee has raised identically worded grounds as regards to the issue of assumption of jurisdiction in both the years

and hence, the relevant grounds as raised in assessment year 2014-15 in ITA No.1312/CHNY/2018 reads as under:-

1.1 The impugned order of the CIT u/s263 is erroneous, opposed to law and facts and is liable to be set aside.

1.2 The CIT erred in passing the order without application of mind and without adverting to the detailed submissions made before him.

2.1 The CIT erred in invoking the provisions of Section 263 in so far as the assessment order is neither prejudicial to the interests of the Revenue nor erroneous.

2.2 The CIT erred in holding that the Assessing Officer did not conduct proper verifications or enquiries and has not applied his mind with respect to the issues considered in the 263 order, which is contrary to the records.

3. At the outset, the Id.counsel for the assessee stated that originally the assessee had challenged these orders of PCIT before the Tribunal in ITA No.1311 & 1312/CHNY/2018 and the Tribunal vide order dated 19.07.2018 confirmed the revision order passed by the PCIT and the assessee carried the matter before the Hon'ble Madras High Court and the Hon'ble Madras High Court, in both the years in TCA Nos. 823 & 826 of 2018 vide order dated 31.01.2020 admitted the following substantial question of law

(i)Whether on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal was perverse in not considering the submissions made and the materials placed before it in the proper perspective in respect of jurisdiction of the Principal Commissioner of Income Tax in exercising jurisdiction under Section 263 of the Income Tax

Act, 1961, but erroneously observing that the assessee had not filed the relevant documents to come to an exact conclusion in respect of the claim of deduction under Section 80IA of the Act?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in not holding that the Principal Commissioner of Income Tax had no jurisdiction to revise the order of the Assessing Officer, which is in violation of the -doctrine of merger- and had exceeded in his jurisdiction in violation of Sub~Clause (c) under Explanation 1 to Section 263(1) of the Act in so far as the issue had already been the subject matter of appeal before the Commissioner of Income Tax (Appeals)? and

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the Assessing Officer had erroneously allowed excess deduction under Section 80IA of the Act?

and remanded the matter back to the file of the Tribunal to decide the issue of assumption of jurisdiction by PCIT vide para 4 as under:-

4. It is evident from the records that though the appellant has raised the issue of jurisdiction of the Commissioner, under Section 263 to initiate suo motu revision especially when an appeal against Assessment Order has been filed and heard and order has been passed by the Appellate Commissioner and though the Tribunal went into the merits of the case, it has not decided about the jurisdiction. The jurisdiction point is an important point to decide the matter and therefore, the order passed by the Tribunal is set aside and the matter is remanded to the Tribunal to decide about the jurisdiction. The above substantial questions of law are answered accordingly.

3.1 In term of the above, the Id.counsel for the assessee stated that this appeal is being revived by the Hon'ble High Court has clearly directed the Tribunal to decide the issue of assumption of

jurisdiction by PCIT for revising the assessments u/s.263 of the Act, for these assessment years. The Id.counsel for the assessee took us through the grounds raised which are reproduced above. The Id.counsel first of all took us through the show cause notice issued by PCIT dated 20.02.2018, which is enclosed in assessee's Paper-book at pages 93 to 96, wherein the PCIT has doubted the issue of contribution to guidance amounting to Rs.5,00,000/- and claim of deduction u/s.80IA of the Act on interest income of Rs.1,80,03,358/-, sundry income of Rs.10,55,33,636/- and other operating revenue of Rs.7,34,67,288/- which represents interest on old loans and advances. This is as regards to assessment year 2013-14. As regards to assessment year 2014-15, the same contribution to guidance amounting to Rs.5,00,000/- and the claim of deduction u/s.80IA of the Act i.e., excess claim of deduction of Rs.54,19,14,875/-.

4. The Id.counsel for the assessee first of all took us through the claim of deduction made u/s.80IA of the Act in the return of income at page 24 of assessee's paper-book. The Id.counsel stated that the AO vide letter dated 25.04.2016 (which is enclosed in assessee's paper-book at pages 66 & 67), wherein the relevant details of claim

u/s.80IA of the Act was asked for, vide question No.5 and question No.9 as under:-

5. Copy of the Annual report, including the director report, audit report, notes to account, Balance sheet and profit and loss account along with all the schedules.

9. Details of expenses which are not debited in the P & L account but claimed IIT memo (Original & Revised). And note on allowability of same with proper documentary evidence for claiming the same. If proper documentary evidence is not produced, the same will be disallowed without further opportunity.

Further, the Id.counsel took us through the AO's notice u/s 142(1) of the Act dated 07.10.2016, which is enclosed at page 68 of assessee's paper-book, asking a specific question about developing and maintaining of infrastructure as envisaged in Rule 18BBB(3) of the Income Tax Rules, 1962. The relevant question at 1. (III) reads as under:-

1.
III. Please furnish documents/details of Govt. approval / permission for developing and maintaining of infrastructure as envisaged in Rule 18 BBB(3).

The Id.counsel for the assessee stated that these two enquiry letters along with notice u/s.142(1) of the Act, was replied by assessee vide letter dated 21.11.2016, which is enclosed at assessee's paper-book pages 84 & 85 and the relevant replies are as under:-

A. Form 10CCB duly filled.
B. Government of India Ministry of Finance CBDT approval for setting up a growth centre at Oragadam

- C. Approval of scheme cost for setting up a growth centre at Oragadam by Government of Tamilnadu
D. Profit & Loss statement of the Oragadam Project

Further, the AO vide notice u/s.142(1) dated 28.11.2016 and questionnaire along with the same, required the assessee to explain vide question No.4, the claim of deduction u/s.80IA of the Act. The relevant question reads as under:-

4. Please explain how the following incomes are eligible for deduction u/s. 80IA

- a) Plot maintenance charges – Rs.36,50,582
b) Water Charges - Rs.5,74,02,133
c) Rent - Rs.2,03,17,777
d) Grant received – Rs.18,05,129
e) Interest on water charges, Maintenance Charges etc., - Rs.7,03,262
f) Misc income – Rs.39,99,697

The assessee replied vide letter dated 02.12.2016 and the relevant answer reads as under:-

b. Income eligible for deduction u/s. 80IA:

In computing the profit and gains of the Oragadam Project, the eligible business under section 80IA of the Income Tax Act, 1961, we have included the following income.

i.	Plot maintenance charges	36,50,582
ii.	Water Charges	5,74,02,133
iii.	Rent	2,03,17,777
iv.	Grant received	18,05,129
v.	Interest on water charges, Maintenance Charges etc.,	7,03,262
vi.	Misc income	39,99,697

8,78,78,580

These incomes are derived from the business of developing, maintaining and operating the infrastructure facility and hence eligible for deduction u/s 80IA of the Act.

The Id.counsel stated that this questionnaire and reply is enclosed in assessee's paper-book at pages 86 to 90. The Id.counsel also stated that complete details in regard to claim of deduction i.e., Government order, allotment order, copy of lease deed executed between assessee and Renault and Nissan Automotive India P Ltd., and date of commencement of production is given to the AO. The same are at page 90 of assessee's paper-book as under:-

Please find the following attachments

- i. GO(MS) No.174 dated 02.06.2008
- ii. Allotment order ref. No.P&SP/SIGC-O-Expn/R&N/29/2009
- iii. Memorandum of Understanding between Government of Tamilnadu and Renault Nissan Automotive India P Ltd.
- iv. Copy of Lease Deed dated 04/09/2012 executed between the assessee and Renault and Nissan Automotive India P Ltd.
- v. Date of commencement of production

5. As regards to the claim of contribution to guidance, the Id.counsel for the assessee stated that this amount has been claimed amounting to Rs.5 lakhs as contribution to guidance and paid to an autonomous society established by State Government of Tamil Nadu under the name and style of "Industrial guidance

Bureau of Tamil Nadu". The Id.counsel stated that this is in term of Government Order Ms.No.6 dated 07.01.1992 issued by Industrial Guidance and Export Promotion Bureau Orders and this payment is regularly claimed by assessee since incorporation of the assessee company and all along has been allowed by the Revenue either u/s.143(1) or 143(3) of the Act. The Id.counsel for the assessee stated that this being a statutory payment it was never disallowed and for the sake of consistency, the payment should have been allowed and rightly been allowed by the AO. In view of the above, the Id.counsel stated that the very assumption of jurisdiction by the AO on the same set of facts which were before the AO and the AO has examined the issue in great detail on both the aspects i.e., claim of deduction u/s.80IA of the Act as well as contribution to guidance. The Id.counsel for the assessee stated that in assessment year 2013-14, the AO in view of the above allowed the claim of assessee after considering the submissions in details on both the issues.

6. The Id.counsel for the assessee stated that in such situation, the Hon'ble Madras High Court in the case of AVM Cine Products vs. DCIT, [2021] 123 taxmann.com 41 has considered the allowability

of claim of deduction u/s.80IA of the Act on interest earned by assessee and the Hon'ble High Court vide para 25 to 27 held as under:-

25. WE do not find any such occasion to artificially bifurcate and dissect the interest income earned by the assessee in the present case in its ordinary course of business, so as to take it out of the ambit of deduction available to it under section 80-IA of the Act. The efforts on the part of the Revenue authorities to create such artificial compartments in the "business income" of the assessee, merely to reduce the quantum of deduction available to the assessee under section 80-IA of the Act of which the eligibility of the assessee is not even in doubt, is nothing but a whimsical and the arbitrary view of the Revenue authorities and the same is opposed to common sense and business prudence of a common businessman.

26. Our view is fully supported by the judgments relied upon by the learned counsel for the assessee quoted above, whereas we find distinction of the facts in the case law relied upon by the Revenue and therefore, we have no hesitation to hold that the interest income earned by the assessee on margin money deposits with the bank and interest on short-term loans and advances in the form of belated payments made by customers was very much profits and gains of the business of the assessee and therefore, the assessee was entitled to deduction under section 80-IA of the Act in respect of such interest income also.

27. Having arrived at the said conclusion in favour of the assessee, we do not consider it even necessary to answer the question whether the reopening of the assessment to bring to tax such income under the head "Income from other sources" and denying deduction under section 80-IA of the Act is required to be answered, as that issue remains only academic now.

6.1 He further relied on the decision of Hon'ble Madras High Court in the case of Arul Mariammal Textiles Ltd., vs. ACIT, [2018] 97

taxmann.com 298 and considering other case laws allowed the claim vide para 23 to 26 as under:-

23. So far as the decision in the case of Liberty India (supra) is concerned, the same would not apply to the facts of present case, because the said decision arose out of a drawback incentive, which was on account of a scheme framed by the Central Government and the Court held that the incentive profits are not profits derived from eligible business under Section 80IB of the Act and they belong to the category of ancillary profits of such undertakings. Therefore, on facts, learned counsel for the Revenue cannot place reliance on the case of Liberty India (supra) to deny the benefit to the Assessee.

24. So far as the decision in the case of Cyber Pearl IT Park Ltd., the Court, after taking into consideration various decisions, pointed out that in order to come to a conclusion as to whether such profits or gains, that is, income would be amenable to deduction, the effective source of income is to be looked at. Thus, essential factual matrix needs to be looked to arrive at a conclusion as to the effective source from which such income earned and if it is found that it is derived from secondary source, it is not the effective source, which falls outside the purview of such like provision, which provides for deduction.

25. In the instant case, the requirement of the Assessee to furnish the fixed deposit was a pre-condition to enable the Assessee to open a foreign Letter of Credit for the purpose of import of critical components for the manufacture of wind mill. This incidentally had earned some interest. As pointed out by the Hon'ble Supreme Court in Shree Rama Multi Tech Ltd., it is not the Assessee's surplus money, which was deposited by way of fixed deposit, which had earned interest; on the contrary, it was a pre-condition for the purchaser/Assessee to enable him to import the critical component for the purpose of manufacturing. Furthermore, it is not the case of the Revenue that the amount was deposited in fixed deposit solely for the purpose of earning interest nor it is the case of the Revenue that the amount, which was deposited in fixed deposit was a surplus money, which was lying idle in the hands of the Assessee. Therefore, whatever income accrued is merely incidental and not the prime purpose of doing the act in question, which resulted into accrual of some additional income and therefore, the said income is not liable to be assessed and is eligible to be claimed as deduction.

26. Thus, for the above reasons, we are of the clear view that the Assessee is entitled to deduction and the Tribunal erred in applying the decision of the *Pandian Chemicals*, which is distinguishable, for the reasons set out by us above.

6.2 The Id.counsel for the assessee stated that this issue is considered by the Hon'ble Bombay High Court in the case of CIT vs. Nirav Modi, 390 ITR 292 (Bom) (2016), wherein the issue of lack of enquiry and identical enquiry was discussed and the Hon'ble Bombay High court considered this aspect vide para 7 to 9 as under:-

7. Firstly, the Revenue contends that the exercise of powers under Section 263 of the Act is justified as in this case, as no inquiry in respect of the gifts received during the subject years was done by the Assessing Officer for the Assessment orders for Assessment Years 2007-08 and 2008-09. This according to the Revenue is evident from the Assessment Orders dated 31st December, 2009 and 30th December, 2010 which does not even make a mention of the gifts received much less discuss and/or deal with the same. This issue is no longer res Integra as this Court in *Idea Cellular Ltd. v. Dy. CIT* [2008] 301 ITR 407 (Bom.) has held that if during Assessment proceedings queries were raised and the assessee responded to the same, then even if an Assessment order does not mention the same, it does not mean that the Assessing Officer has not applied his mind to the issues. It would be well-nigh impossible for an Assessing Officer to complete all-assessments assigned to him under Section 143(3) of the Act if he is required to deal with all issues which arose during the Assessment Proceedings. Thus, the Assessment Order primarily deal with only those issues in respect of which the Assessee has not been able to satisfy him and give reasons for his conclusion. This would enable the Assessee to challenge the same, if aggrieved. In fact the Gujarat High Court in *CIT v. Nirma Chemical Works Ltd.* [2009] 309 ITR 67 has observed that if an assessment order were to incorporate the reasons for upholding the claim made by an assessee, the result would be an epitome and not an assessment

order. In this case, during the assessment proceedings for both the Assessment Years, the Assessing Officer issued a query memos to the assessee, calling upon him to justify the genuineness of the gifts. The Respondent-Assessee responded to the same by giving evidence of the communications received from his father and his sister i.e. the donors of the gifts along with the statement of their Bank accounts. On perusal, the Assessing Officer was satisfied about the identities of the donors, the source from where these funds have come and also the creditworthiness/capacity of the donor. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Order passed thereon. Thus, this objection on the part of the Revenue, cannot be accepted.

8. It is next submitted that the donor had not been examined by the Assessing Officer. It is not in every case that every evidence produced has to be tested by cross examination of the person giving the evidence. It is only in cases where the evidence produced gives rise to suspicion about its veracity that further scrutiny is called for. If there is nothing on record to indicate that the evidence produced is not reliable and the Assessing Officer was satisfied with the same, then it is not open to the CIT to exercise his powers of Revision without the CIT recording how and why the order is erroneous due to not examining the donors. Thus, this objection to the impugned order by the Revenue is also not sustainable.

9. It was next submitted that no enquiry was done by the Assessing Officer to find out whether the donor Mr Deepak Modi (father) had received money from M/s. Chang Jiang as claimed. Nor any inquiry was done to find out whether the sister had in fact earned amounts on account of Foreign Exchange Transactions as claimed by her. We find that this enquiry of a source of source is not the requirement of law. Once the Assessing Officer is satisfied with the explanation offered on inquiry, it is not open to the CIT in exercise of his revisional powers direct that further enquiry has to be done. At the very highest, the case of the Revenue is that this is a case of inadequate inquiry and not of "no enquiry." It is well settled that the jurisdiction under Section 263 of the Act can be exercised by the CIT only when it is a case of lack of enquiry and not one of inadequate enquiry. This view has been taken by this Court in the matter of CIT v. Shreepati Holdings & Finance (P.) Ltd. [ITA 1879 of 2013 dated 5th October, 2013], by the Delhi High Court in CIT v. Vikas Polymers [2012] 341 ITR 537 and

in D.G. Housing Projects (supra). In fact the Delhi High Court in D.G. Housing Projects (supra) while so holding placed reliance upon the decision of this Court in Gabriel (India) Ltd. (supra). It is very important to note that the CIT in his order under Section 263 of the Act has recorded the fact that there has been no adequate inquiry. Thus, this is not a case of no inquiry, warranting order under section 263 of the Act. Thus, this objection on the part of the Revenue, is also not sustainable.

and finally vide para 12, following the decision of CIT vs. Amitabh Bachchan, 384 ITR 200 held that it is a well settled law that the jurisdiction u/s.263 of the Act can be assumed only when it is a case of lack of enquiry and not want of enquiry. The Hon'ble Bombay High Court finally held in para 12 as under:-

12. In the present facts, the Assessing Officer was satisfied, consequent to making an enquiry and examining the evidence produced by the Assessing Officer, establishing the identity and creditworthiness of the donor as also the genuineness of the gift. The CIT in his order of Revision, does not indicate any doubts in respect of the genuineness of the evidence produced by the Assessee. The satisfaction of the Assessing Officer on the basis of the documents produced is not shown to be erroneous in the absence of making a further enquiry. It is made clear that our above observations should not be inferred to mean that it is open to the Assessing Officer to enquire into the source of source for the purpose of the present facts. This is a case where a view has been taken by the Assessing Officer on enquiry. Even if this view, in the opinion of the CIT is not correct, it would not permit him to exercise power under Section 263 of the Act. In fact, the Apex Court in Amitabh Bachchan (supra) has observed that there can be no doubt that where the view taken by the Assessing Officer is a possible view, interference under Section 263 of the Act, is not permissible.

6.3 The Id.counsel stated that even Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., vs. CIT, [2000] 243 ITR 83 held

that if there exists two views, the CIT could not exercise jurisdiction u/s.263 of the Act as per settled legal position. The Hon'ble Supreme Court noted that for an order of AO to be interfered within exercise of revisional powers, the CIT has to find in the first instance that the order is erroneous and secondly, the order is prejudicial to the interest of Revenue. Once the twin conditions are fulfilled, the CIT can exercise jurisdiction u/s.263 of the Act. The Hon'ble Supreme Court further noted that the AO after making due enquiries adopted one of the view and granted partial relief u/s.80I of the Act, the CIT cannot take a different view but would not be sufficient to take a different view to exercise power u/s.263 of the Act because when two views are possible and CIT does not agree with the view taken by the AO, the assessment order cannot be treated as erroneous and prejudicial to the interest of Revenue unless the view taken by the AO is unsustainable in law.

6.4 In view of the above, the Id.counsel for the assessee stated that the PCIT has wrongly assumed the jurisdiction u/s.263 of the Act despite the fact that in present case, the AO has carried out complete enquiry in regard to claim of deduction u/s.80IA of the Act as well as the claim of deduction in regard to contribution to

guidance. Hence, he urged that the issue on assumption of jurisdiction may be decided in favour of assessee.

7. On the other hand, the Id.CIT-DR relied on the order of PCIT and argued that by insertion of Explanation to Section 263 of the Act, by the Finance Act, 2015 w.e.f. 01.06.2015, the revisionary powers of PCIT /CIT has enlarged and all orders passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interest of Revenue, if, in the opinion of PCIT/CIT

- (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.

8. We have heard rival contentions and gone through facts and circumstances of the case. The assessee company is an autonomous society set up by the Government of Tamil Nadu and functions as an Industrial Guidance and Export Promotion Bureau of Tamil Nadu. This entity acts as a conduit between the prospective investors / entrepreneurs and the Government of Tamil Nadu for

signing of Memorandum of Understanding and bringing investments in the state of Tamil Nadu. The assessee for these two assessment years i.e., AY 2013-14 & 2014-15 claimed deduction u/s.80IA of the Act in respect of interest income amounting to Rs.1,80,03,358/-, sundry income of Rs.10,55,33,636/- and other operating revenue of Rs.7,34,67,288/- which represents interest on old loans and advances. This is for assessment year 2013-14. As regards to assessment year 2014-15, the assessee claimed deduction u/s.80IA of the Act to the tune of Rs. 93,40,83,416/- but the AO disallowed the claim of deduction u/s.80IA on various incomes (including interest of Rs.8,78,78,580/-). The AO disallowed claim of deduction u/s.80IA of the Act. The AO in both the years allowed contribution to guidance of Rs.5 lakhs in each of the years claimed by assessee as deduction.

8.1 Subsequently the PCIT issued show-cause notice for both the years stating that the contribution to guidance and the claim of deduction u/s.80IA of the Act allowed by AO in assessment year 2013-14, is to be withdrawn. The claim of deduction u/s.80IA of the Act for assessment year 2014-15 was disallowed by AO on various incomes but the PCIT noted that even in assessment year

2014-15, the AO failed to take note that the business income available is to the extent of Rs.30,42,89,961/- and thereby, he wrongly allowed the claim of deduction u/s.80I of the Act on excess amount of Rs.54,19,14,875/-. We noted that the AO during the course of assessment proceedings, in both the years has applied his mind to the facts of the case by issuing show cause notice and calling for the information and examining the same. The AO, in both the years, allowed the claim of deduction u/s.80IA of the Act, after going through all the details and formed an opinion on the basis of details filed by the assessee in regard to various incomes i.e., including interest income in assessment year 2013-14. As regards to assessment year 2014-15, the AO has subsequently disallowed the claim of deduction u/s.80IA of the Act, in respect to flat maintenance charges, water charges, rent, grant received from transfer to income, interest on water charges and maintenance charges and miscellaneous income and lease premium. As the AO has applied his mind to the facts of the case and reached to a conclusion that the assessee has claimed deduction based on some evidences that means, he has taken a possible view. It is to be noticed that the Hon'ble Madras High Court in the case of Arul Mariammal Textiles Ltd., *supra*, has categorically held that interest

on margin money by way of fixed deposits kept with the assessee's banker so as to enable bank to open a foreign letter of credit which was essential for purpose of import of critical components for carrying on business of the assessee, was eligible for claim of deduction u/s.80IA of the Act. Similar view was expressed by Hon'ble Madras High Court in the case of AVM Cine Products, *supra*. We noted that the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd., *supra*, has categorically held that once the AO after making due enquiries adopted one of the view and granted partial relief, CIT is not permitted to exercise power u/s.263 of the Act because when two views are possible and CIT does not agree with the view taken by the AO, the assessment order cannot be treated as erroneous as well as prejudicial to the interest of Revenue unless the view taken by the AO is unsustainable in law. Hence, keeping in mind entirety of facts, we are of the view that in both the years, the PCIT erred in revising the assessments u/s.263 of the Act without holding the assessments framed by the AO u/s.143(3) of the Act after due enquiry and investigation as erroneous as well as prejudicial to the interest of Revenue. In such circumstances, we set aside the revision orders passed by PCIT in both the assessment years and allow the appeals of assessee.

9. Coming to **ITA Nos.2093 & 954/Chny/2019** for the assessment years 2013-14 & 2014-15, these appeals are arising out of consequential assessments i.e., impugned orders of CIT(A) in ITA No. 255/2018-19/CIT(A)-15 & 35/2018-19/CIT(A)-15 dated 30.04.2019 & 31.01.2019 for the assessment years 2013-14 & 2014-15 respectively. Since, the revision order has already been quashed by us, these orders of lower authorities giving effect to consequential order will not survive and hence, in these two assessment years, the orders of the lower authorities are set aside and the appeals of the assessee are allowed.

10. In the result, the appeals filed by the assessee in ITA Nos.1311 & 1312/CHNY/2018 and 2093 & 954/CHNY/2019 are allowed.

Order pronounced in the court on 8th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 8th April, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT