

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 746/Bang/2021</b>
<b>Assessment Year : 2016-17</b>

M/s. Coretech Ventures (Bangalore) Pvt. Ltd., Divyasree Chambers' Wing-A, O Shaugnessy Road, Langford Town, Bangalore – 560 025. <b>PAN: AAFCC2775E</b>	<b>Vs.</b>	The Principal Commissioner of Income Tax, Bangaluru – 2, Bangaluru.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri V. Chandrashekar, Advocate
Revenue by	:	Shri V.S. Chakrapani, CIT- DR

Date of Hearing	:	01-06-2022
Date of Pronouncement	:	29-07-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by assessee against order dated 30/03/2021 passed by Ld.PCIT, Bangalore -2 u/s. 263 of the Act for A.Y. 2016-17 on following grounds of appeal:

*“1. The order of revision passed by the learned Principal Commissioner of Income tax, Bengaluru -2, Bengaluru, under Section 263 of the Act dated 30/03/2021, in so far as it is against the Appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.*

2. *The learned Principal Commissioner of Income tax is not justified in law and on facts to set aside the assessment order passed under section 143[3] of the Act dated 30/12/2018 and direct the assessing officer to modify the original assessment passed by the learned assessing officer, on the facts and circumstance of the case*

3. *The learned Principal Commissioner of Income tax was not justified in passing an order under section 263 of the Act, as the order passed under section 143[3] of the Act, was pursuant to proper enquiry by the learned assessing officer on the facts and circumstances of the case.*

4. *The learned Principal Commissioner of Income tax has passed an unsustainable order which is based purely on assumptions and presumptions.*

*The order is arbitrary and full of surmises, without considering the relevant material and assuming irrelevant material. Consequently, the order passed is a perverse order on the facts and circumstance of the case.*

5. *The learned Principal Commissioner of Income tax has grossly erred in revising the order passed by the learned Assessing officer without appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the learned PCIT is ultra vires to the scope of Section 263 and requires to be cancelled under the facts and circumstances of the Appellant's case. The direction to make thorough and detailed enquiry amounts to ordering fishing and roving enquires without any material in support thereof and consequently the impugned order passed is bad in law and is liable to be cancelled.*

6. *The learned Principal Commissioner of Income tax failed to appreciate that the Assessing Officer before completing the assessment order under section 143[3] of the Act on 30/12/2018 had made detailed enquiries calling for relevant records and documents and explanation pertaining to the matter at hand, the same being produced by the assessee company during various instances during the regular assessment proceedings. Hence on the very same issue no action can be taken under Section 263 of the Act as the actions of the Assessing Officer is pursuant to applying his mind to the matter and in accordance with law.*

7. *The learned Principal Commissioner of Income Tax erred in holding that the assessee company is not entitled for*

*deduction under section 80-IA of the Act amounting to a sum of Rs. 9,86,36,699/- on wrong interpretation of the provisions and against judicial precedents in favour of the assessee on the facts and circumstances of the case.*

*8. The learned Principal Commissioner of Income Tax is not justified in arriving at erroneous conclusion that the income generated from interest receipts do not form part of the business income and consequently the appellant is not entitled for eligible deduction under section 80-IA of the Act on the facts and circumstances of the case.*

*9. The learned Principal Commissioner of Income-tax failed to appreciate that deduction under Section 80-IA is not restricted to "Business Income" the interest income also partakes the character of income from the industrial undertaking eligible for exemption under section 80IA of the Act on the facts and circumstances of the case.*

*10. The learned Principal Commissioner of Income Tax has further not appreciated and taken into consideration the net interest difference being the interest received and interest paid which resulted into a surplus of Rs.2,21,877/- i.e. [Rs.9,86,36,699- minus Rs.9,84,14,822/-] as forming a part of 'Income from other sources' and eligible for deduction under section 80-IA of the act on the facts and circumstances of the case.*

*11. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice."*

## **2. Brief facts of the case are as under:**

2.1 The assessee is engaged in the business of development, operation, maintenance of industrial park. The assessee filed its original return of income for the year under consideration on 17.10.2016, declaring total income of 'Nil' after claiming deductions under Chapter VIA amounting to Rs.7,54,15,766/- and computed 'Deemed Total Income' u/s 115 JB of Rs.7,89,00,947/-.

2.2 The assessment was completed under section 143(3) of the Act on 30.12.2018, by accepting the returned income.

2.3 Subsequently the Ld.PCIT observed that, the assessee is into the business of development, operation, maintenance of industrial park at NR enclave, Plot Nos.143,21,213,214 and 215, EPIP Industrial area K.R. Puram Bangalore-48. He noted that, during the financial year relevant to assessment year 2016-17, the assessee computed profit and gains of business of Rs.7,54,15,767/- and claimed entire amount as deduction u/s 80IA of the Act. On perusal of the assessment records, the Ld.PCIT found that, the assessee received rental income of Rs.19,12,20,033/-, interest income on loans and advances from related parties of Rs. 7,20,46,931/-, interest income from fixed deposits of Rs. 1,08,79,022/- and other income of Rs.1,57,10,756/. The Ld.PCIT observed that, deduction under section 80IA(4)(iii) was claimed and allowed on interest receipts and other income etc., interalia, included in the profit and gains of the eligible business. The Ld.PCIT was of the view that the Ld.AO, while concluding the assessment, did not excluded interest receipts and other income from the business profit of the undertaking, and therefore, the amount of deduction claimed by the assessee u/s 80IA of Rs. 9,86,36,699/- (restricted to the profit computed of Rs. 7,54,15,767/-) was allowed in excess. The Ld.PCIT, therefore, was of the view that the assessment order passed is erroneous and prejudicial to the interests of the revenue.

2.4 A notice u/s. 263 of the Act was, issued to the assessee on 18/03/2021 to appear before the Principal Commissioner of Income-tax-2 on 23.03.2021. The assessee sought an adjournment of hearing to 26.03.2021 which was granted. On

behalf of the assessee, representative of the assessee appeared and filed written submissions.

2.5 In reply to the show cause notice u/s. 263, assessee vide letter dated 25/03/2021, filed its objections by submitting as under:

**CORETECH VENTURES (BANGALORE) PVT. LTD.**

Regd. Office : DivyaSree Chambers, 'A' Wing, No. 11, O' Shaughnessy Road,  
Bangalore - 560 025, India. Tel : +91 80 22213344, Fax : +91 80 22228840  
CIN : U70100KA2013PTC069170

142

25<sup>th</sup> March 2021

To:

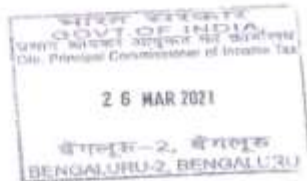
The Hon'ble Principal Commissioner of Income Tax,  
PCIT, Bangalore-2  
Bangalore

Hon'ble Sir,

Reg: Our Own – PAN: AAFCC2775E – Assessment year 2016-2017 – Proposal to initiate proceedings u/s 263 of the I.T. Act for the Assessment year 2016-2017 vide notice dated 18/03/2021 along with notice for hearing in the matter fixed originally on 23/03/2021 by your Honour – To kindly drop the initiation of proceedings u/s 263 of the I.T. Act under the facts mentioned hereinunder – Furnishing of:-

The aforesaid Company is in receipt of the aforesaid notice cited above, inviting our attention of your Honour's proposal to initiate proceedings u/s 263 of the I.T. Act for the Assessment year 2016-2017 which were already assessed earlier by the learned DCIT, Circle 2(1), Bangalore passed u/s 143(3) of the I.T. Act dated 30/12/2018 and in this connection beg to submit the following facts for your Honour's kind consideration which requires dropping of the proceedings u/s 263 of the I.T. Act which are as under:-

1. At the outset, the aforesaid notice u/s 263 of the I.T. Act along with the notice for hearing dated 18/03/2021 was received by the aforesaid Company by RPAD on 22/03/2021 @ 3.00 pm and hence could not comply the hearing fixed on the very next date i.e. 23/03/2021 for which the aforesaid Company had sought for a short adjournment and thereafter your Honour was kind enough to grant us further time till 26/03/2021.



*[Signature]*  
**TRUE COPY**

2. The aforesaid Company now adverting to the facts which requires appreciation as it does not warrant any proposed revision of the completed assessment and further, object to the Show cause notice in the proposed denial of deduction u/s 80IA(4)(iii) of Rs.8,29,25,953,-, which facts are chronologically tabulated and assimilated as under:-

2.1 The aforesaid Company had filed its return of income for the Assessment year 2018-2019 by returning profits and gains from business of Rs.7,54,15,767/- and that the entire income from profits and gains was claimed as a deduction under Chapter-VI A read with section 80IA of the I.T. Act being an Industrial Park. Copy of the computation of such income is enclosed in **Exhibit-I** for your Honour's kind perusal.

2.2 Further, the aforesaid Company duly worked the Computation of Deemed Income u/s 115 JB of the I.T. Act wherein the minimum alternate tax payable on such income based on the Audited Statement of Profit of Rs.7,89,00,947/- which total tax payable inclusive of interest u/s 234B and 234C of the I.T. Act worked out to Rs.1,66,18,323/-. Copy of the Computation of Deemed Income u/s 115 JB of the I.T. Act is enclosed in **Exhibit-II** for your Honour's kind perusal.

2.3 The aforesaid return was selected for complete scrutiny and that a notice u/s 143(2) of the I.T. Act dated 24/07/2017 was issued by the Learned A.O, which was duly complied with.

2.4 Thereafter the Learned A.O issued various notices u/s 142(1) of the I.T. act dated 03/08/2018, 13/10/2018 and 19/12/2018 calling for various details / explanation including the claim of deduction u/s 80IA(4)(iii) of the I.T. Act for which the aforesaid Company duly filed and explained to the hilt all the requisite details so called for by the Learned A.O. which were in addition to the hearings had on 09/08/2017, 23/08/2017, 10/08/2018, 22/10/2018, 21/12/2018 and on 28/12/2018.

- 2.5 Thereupon, the Learned A.O issued a Show cause notice dated 27/12/2018 with a specific query as to "why the profits of the eligible unit for the purpose of calculating deduction u/s 80IA should not be reduced by the other income of Rs.9,86,36,699/- being profits not derived from the unit and the deduction u/s 80IA to be recomputed accordingly". Copy of the aforesaid Show cause notice dated 27/12/2018 is enclosed in **Exhibit-III** for your Honour's kind perusal.
- 2.6 The aforesaid Company in discharge objected to the aforesaid Show cause notice by explaining the factual matrix of the Net Interest Component which was the net excess of profit earned on other income being the difference of interest received by the aforesaid Company of Rs.9,86,36,699/- and interest paid by the aforesaid Company of Rs.9,84,14,822/- which resultant surplus was only Rs.2,21,877/- on which 80IA deduction was included. Further even such interest income of Rs.2,21,877/- was eligible under the provisions of section 80IA by enclosing the various judicial pronouncement in favour of the aforesaid Company and the proposed re-computation of the deduction u/s 80IA are against the very scheme of the I.T. Act under the set given facts of the aforesaid Company. Copy of the Objection letter filed by the aforesaid Company dated 28/12/2018 before the Learned A.O is enclosed in **Exhibit-IV** for your Honour's kind perusal.
3. Thus, the Learned A.O having considered the various particulars / explanations so filed by the aforesaid Company and in particular to the reply to the aforesaid Show cause notice, duly accepted the explanations / submissions furnished by the aforesaid Company and assessed the income returned u/s 143(3) of the I.T. Act dated 30/12/2018. Copy of such Assessment Order is enclosed in **Exhibit-V** for your Honour's perusal.
4. The aforesaid Company now adverting to your Honour's proposal to revisit the aforesaid completed assessment and the proposal of revision proceedings and the corresponding Show cause which are proposed on the basis of Interest Income earned of Rs.8,29,25,953/- should not be disallowed corresponding to the deduction claimed u/s 80IA (4)(iii) are erroneous. This is in view of the fact that such an issue was already deliberated, considered and duly allowed in the assessment so framed and passed by the Learned A.O. and that no such interest income of Rs.8,29,25,953/- was claimed separately in the deduction u/s 80IA (4)(iii) of the I.T. Act.

- 4.1 While on this point, the aforesaid Company would like to invite the kind attention of the Hon'ble Principal Commissioner as the Interest and Other Income of Rs.9,86,36,699/- (credits) had been grouped under notes 16 to the financials for the year under consideration must not be considered in "Isolation" in as much as on a perusal of notes 19 to the financials for the year under consideration also consisted corresponding interest expenditure (debits) incurred and paid to various financial institutions which in total interest paid were almost to the tune of Rs.9,84,14,822/- under the head "Finance Cost".
- 4.2 That the aforesaid Company had borrowed Lease Rental discounting loans from Standard Chartered Bank and IndusInd Bank, wherein the unutilized amount of Loan of Rs.53,77,54,010/- (closing balance) as referred to in note 11 to the Financials for the year under consideration out of which such sums were factually been provided to the group entities as per Financials.
- 4.3 That the interest on loans so availed by the aforesaid Company from such aforesaid financial institutions wherein the aforesaid company were being charged at 12.5% p.a. and that the aforesaid company in turn on such amounts advanced to the group entities wherein interest received by the aforesaid Company were @ 13% p.a. Both the interest receipts and interest payment were separately and independently accounted in the financials for the year under consideration.
- 4.4 That the aforesaid resultant net interest difference being the interest received and interest paid which resulted into a Surplus of Rs.2,21,877/- (Rs.9,86,36,699/- minus Rs.9,84,14,822/-) also is forming part of the profits and gains of business as per the scheme of the act read with the decision of the apex court in Commissioner of Income Tax v/s. Pandian Chemicals Ltd reported in 318 ITR 420 the gist of the decision are culled out as under:

Which has held that the words 'derived from' means something which has direct and immediate nexus with the industrial undertaking. Thus the claim for deduction on the above heads was disallowed under section 80IA of the Act.

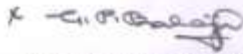
The Learned Counsel appearing in support of the appeal point out that Pandian Chemicals Ltd (Supra) was rendered in the context of Section 80HH of the Act and we are concerned with Section 8-IA of the Act. It is particularly pointed out that there is a difference in the working of the two Sections as existing during the previous year relevant to the subject Assessment year. Section 80HH of the Act grants deduction in respect of the project and gains derived from Industrial Undertaking while Section 80IA of the Act as in force at the relevant time grants deduction of profits and gains derived from any business of an industrial undertaking. It is submitted that the above issue is no longer res integra as the issue stand concluded in its favour by the decision of this Court in Commissioner of Income Tax Vs. Jagadishprasad M. Joshi, 318 ITR 420.

- 4.5 That aforesaid Company states that the even for argument sake that for re-computing deduction u/s 80IA if such sum of Rs.9,86,36,699/- being the other incomes are excluded for the purpose of computation of 80IA, then the situation would be that the finance cost of Rs.9,84,14,822/- as reflected in notes-19 to the financials would result into a loss and that there would not be any impact in respect of your Honour's Show cause notice.
5. In view of the above, your Honour's proposal and findings in the proposed Revision notice u/s 263 of the I.T.Act that the Interest Income of Rs.8,29,25,953/- is proposed to be disallowed is arbitrary and contrary to the records and financials under the aforesaid mentioned factual matrix which deserves appreciation and thereby the proceedings u/s 263 of the I.T. Act may kindly be dropped under your benign hands on this count also.
6. Furthermore, without prejudice to the above, at para No.(3) of the aforesaid Revision notice u/s 263 of the I.T.Act, wherein your Honour has adverted that the assessment was completed by assessing the total income at NIL after allowing deduction of Rs.7,54,15,766/- u/s 80IA(4)(iii) of the I.T. Act is again misconceived and contrary to the Assessment records.
7. While on this point, on a perusal of the Assessment order dated 30/12/2018 read with the Computation Sheet of serial No.19, wherein the Learned A.O has considered the 'Deemed Total Income' u/s 115 JB of Rs.7,89,00,947/- as returned by the aforesaid Company. Similarly, the Income Tax Liability on the aforesaid income was duly assessed at Rs.1,66,18,312/- inclusive of interest levy u/s 234B and 234C of the I.T. Act which are Self evident on a perusal of Serial No.23, 30, 38, 39, 41 and 42 of the Computation Sheet annexed to the Assessment Order.

8. In view of the aforesaid facts, it is prayed before the Hon'ble Commissioner that the initiation proceedings u/s 263 of the I.T. Act may kindly be dropped as the assessment so passed by the Learned A.O was not in the nature of prejudicial to the interest of revenue nor were they any and that the assessment so framed and passed by the Learned A.O may kindly not be disturbed which assessments were in accordance with law and under the scheme of the act and that the dropping of the proceedings u/s 263 of the I.T. Act, would go a long way for the advancement of substantial cause of Natural Justice.

Thanking you,

Yours faithfully,  
For Coretech Ventures (Bangalore) Pvt. Ltd.,



Authorised Signatory

Encl: Exhibit-I to Exhibit-V

  
**TRUE COPY**

2.6 Based on the above submissions, the Ld.PCIT was of the opinion that the claim of deduction u/s. 80IA made by the assessee with respect to interest income received was not acceptable as assessee had not established any nexus between the interest receipts and other income and eligible business undertaking. On facts of this issue, the Ld.PCIT observed as under:

*“7.5. I have perused financial statements and other documents furnished by the assessee before the assessing officer and noticed that, Company had borrowed from Standard Chartered Bank and IndusindBank by mortgaging land, building and assignment of lease rentals. Facility of Rs.365 Cr in aggregate is availed jointly with its associated enterprises M/s Divyashreesoftech Realtors Pvt Ltd and M/s DivyashreeTarbus Builders Pvt ltd. and repayment terms are accordingly fixed on an aggregate basis across all three borrowers. Such borrowings are diverted to its sister concerns in order to support the operations of the entities in a group which have lower cash*

*resources or which cannot raise finance through a bank or another institution. Further assessee company did not have sufficient reserves on its own, hence, borrowed by mortgaging its assets to support associated enterprises”*

2.7 Thereafter the Ld.PCIT referring to the merits of the case, held that as the source of the income is not directly connected with the business of the eligible undertaking, and it cannot be held that interest receipts from inter company lending and other income to be directly derived from the eligible international undertaking to be considered for the purpose of computing deduction u/s. 80IA of the Act. The Ld.Pr.CIT thus held the assessment order passed to be erroneous and prejudicial to the interest of revenue by observing as under:

*“7.11. The assessing officer while concluding assessment order failed to appreciate these facts on record and concluded assessments without examining relevance of judicial pronouncements submitted by the assessee to facts of the assessee. Had assessing officer carefully verified all the facts available on record, he would have taken only possible view in the facts of the case. i.e. interest receivable from sister concerns and other income of shall not be part of profit and gains of the business which is eligible to claim deduction u/s 80IA of the Act. Hence such assessment which resulted into loss of revenue is erroneous and prejudicial to the interest of revenue.*

*8. In the light of foregoing, it very clear that the Assessing Officer has failed to perform his duty by not applying his mind to the issue at hand and failed to arrive at the only view possible in given set of facts. A combination of incorrect assumption of facts and incorrect application of law by the AO, therefore, made the order of assessment erroneous and prejudicial to the interest of the Revenue. Accordingly, the assessment order is set aside with respect to exclude interest income from sister concerns and other income while computing eligible deduction under section 80IA of the Act. The Assessing Officer is directed to carryout thorough and detailed enquiry. The assessee must be provided with reasonable opportunity of being heard during the course of the assessment proceedings in*

*pursuance to this Order and the Assessing Officer must pass a speaking order on the basis of the facts and law.”*

2.8 Aggrieved by the above observations of the Ld.Pr.CIT, assessee filed the present appeal before this *Tribunal*.

3. Before us the Ld.AR submitted that all relevant details were filed before the Ld.AO at the time of original assessment proceedings. He referred to the notice u/s. 143(2) placed at page 1 of the paper book and reply filed in response to the same by the assessee at page 3 of the paper book.

4. The Ld.AR referred to the questionnaire issued by the Ld.AO u/s. 142(1) which is placed at pages 83-84 of the paper book wherein following details were called for.

*“In continuation to the assessment proceedings u/s 143(3) for AY 2016-17, kindly furnish the following details:*

- (1) Please provide details of receipts for which certificate u/s 197 was obtained. Further reconcile above receipts with receipts shown in P&L Account.*
- (2) Please reconcile tax credit claimed (and receipts) in ITR with tax credit available in 26AS.*
- (3) Please provide details of sales turnover reported in Audit Report (Form 3CD) and ITR (Total Sales / Gross Receipt in Part A-P&L of ITR) and reconcile the difference if any*
- (4) Please provide details of deduction claimed under Chapter VI-A and furnish documents in support of your claim.*
- (5) Please furnish details of all the loans/deposits/advances given/made during the year including squared up loans and nature of income generation out of such investment and source of the investment”*

5. Assessee in response has filed letter dated 22/10/2018 submitting the required details. The scanned copy of the submissions are as under:

**CORETECH VENTURES (BANGALORE) PVT. LTD.**REGD. OFFICE : 'DIVYASREE CHAMBERS', WING-'A', # 11, O'SHAUGNESSY ROAD,  
BANGALORE - 560 025

Phone : 080-22213344 Fax: 080 - 080-22228840, CIN No.U70100KA2013PTC069170

**22<sup>nd</sup> October, 2018**

**The Assistant Commissioner of Income Tax,  
Circle - 2(1)(1),  
2<sup>nd</sup> Floor, BMTC Building,  
Koramangala,  
Bangalore - 560 095.**

Dear Sir,

**Sub : Our Own - PAN : AAFFC2775E - - Assessment year 2016-17 - - your  
notice u/s. 142(1) of the IT Act. dated 12.10.2018 - - Income Tax  
Assessment Proceedings - Submission of details :-**

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Adverting to the above, we furnish hereunder the requisite particulars for the Income Tax Assessment of the aforesaid company for the Assessment year 2016-17, for your kind perusal in seriatum.

1. We are enclosing herewith in **Exhibit-I**, Statement of reconciliation between receipts as per audited profit and loss account and the receipts as per provisional financials furnished u/s. 197 of the IT Act with remarks indicating the variance for the year ended 31.03.2016.
2. With regard to the reconciliation of tax credit claimed in ITR with tax credits available in 26AS, we are enclosing the statement which contains the difference and remarks for the same in **Exhibit-II**.
3. There is no difference between the turnover reported in the audit report (Form-3CD) and ITR (Turnover in PART-A-P&L A/c) amounting to Rs.28,98,56,732/-. Also there is no difference in the profit before tax reported in Form-3CD and the ITR - P&L A/c amounting to Rs.7,89,00,947/-.
4. With respect to the claim of deduction by the aforesaid company under section 80IA(4)(iii), we submit your honour that, the company has claimed the deduction of an amount of Rs.7,54,15,767/- for the assessment year 2016-17.

  
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We furnish hereunder the particulars of claim of deduction u/s 80IA of Income Tax Act, 1961 for the Assessment year 2016-17 and we are enclosing the copy of 10CCB & Industrial park approvals in **Exhibit-III** for your kind perusal.

5. With regard to all the deposits / loans / advances given / made during the year including squared up loans, we are enclosing a statement which contains all the particulars there of. We are also enclosing herewith the interest working statements on intercompany loans for the year ended 31.03.2016 in **Exhibit-IV** for your kind perusal.

Thanking you,

Yours faithfully  
For **Coretech Ventures (Bangalore) Pvt. Ltd.,**



**Authorised Signatory**  
Enc: As above.

6. Thereafter in response to show cause notice issued by the Ld.AO on 27/12/2018 wherein a query in respect of the interest income and other income was raised by the Ld.AO, assessee filed letter dated 28/12/2018 furnished as under:

Exhibit - III

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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX  
CIRCLE 2(1)(1), BANGALORE

To,  
CORETECH VENTURES ( BANGALORE )  
PRIVATE LIMITED  
11 DIVYASREE CHAMBERS, WING - A ,O  
SHAUGNESSY ROAD LANG FORD TOWN  
BANGALORE 560025 ,Karnataka  
India

PAN: AAFCC2775E	AY: 2016-17	Notice No: ITBA/AST/F/143(3)(SCN)/20 18-19/1014600435(1)	Dated: 27/12/2018	Hearing Date and Time: 28/12/2018 12:30 PM
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## SHOW CAUSE NOTICE

In connection with the assessment proceedings in your case for AY 2016-17 you are directed to show cause as to why the profits of the eligible unit for the purpose of calculating deduction u/s 80IA should not be reduced by the other income of Rs.9,86,36,699/- being profits not derived from the unit and the deduction u/s 80IA to be recomputed accordingly.

BALU BAPURAO NAGWE  
CIRCLE 2(1)(1), BANGALORE

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

  
TRUE COPY

Note: If digitally signed, the date of digital signature may be taken as date of document.  
BMTG BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE,  
KORAMANGALA, BENGALURU, Karnataka, 560095  
Email: BANGALORE.DCIT2.1.1@INCOMETAX.GOV.IN,

This document is digitally signed by:  
Signer: BALU BAPURAO NAGWE  
Date: 27 December 2018 10:57  
Location: BANGALORE, India

A7h.6ic JV

(137)

**CORETECH VENTURES (BANGALORE) PVT. LTD.**

REGD. OFFICE : 'DIVYASREE CHAMBERS', WING-'A', # 11, O'SHAUGNESSY ROAD,  
BANGALORE - 560 025

Phone : 080-22213344 Fax: 080 - 080-22228840, CIN No.U70100KA2013PTC069170

**28<sup>th</sup> December, 2018**

**The Assistant Commissioner of Income Tax,  
Circle - 2(1)(1),  
2<sup>nd</sup> Floor, BMTC Building,  
Koramangala,  
Bangalore - 560 095.**

Dear Sir,

**Sub : Our Own - PAN : AAFFC2775E - - Assessment year 2016-17 - - Your show  
Cause notice dated 27.12.2018 - - Income Tax Assessment Proceedings  
- - Submission of further details :-**

\*\*\*\*\*

Adverting to the above, we furnish hereunder our explanation and clarification with regard to your show cause notice referred above pertaining to computation of deduction u/s. 80IA of the Income tax act and the treatment of interest & other income of Rs. 9,86,36,699/-.


The interest and other income of Rs. 9,86,36,699/- referred in the aforesaid show cause notice represents interest income & other income as detailed below :

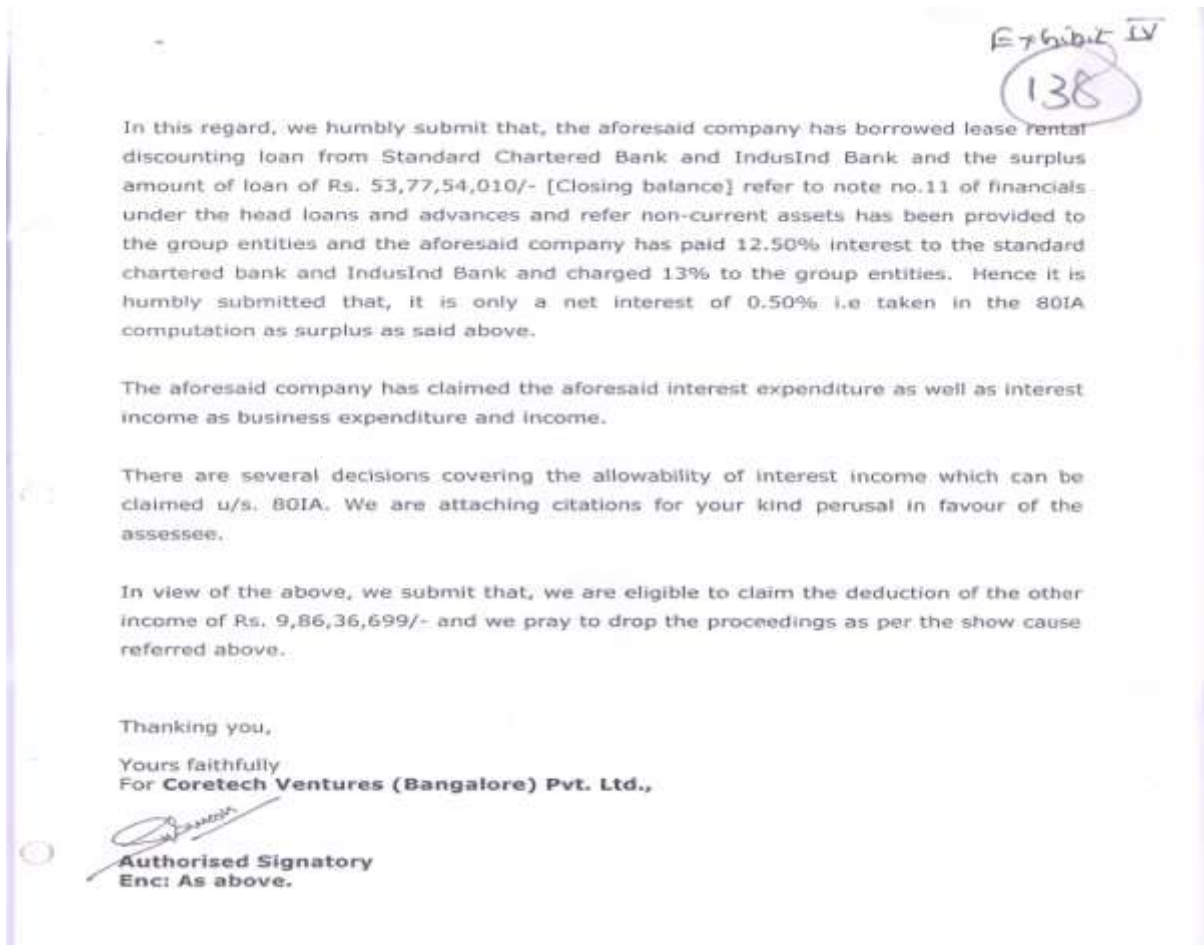
SL No.	Particulars	Amount [Rs.]
1	Interest income Bank deposits	1,08,79,022
2	Interest income Inter corporate loans	7,30,76,375
3	Other Non operating income	75,81,517
4	Liabilities written back	70,99,785
<b>Total</b>		<b>9,86,36,699</b>

The same has been grouped under notes 16 to the financial statements for the assessment year 2016-17.

And also we bring to your kind notice that, interest earned as said above of Rs. 9,86,36,699/- there is corresponding expenditure incurred and paid to various financial institutions was Rs.9,84,14,822/- refer note no.19 of the financials under finance cost and net effect of profit earned on other income was only Rs.2,21,877/- as a net result we have claimed the 80IA deduction to the extent of Rs.2,21,877/- after reducing the expenditure out of interest earned.

  
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Received  
  
28/12/2018.



7. The Ld.AR thus submitted that the assessment order has been passed after considering various submissions called by the Ld.AO in respect of the deduction claimed u/s. 80IA of the Act and on furnishing of the necessary details, the Ld.AR submitted that, the assessing officer was convinced and accepted the claim of assessee. The Ld.AR placed reliance on following decisions in support of the argument that 263 proceedings are therefore bad in law.

- *Malabar Industrial Co Ltd v CT [2000] 243 ITR 83 (SC)*
- *Principal Commissioner of Income-tax, Surat-2 v. Shreeji Prints (P.) Ltd. (2021) 130 taxmann.com 294 (SC)*
- *CIT, Central Circle v. D.G. Gopala. Gowda [2013] 34 taxmann.com 154 (Karnataka)*
- *CIT v Saravana Developers [2016] 68 taxmann.com 148 (Karnataka)*
- *Commissioner of Income-tax v. Honda Siel Power Products Ltd 194 Taxman 175 (Delhi)*

- *CIT v. Cyber Park Development & Construction Ltd. [2020] 121 taxmann.com 172 (Karnataka)*
- *KR. Satyanarayana v. Commissioner of Income Tax, Mysuru [2021] 126 taxmann.com 22 (Karnataka)*
- *Commissioner of Income-tax v. International Society for Krishna Consciousness [2020] 117 taxmann.com 799 (Karnataka)*
- *Commissioner of Income-tax, Bangalore v. Kurlon Ltd. [2014] 52 taxmann.com 92 (Karnataka)*
- *CIT v. Gokuldas Exports [2012] 20 taxmann.com 491 (Karnataka)*
- *Commissioner of Income-tax (Central), Ludhiana v. Max India Ltd. 166 Taxman 188 (SC)*

8. The Ld.DR on the contrary relied on the orders passed by the authorities below.

9. He also referred to the various decisions of *Hon'ble Supreme Court* wherein it is held that the nexus on earning of interest must be established having connected to the business of the eligible undertaking in order to include the same for computation of deduction u/s. 80IA of the Act.

10. We have perused the submissions advanced by both sides in the light of records placed before us.

11. *Hon'ble Supreme Court* in case of *Malabar Industries Co. Ltd. vs. CIT reported in 243 ITR 83 (SC)*, the Commissioner can exercise revision jurisdiction u/s 263 if he is satisfied that the order of the assessing officer sought to be revised is (i) erroneous; and also (ii) prejudicial to the interests of the revenue.

12. Therefore both the limbs being erroneous as well as prejudicial to the interest of revenue has to be satisfied for invoking the jurisdiction u/s. 263 of the Act.

13. In *Malabar Industrial Co. Ltd. (supra)*, the *Hon'ble Court* has held as under:

*"There can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted. An incorrect assumption of facts or an*

*incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall the orders passed without applying the principles of natural justice or without application of mind.*

*In our humble view, arbitrariness in decision-making would always need correction regardless of whether it causes prejudice to an assessee or to the State Exchequer. The Legislature has taken ample care to provide for the mechanism to have such prejudice removed. While an assessee can have it corrected through revisional jurisdiction of the Commissioner under Section 264 or through appeals and other means of judicial review, the prejudice caused to the State Exchequer can also be corrected by invoking revisional jurisdiction of the Commissioner under Section 263. Arbitrariness in decision-making causing prejudice to either party cannot therefore be allowed to stand and stare at the legal system. It is difficult to countenance such arbitrariness in the actions of the Assessing Officer. It is the duty of the Assessing Officer to adequately protect the interest of both the parties, namely, the assessee as well as the State. If he fails to discharge his duties fairly, his arbitrary actions culminating in erroneous orders can always be corrected either at the instance of the assessee, if the assessee is prejudiced or at the instance of the Commissioner, if the revenue is prejudiced. While making an assessment, the ITO has a varied role to play. He is the investigator, prosecutor as well as adjudicator. As an adjudicator he is an arbitrator between the revenue and the taxpayer and he has to be fair to both. His duty to act fairly requires that when he enquires into a substantial matter like the present one, he must record a finding on the relevant issue giving, howsoever briefly, his reasons therefor. In S.N. Mukherjee v. Union of India AIR 1990 SC 1984, it has been observed by the Hon'ble Supreme Court as follows: "Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the other considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances or arbitrariness and*

*ensures a degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”*

14. In view of the foregoing, it can be said that an order passed by the Assessing Officer becomes erroneous and prejudicial to the interests of the Revenue under Section 263 in the following cases:

- (i) *The order sought to be revised contains error of reasoning or of law or of fact on the face of it.*
- (ii) *The order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law. In the same category fall orders passed without applying the principles of natural justice or without application of mind.*
- (iii) *The order passed by the Assessing Officer is a stereotype order which simply accepts what the assessee has stated in his return or where he fails to make the requisite enquiries or examine the genuineness of the claim which is called for in the circumstances of the case.*

15. In the present facts of the case, the Ld.AO has issued specific notice to assessee to verify the claim of deduction u/s. 80IA on 27/12/2018 which is scanned and reproduced hereinabove.

16. The response filed by the assessee dated 28/12/2018 in respect of the same also details the submissions in response to

the notice. The assessment order then passed on 30/12/2018 does not contain any discussion regarding the claim for which the assessee was show caused by the Ld.AO. It is mandatory on the part of the Ld.AO not to close an issue in a haste. *Hon'ble Supreme Court* in following cases, including the decision of *Malabar Industrial Co. Ltd. (supra)* observed that, AO is not supposed to accept a claim in the absence of supporting materials:

- *Rampyari Devi Saraogi v. CIT* reported in (1968) 67 ITR 84
- *Smt. Tara Devi Aggarwal v. CIT* reported in (1973) 88 ITR 323

*Hon'ble Delhi High Court* in case of *Duggal & Co. v. CIT* reported in (1996) 220 ITR 456 and *GeeVee Enterprises* reported in (1975) 99ITR 375, observed that, failure of the AO to investigate into facts in the return calling for enquiries makes the order erroneous.

17. In case of lack of enquiry or in case of failure of the Ld.AO to investigate the claim made in the return, the order of the Ld.AO would be considered to be erroneous. Perusal of following decisions of *Hon'ble Delhi High Court*, shows that, as an investigator it is incumbent upon the AO to undertake investigation into the disclosures made in the return and also to probe into other facts required to be examined and verified to compute the taxable income and if he fails to do so, he commits an error. *Hon'ble Delhi High Court* has held that order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits.

- *CIT v. Nagesh Knitwears (P.) Ltd.*, reported in [\(2012\) 22 taxmann.com 309](#);
- *CIT v. New Delhi Television Ltd.*, reported in (2013) 39 taxmann.com 135;
- *CIT v. Goetze (India) Ltd.* reported in (2014) 44 taxmann.com 138

18. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "*erroneous*" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "*erroneous*" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct. Thus, in cases of non-investigation the CIT will be justified to revise the order. But at the same time while doing so, it would be necessary for the CIT to show as to how non-investigation has made the order erroneous?

19. In the facts and circumstances of a given case what enquiries have to be conducted are to be decided by the AO, considering that, the AO performs *quasi judicial* functions. Hence, it will not be proper for any other person to dispute the adequacy of the enquiries conducted. Nevertheless, considering the fact that the AO, being Revenue's Representative, discharges functions as an Investigator also, it is very important for him to conduct the enquiries as adequately as the facts and circumstances of a case demand. If the enquiries conducted by the AO are inadequate, and there is omission of enquiries on certain vital aspects of the

case, the CIT will be within his powers conferred on him under section 263 to revise the order.

20. In the present facts of the case there was specific query raised by the Ld.AO in respect of the issue that is subjected to revision, and a reply was also filed by the assessee. However there was no further enquiry made by the Ld.AO, and the assessment order was passed within 2 days of the reply by the assessee. The Ld.AO accepted that claim and concluded the assessment without undertaking enquiries or investigations, when *ex-facie* facts and circumstances warranted him to do so. The Ld.PCIT has recorded a clear finding that the enquiries by the Ld.AO were in adequate and on assumption of wrong facts. We therefore up hold the order passed by the Ld.PCIT on this issue.

**Accordingly, grounds raised by the assessee stands dismissed.**

**In the result, the appeal filed by the assessee stands dismissed.**

Order pronounced in open court on 29<sup>th</sup> July, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 29<sup>th</sup> July, 2022.  
/MS /

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore