

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, "B", CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.1380/CHD/2019

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Kumari Shiwangi, MC Complex, Near Mohan Park, Solan HP	बनाम	The Chief CIT((OSP), Shimla
स्थायीलेखासं./PAN NO: CVHPS4283H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Sh. Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Sh. Sarabjeet Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 03.08.2022

उद्घोषणा की तारीख/Date of Pronouncement : 22.08.2022

आदेश/Order

Per SudhanshuSrivastava, Judicial Member:

This appeal is preferred by the assessee against the order dated 22.03.2019 passed u/s 263 of the Income Tax Act, 1961 (hereinafter called 'the Act') by the Ld. Principal Commissioner of Income Tax, Shimla [hereinafter referred to as 'PCIT'] and pertains to assessment year 2014-15.

2.0 The brief facts of the case are that the assessee is into the business of manufacturing activities in Himachal Pradesh and the first year of the manufacturing activity was Assessment Year 2013-14, wherein deduction u/s 80IC of the Act had been claimed and allowed by the Assessing officer by way of order u/s 143(3) vide order dated 16.11.2015.

2.1 Subsequently, the Ld. PCIT issued a show cause notice in terms of section 263 of the Act dated 05.03.2019 alleging that the claim of deduction u/s 80IC of the Act had been allowed by the AO on a wrong appreciation of facts as the area in which the manufacturing unit was located did not fall in the area notified by the CBDT for the purpose of claiming deduction u/s 80IC of the Act. It was alleged in the said show cause notice that the assessment order was erroneous and prejudicial to the interest of the Revenue as the Assessing Officer (AO) had wrongly accepted the claim of the assessee without verifying all the conditions necessary for the purpose of allowability of the assessee's claim.

2.2 Subsequently, after considering the submissions of the assessee, the Ld. PCIT set aside the assessment order with a direction to the AO to re-compute the income of the assessee by conducting further enquiries as necessary.

2.3 The assessee has now approached the Tribunal challenging the impugned order by raising the following grounds of appeal:

1. *That the Worthy Pr. CIT has erred in cancelling the assessment as already framed by the Assessing Officer u/s 143(3) and holding the same as erroneous and prejudicial to the interest of revenue.*
2. *That the Worthy Pr. CIT has failed to appreciate the fact that the original assessment has been framed after due application of mind by the concerned Assessing Officer on all the issues and our submissions in this regard as submitted during the course of assessment proceedings, have not been appreciated.*
3. *That the Ld. Pr. CIT has failed to appreciate the fact that the earlier assessments of the Assessee for the Assessment Years 2012-2013 and 2013-2014 have been framed u/s 143(3) / 143(1) and deduction U/s 80-IC as claimed have been allowed and, thus, when in the initial assessment years, the deduction u/s 80IC stands allowed, the same could not have been subject matter of denial in the subsequent assessment years as per binding judgment of Hon'ble Punjab & Haryana High Court in the case of M/s Micro Instrument and other High Courts.*
4. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

3.0 The Ld. AR submitted that during the course of assessment proceedings, the Assessing Officer had issued a questionnaire, dated 21.06. 2016 and as per Question No.17, the assessee was asked about the claim under chapter XVIA with the documentary evidences and to which a detailed reply was submitted before the Assessing Officer by the assessee. Our attention was drawn to the reply as reproduced herein under:

“The Unit is engaged in manufacturing activities in the state of H.P. The precuts being manufactured are not in negative list. This is the Third year of production and the assessee is entitled to deduction U/S 80IC for 10 years. The Unit fulfills all the condition required for claiming the deduction. Therefore, the assessee is entitled for deduction under Chapter VIZ u/s 80C of the I.T. Act. The deduction claimed is only of Rs. 1379527/-, which is by no means a large deduction.”

3.1 It has further been argued that the Assessing Officer has framed the assessment u/s 143(3) of the Act after due application of mind and after duly considering the past history of the case.

3.2 Our attention was drawn by the Ld. AR to the ‘show cause notice’ u/s 263 and it was submitted that the same has been issued on the basis of ‘audit objection’ which has been placed in Paper Book-II at pages 1 to 3. It was further argued that since

proceedings u/s 263 have been initiated by way of audit objection, the said proceedings were liable to be set aside as per the binding order in the case of Ganga Acrowools Ltd. of Chandigarh Bench as reported in [2022] 96 ITR (Trib.) 71, in which, it has been held that no valid proceedings u/s 263 can be initiated on the basis of audit objection and while giving this finding, reliance has been placed on the judgment rendered by the Hon'ble Jurisdictional High Court in the case of Sohana Woollen Mills [2008] 296 ITR 238 (P&H) and a further reference has also been made to the order of Chandigarh Bench of the ITAT in the case of Surinder Pal Singh reported in [2022] 94 ITR (Trib) 458 (Chd).

3.3 On the allegation of non-application of mind, it was submitted that in Assessment Year 2013-14 the claim u/s 80IC had been first made and referring to the Assessment Order passed u/s 143(3) of the Act for that year, our attention was drawn to the following observations of the AO:

“During the relevant assessment year the assessee was engaged in the business of Manufacturing of MS Shuttering Plates, Scaffoldings, Fencing Poles and Water Tanks. The gross turnover from the business during the year of Rs. 1,31,53,937/- and books of account

have been audited. The assessee has maintained regular books of accounts on computer consisting of cash book, ledger & journal and printout of the same were produced and examined on test check basis. The case was discussed with the counsel of the assessee from time to time. In view of the information filed through his counsel and after examination of books of accounts, assessment of income of the assessee is made as under:

The assessee has established industrial unit on 29.03.2012 during the year 2012-13 and the year under consideration is 2nd year of its manufacturing activities/business operations. During the course of assessment proceedings, the assessee has furnished certain details and documents in support of his claim of deduction u/s 80IC. On verification of details and information furnished by the assessee, it is found that there is no change in manufacturing activities. After verification and examination of the case, it is found that the assessee fulfills, the conditions as prescribed u/s 80IC of the Act.”

3.4 Similarly, it was argued that for the year under consideration, the Assessing Officer had specifically recorded a finding of fact in the Assessment order that the assessee fulfills all the conditions as prescribed u/s 80 IC as under:

“The assessee has established industrial unit on 29.03.2012 during the year 2012-13 and the year under consideration is 3rd year of its

manufacturing activities/business operations. During the course of assessment proceedings, the assessee has furnished certain details and documents in support of his claim of deduction u/s 80IC of the Income Tax Act, 1961. On verification of details and information furnished by the assessee, it is found that there is no change in manufacturing activities. After verification and examination of the case, it is found that the assessee fulfills, the conditions as prescribed u/s 80IC of the Income Tax Act, 1961.”

3.5 Thus, it was submitted that the Assessing Officer has examined the past history of the case and also for the current year and that he has made requisite enquiries and has then come to the conclusion about allowance of deduction u/s 80IC and thus, the assumption of jurisdiction u/s 263 was not warranted.

The Ld. AR relied upon the following case laws in this regard:-

- i). Venkatesh Technokraft Pvt. Ltd. v ITO in I.T.A.No.1464/Chd/2018
- ii). Manisha Ajaj Shah v. Pr. CIT in [2020] 83 ITR (Trib) (S.N.) 75 (Mum) ; ITA No. 3001/Mum/2019.
- iii). Promod Kesharichand Shah v Pr. CIT in ITA No. 43/Surat/2018
- iv). CIT v Anil Kumar Sharma reported in [2011] 335 ITR 83 (Del.)
- v). CIT Vs Hindustan Marketing & Advertising Co. Ltd. reported in [2012] 341 ITR 180 (Delhi).

- vi). CIT v Late Shri Vijay Kumar Koganti reported in [2020] 195 DTR 428 (Mad).
- vii). DTE Exports Pvt. Ltd. v Pr.CIT. ITA No. 138/Vizag/2020

4.0 Per contra, the Ld. Commissioner of Income Tax (Departmental Representative) justified the action of the Ld. PCIT in setting aside the issue and argued that as per notice u/s 263, the Ld. PCIT has observed that the area, where the 'manufacturing unit' is situated did not fall in the area notified by the Board, though, the assessee is engaged in manufacturing activities in the State of Himachal Pradesh and it is not covered by the XIV Schedule of the Act and, thus, the requisite conditions have not been complied with and, thus, the unit was not eligible for deduction u/s 80 IC and, as such, the deduction u/s 80 IC has wrongly been allowed by the Ld. Assessing Officer.

4.1 In so far as the reopening on the basis of 'audit objection' is concerned, it was argued that the Ld. PCIT can be guided by the 'Audit Objection' and, as such, this argument of the assessee is not tenable and, as such, there was no application of mind by the Assessing Officer, as well.

5.0 In rejoinder, it was argued by the Ld. AR that the Unit is not engaged in the manufacturing of article or thing as specified in

XIIIth Schedule and that the Unit fulfills all the conditions for claim u/s 80IC and for the purpose of 263, there has to be independent opinion of the Ld. PCIT only and if there is no such independent opinion of the Ld. PCIT, then, the proceedings u/s 263 deserve to be quashed, as in the present case it is very much clear that there was an 'audit objection' which has led to the issuance of notice u/s 263.

6.0 We have given our utmost consideration to the rival contentions and have gone through the paper books, brief synopsis and the arguments of the Ld. AR and Ld. Departmental Representative (CIT) and at the very outset, it may be stated that undisputedly, the show cause notice u/s 263 has been prompted by the 'audit objection', which is evident from the show cause notice issued u/s 263, where there is a reference to the said 'Audit objection' in Para 3 of 'show cause notice' and, thus, this contention of the assessee deserves to be taken into consideration. This issue is covered by the order of the Chandigarh Bench of the ITAT in the case of 'Ganga Acrowools Limited v PCIT (Supra)', in which an identical issue was there and in that order, reference was made to the judgment of the Hon'ble

jurisdictional High Court in the case of CIT v Sohana Woollen Mills (Supra) as under:-

“A reference to the provisions of section 263 shows that jurisdiction there under can be exercised if the commissioner of Income-tax finds that the order of the Assessing Officer was erroneous and prejudicial to the interest of the Revenue. Mere audit objection and because a different view could be taken, were not enough to say that the order of the Assessing Officer was erroneous or prejudicial to the interest of the Revenue. The jurisdiction could be exercised if the Commissioner of Income-tax was satisfied that the basis for exercise of jurisdiction existed. No rigid rule could be laid down about the situation when the jurisdiction can be exercised. Whether satisfaction of the Commissioner of Income-tax for exercising jurisdiction was called or has to be decided having regard to a given fact situation.”

6.11 We, therefore, by respectfully following the ratio laid down by the Hon’ble jurisdictional High Court in the aforesaid referred to case as well, are of the view that the learned Principal Commissioner of Income-tax was not justified in exercising his power to invoke the provision of section 263 of the Act on the basis of audit objection raised by the Audit Wing of the Department. We also note that the above said judgment of the Hon’ble High Court has been followed by the Chandigarh Bench of the ITAT later on in the case of Kirti Anand v. CIT in ITA No. 540/Chd/2013, Paramjit Singh v. Pr.CIT in ITA No.499/Chd/2016, Vikram Kaswan v. CIT in [2016] 47 ITR (Trib) 322 (Chd); ITA No.529/Chd/2014 vide order dated March 8, 2016 and Jaswinder Singh v CIT in ITA No. 690/Chd/2010 vide order dated March 9,2012.”

6.1 After considering the above said precedents which are squarely applicable to the facts of the case, we have no hesitation in quashing the order as passed by the Ld. PCIT u/s 263 of the Act.

6.2 Although, the Ld. AR has also argued that the Assessing Officer had duly applied his mind and made requisite enquiries with regard to deduction u/s 80IC, but since we have quashed the order of the Ld. PCIT u/s 263 on the basis of audit objection, we do not deem it fit to adjudicate the issue on application of mind as argued by the Ld. AR.

7.0 In the final result, the appeal of the assessee stands allowed.

Order pronounced on 22.08.2022.

Sd/-
(N.K. SAINI)
Vice President
Dated : 22.08.2022

“आर.के.”

Sd/-
(SUDHANSHU SRIVASTAVA)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)

5. विभागीय प्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR,
ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar