

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.108/RJT/2022
Assessment Year: 2017-18**

M/s. Ardeec Engineering SAU P. Ltd., vs. The Principal Commissioner
Industrial Area, of Income Tax,
Tramway Road, Ahmedabad.
Wadhwan – 363 035.
Gujarat.
[PAN – AABCA 7478 E]
(Appellant) (Respondent)

Appellant by : Shri D.M. Rindani, AR
Respondent by : Shri Karun Ojha, CIT (DR)

Date of hearing : 02.08.2022
Date of pronouncement : 26.08.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 14.02.2022 passed by the PCIT-3, Ahmedabad for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:

- “1. *The learned Principal Commissioner of Income Tax, Rajkot -3 erred in assuming jurisdiction u/s. 263 of the Act, particularly in the alight of reasons stated by him in the show cause notice and in the order passed u/s. 263 of the Act and hence the impugned order is bad in law.*
2. *The learned Principal Commissioner of Income Tax, Rajkot-3 erred in setting aside the assessment order framed u/s.143(3) of the Act by holding that assessment order passed by the AO was passed without proper examination, enquiry and verification in respect of issues mentioned in the show cause notice u/s.263 of the Act.*
3. *The learned Principal Commissioner of Income Tax, Rajkot-1, Rajkot failed to appreciate that the impugned issues were duly*

examined by the Assessing Officer by way of specific inquiries/notices and replies thereto, while finalizing assessment proceedings u/s.143(3) of the Act.”

3. The assessee is engaged in the business of manufacturing of Auto Diesel Engine Parts and generation of power through Windmill. The assessee filed return of income for A.Y. 2017-19 on 25.10.2017 declaring total income of Rs.1,17,45,590/- Assessment was completed by passing order under Section 143(3) of the Income Tax Act, 1961 on 24.12.2019 determining the total income at Rs.1,20,46,450/- after making disallowance of Rs.3,00,853/- out of common expenses claimed in the Profit & Loss account. The PCIT observed that the assessee claimed deduction under Section 80IA of the Act to the tune of Rs.34,75,920/-. The assessee filed Form No.10CCB for claiming deduction under Section 80IA of the Act. The PCIT further observed that during the year under consideration the assessee company entered into an agreement with Gujarat Energy Development Agency for generation of power through Windmill located at Kalyanpur Village in Jamnagar District having commenced the operation of Windmill on 18.12.2012 and thus the assessee had claimed the deduction under Section 80IA(4)(iv) of the Act. The PCIT observed that the eligible unit has been engaged in the business of generating power but not distributing or transmitting the power. Therefore, the PCIT held that the assessment order passed under Section 143(3) of the Act is erroneous and prejudicial to the interest of Revenue as the Assessing Officer failed to correct the amount of deduction under Section 80IA(4) of the Act by making disallowance out of deduction of expenses claimed and bringing the correct income from other sources to tax. Thus, the PCIT set aside the said order and directed the Assessing Officer to pass a fresh Assessment Order.

4. The Ld. AR submitted that during the assessment proceedings under Section 143(3) the assessee was categorically asked vide show cause notice dated 24.05.2019 stating why common expenses in proportion to the turnover of the Windmill not be disallowed from the total expenses claimed for manufacturing unit. The Ld. AR further submitted that the assessee filed reply on 21.12.2019 before the Assessing Officer thereby stating that there is no employee cost associated to the Windmill Division as there was no employee deputed for the same. Ld. AR submitted that Windmill is installed at remote location and one security person is deployed for the same, expense for the same is reported under WTG Security Guard

Expenses. Further the expenses which are purely to the Windmill was allocated and reported in the books of Windmill Division only. Further, in this connection, Ld. AR stated that the net income from Windmill after allowance of all the expenses were allowable as deduction under Section 80IA(4)(iv) of the Act. The proportionate expenses to the turnover of both the units i.e. Manufacturing Unit and Windmill Unit was disputed by the Assessing Officer and the assessee filed appeal before the CIT(A) which was rejected by the CIT(A), National Faceless Appeal Centre (NFAC) vide order dated 16.11.2021.

5. The Ld. DR relied upon the order of PCIT passed under Section 263 of the Act.

6. We have heard both the parties and perused all the material available on record. It is pertinent to note that the very issue which was taken into account by the PCIT under Section 263 of the Act was already controverted by the Assessing Officer to the assessee during the assessment proceedings under Section 143(3) of the Act and after verification has been disallowed upon which the CIT(A) has rejected the appeal of the assessee as stated by the Ld. AR during the hearing. Section 263 of the Act is invoked when there is assessment order which is prejudicial to the interest of Revenue. But in the present case, the very basis of exercising the revisionary power under Section 263 does not survive as the Assessing Officer has taken precaution and verified all the factors on the very same issue during the assessment proceedings. The PCIT cannot review the Assessing Officer's order unless there is substantial loss on the part of the Assessing Officer which is prejudicial to the interest of the Revenue. In the present case, the very basis of Section 263 of the Act has not been properly invoked by the PCIT as the Assessing Officer has taken utmost interest of the Revenue and the same cannot be stated as prejudicial to the interest of Revenue. Hence, appeal of the assessee is allowed.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 26th day of August, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 26th day of August, 2022
PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Rajkot Bench, Rajkot*