

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

ITA No. 50/Jodh/2022
(ASSESSMENT YEAR- 2017-18)

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| Kaushaliya Devi Dhoot 0, Lodha Street 1 st A Road, Sardarpura, Jodhpur | Vs | Pr. CIT-1, Jodhpur |
| (Appellant) | | (Respondent) |
| PAN NO. AANPD 4947 J | | |

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|------------------------------|-------------------------------------|
| Assessee By | Shri Rajendra Jain (Adv.) |
| Revenue By | Smt. Alka Rajvanshi Jain, CIT-DR |
| Date of hearing | 03/11/2022 |
| Date of Pronouncement | 09/11/2022 |

ORDER

PER: B.R. BASKARAN, AM

The assessee has filed this appeal challenging the revision order dated 27-03-2022 passed by Ld PCIT-1, Jodhpur and it relates to the assessment year 2017-18. The assessee is challenging the validity of initiation of revision proceedings in the revision order passed by Ld PCIT.

2. The facts relating to the case are stated in brief. In the return of income filed for Assessment Year 2017-18. The assessee had claimed a

sum of Rs. 34.45 lakhs as deduction u/s 80IA of the Act in respect of profits generated from wind power units named BLG-94, which had commenced its operation w.e.f 29.03.2016. The assessee had selected AY 2017-18 as the initial year of operation. In the immediately preceding Assessment Year, i.e., in AY 2016-17, the assessee had claimed depreciation on wind mill and the depreciation claim was not fully absorbed against the profits of business/income. Accordingly, unabsorbed depreciation of Rs.49.25 lakhs was carried forward to succeeding years. However, while computing deduction u/s 80IA of the Act in A.Y 2017-18 against the profits generated from Wind Power unit, the assessee did not deduct unabsorbed depreciation brought forward from the earlier year, apparently on the reasoning that the initial year for claiming deduction u/s 80IA was taken as AY 2017-18. The AO also allowed the claim so made by the assessee.

3. The Id. PCIT took the view that the Assessing Officer has allowed the claim for deduction u/s 80IA of the Act with examining this aspect. He noticed that, if the unabsorbed depreciation brought forward from earlier year is set off against the profits of wind power unit declared during the year under consideration, the assessee would not be eligible to claim deduction u/s 80IA of the Act. Accordingly, he took the view that the assessment order is rendered erroneous and prejudicial to the interests of

revenue. Accordingly, the Id. PCIT initiated the revision proceedings u/s 263 of the Act on the above said issue. After considering reply filed by the assessee, he set aside the assessment order in respect of deduction claimed u/s 80IA of the Act and restored the said matter to the file of AO for conducting necessary inquiries and to determine the veracity of the claim made by the assessee.

4. The Ld A.R submitted that the assessee has taken the initial year for claiming deduction u/s 80IA as AY 2017-18. Hence the loss incurred in any of the earlier years is not required to be adjusted as assumed by the Ld PCIT. Accordingly, he submitted that the view so taken by Ld PCIT is not in accordance with law and hence, on this ground alone, the impugned revision order passed by Ld PCIT is liable to be dismissed. He submitted that the above said view pressed by him would get support from the decision rendered by Ahmedabad bench of ITAT in the case of DCIT vs. Chhotabhai Jethabhai Patel & Co. (ITA No.567/Ahd/2017). He further submitted that the AO has made necessary enquiries with regard to the claim made u/s 80IA of the Act and accordingly allowed the claim. Accordingly, he submitted that the view taken by AO to allow the deduction u/s 80IA without adjusting brought forward loss/depreciation pertaining to

the prior to the initial year is one of the possible views and hence the Ld PCIT was not justified in initiating revision proceedings.

5. The Ld D.R, on the contrary, supported the order passed by Ld PCIT.

6. We have heard rival contentions and perused the record. The scope of revision proceedings initiated under section 263 of the Act was examined by Hon'ble Bombay High Court, in the case of Grasim Industries Ltd. V CIT (321 ITR 92) by taking into account the law laid down by the Hon'ble Supreme Court. The relevant observations are extracted below:

Section 263 of the Income-tax Act, 1961 empowers the Commissioner to call for and examine the record of any proceedings under the Act and, if he considers that any order passed therein, by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue, to pass an order upon hearing the assessee and after an enquiry as is necessary, enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. The key words that are used by section 263 are that the order must be considered by the Commissioner to be "erroneous in so far as it is prejudicial to the interests of the Revenue". This provision has been interpreted by the Supreme Court in several judgments to which it is now necessary to turn. In *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83, the Supreme Court held that the provision "cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer" and "it is only when an order is erroneous that the section will be attracted". The Supreme Court held that an incorrect assumption of fact or an incorrect application of law, will satisfy the requirement of the order being erroneous. An order passed in violation of the principles of natural justice or without application of mind, would be an order falling in that category. The expression "prejudicial to the interests of the Revenue", the Supreme Court held, it is of wide import and is not confined to a loss of tax.

What is prejudicial to the interest of the Revenue is explained in the judgment of the Supreme Court (headnote) :

“The phrase ‘prejudicial to the interests of the Revenue’ has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law.”

The principle which has been laid down in Malabar Industrial Co. Ltd. [2000] 243 ITR 83 (SC) has been followed and explained in a subsequent judgment of the Supreme Court in CIT v. Max India Ltd. [2007] 295 ITR 282.”

The principles laid down by the courts are that the **Learned CIT cannot invoke his powers of revision under section 263 if the Assessing Officer has conducted enquiries and applied his mind and has taken a possible view of the matter.** If there was any enquiry and a possible view is taken, it would not give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. The consideration of the Commissioner as to whether an order is erroneous in so far it is prejudicial to the interests of Revenue must be based on materials on record of the proceedings called for by him. If there are no materials on record on the basis of which it can be said that the Commissioner acting in a reasonable manner could have come to such a conclusion, the very initiation of proceedings by him will be illegal

and without jurisdiction. The Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded.

7. In the instant case, we notice that the deduction u/s 80IA claimed by the assessee without adjusting losses of the years prior to the initial year gets support from the decision rendered by Ahmedabad bench of ITAT in the case of DCIT vs. Chhotabhai Jethabhai Patel & Co. (supra), wherein it was held as under:-

8. We have carefully considered the rival submissions. The short issue that arises for consideration in the present case is whether the assessee is entitled in law for claim of deduction of income arising from eligible business during the year under [s. 80IA\(1\)](#) r/w.s. 80IA(4) of the Act without making adjustments towards losses arising in the earlier assessment years prior to exercise of option of 'initial assessment year' with reference to the eligible business. Hence, the central question for consideration is whether the losses arising in eligible business, if any, prior to exercise of option towards 'initial assessment year' is required to be artificially carried forward and notionally adjusted from the profits arising from eligible business in the 'initial assessment year' and subsequent assessment years for the purposes of [Section 80IA\(5\)](#) of the Act.

9. The manner of determination of quantum of deduction as provided under s.80IA(5) of the Act has since been **clarified by the CBDT Circular No.1 of 2016 dated 15.02.2016** and is devoid of controversy any more. Having regard to the wide ranging controversies, the CBDT circular has given categorical interpretation on exercise of option of choosing 'initial assessment year' referred to sub-section (5) of [Section 80IA](#) of the Act in favour of the assessee. The CBDT has also clarified that embargo placed under s.80IA(5) of the Act for quantification of

deduction of profits and gains of an eligible business would apply from the assessment years immediately succeeding 'initial assessment years' only. Having regard to express elucidation by CBDT, the CIT(A), in our view, has rightly decided the issue of manner of computation of quantum of deduction under s.80IA(5) of the Act in favour of the assessee. The assessee, thus, while determining the eligible profit, is not required to notionally reduce losses arising from eligible business in the earlier years already set off against other business of assessee in terms of [Sections 70, 71 & 72](#) of the Act prior to exercise of option of 'initial assessment year'. The losses arising in 'eligible business', if any, subsequent to earmarking of 'initial assessment year' shall however continue to be governed by embargo placed in [Section 80IA\(5\)](#) of the Act.

10. Hence, in the light of above discussion and in consonance with the decision of the co-ordinate bench in AY 2013-14 as well as CBDT Circular referred above, we see no merit in the grievance of the Revenue.”

It can be noticed that the CBDT has clarified in the Circular referred above that the losses arising in 'eligible business', if any, subsequent to earmarking of 'initial assessment year' shall however continue to be governed by embargo placed in [Section 80IA\(5\)](#) of the Act, i.e., the losses incurred in the years prior to the initial year need not be adjusted while computing the deduction u/s 80IA in the initial year. Hence the view expressed by Ld PCIT is against the Circular of CBDT referred above. There should not be any doubt that the circulars issued by CBDT are binding on the tax authorities. In the instant case, it can be noticed that the view expressed by Ld PCIT is contrary to the Circular issued by CBDT.

On the contrary, the deduction allowed by the AO is in accordance with the view expressed in the Circular issued by the CBDT.

8. Accordingly, we are of the opinion that the view expressed by Ld PCIT with regard to the computation of deduction u/s 80IA cannot be sustained. Accordingly, we quash the impugned revision order passed by Ld PCIT.

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

Order pronounced in the open Court on 9th November, 2022.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Dated : 09/11/2022

**Ganesh Kr*

Copy to:

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4. The CIT(A)
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Assistant Registrar
Jodhpur Bench