आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा॰ एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 219/JPR/2023
निर्धारण वर्ष/Assessment Years : 2018-19

GA Infra Private Limited Plot No. 61, Keshav Nagar, Hawa Sadak, Jaipur	बनाम Vs.	The Principal Commissioner of Income Tax, Jaipur-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECG 6222 D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal (C.A.)
राजस्व की ओर से/ Revenue by: Shri Shailendra Sharma (CIT)

सुनवाई की तारीख/ Date of Hearing : 24/05/2023
उदघोषणा की तारीख/Date of Pronouncement : 14/06/2023

आदेश/ ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee aggrieved from the order of the Learned Principal Commissioner of Income Tax, Jaipur-2 [here in after "Ld.PCIT"] for assessment year 2018-19 dated 31.03.2023 as per provisions of section 263 of the Income Tax Act (hereinafter "Act"). The order of the Ld. PCIT arise from the order passed by the National e-Assessment Centre, Delhi passed u/s 143(3) read with sections 143(3A) & 143(3B) of the Act dated 22.02.2021.

2. The assessee has marched this appeal on the following grounds:-

"1. On the facts and in the circumstances of the case and in law, ld. PCIT has erred in passing order dated 31.03.2023 by holding that assessment order passed u/s 143(3) of the Income Tax Act, 1961 dated 22.02.2021 is erroneous in so far as prejudicial to the interest of revenue and thus setting aside the assessment order, arbitrarily.
1.1 That, ld, PCTT has further erred in holding that ld.AO has passed the order in routine and perfunctory manner and without examining the issue of deduction u/s 80IA, resulting into wrong deduction of income to the assessee. Appellant prays that all the conditions prescribed u/s 80IA are duly fulfilled by assessee and all the necessary details have been sought and examined by ld.AO and thereafter claim of assessee was allowed, thus the order of ld PCIT holding the assessment order as erroneous deserves to be set aside.
1.2. That, ld. PCIT further erred in ignoring the fact that assessee was maintaining books of accounts in such a manner that profits of eligible undertakings were determinable, which is evident from Audit Report issued by qualified chartered accountant in Form 10CCB based on audited profit & loss A/C of eligible business and no adverse remarks have been made in this regard. Appellant prays that there is no requirement of maintaining separate books of accounts of eligible business moreover ld. PCIT has misconstrued the general remarks (disclosures) of auditor as Qualification which is factually incorrect. Thus, the assessment order so passed deserves to be uphold.
1.3. That, ld. PCIT has further erred in holding that deduction u/s 80IA as incorrect, by grossly ignoring that assessee has been regularly claiming the deduction on similar lines, which has been allowed to it, vide scrutiny assessments completed for earlier as well as subsequent assessment years where the facts are identical. It is therefore prayed that claim of assessee is allowable as per principle of consistency also and order passed by ld. PCIT being not in accordance with law, deserves to be set aside.
2. That the appellant request to reserve its right to add, amend or alter any of the ground of appeal either before or at the time of actual hearing."

3. The fact as culled out from the records is that that assessee has filed return of income on 29.10.2018 declaring total income at Rs. 8,76,78,840/-. The assessee is mainly engaged installing and

commissioning of various water supply plants for government of Rajasthan. Notice u/s 143(2) was issued on 23.09.2019 which was duly served on the assessee within stipulated time. Notice u/s 142(1) were issued on 20.11.2020 along with the query letter. Letters were issued on various dates in response to this, the assessee has furnished reply on various dates. The case was selected for complete scrutiny assessment under the E-assessment Scheme,2019 on the following issues:-

i. Deduction claimed for industrial undertaking u/s 80IA/80IAB/80IAC//IB/IC//IBA/80ID/80IE/10A/10AA.

On perusal of the submissions made by the assessee, ld. AO passed an order assessing the income of the assessee at Rs. 8,76,78,840/-.

3.1 On culmination of the assessment proceedings, the learned PCIT perused the assessment records and found that the return was filed claiming deduction of Rs. 5,28,73,934/- under section 80IA of the IT Act, 1961 for three projects namely ESCO Kailana (Rs. 1,44,92,712), ESCO Bharatpur (RS. 1,17,02,400) and RO Jodhpur Water project (Rs. 2,66,78,822). Since one of the basic conditions for claiming of deduction u/s 80IA(4)(1) is that the

assessee must have separate details of receipts and expenses project wise, the AO, besides asking for the justification of claim, also made a specific requisition for providing full details along with evidences claimed in profit and loss account of each contract work eligible for deduction u/s 80IA. As per record no accounting ledgers or any evidences were submitted. The FAO has accepted the submission filed without further query and in the absence of required details and evidences and alleging the error in the claim of the assessee as mentioned in para 2.2 of his order he noticed that the claim was not correct and an excessive deduction was claimed by the assessee.

3.2 The ld. PCIT also observed that the ld. AO also failed to examine large difference of gross profit and net gross profit of the different projects and the reason thereof.

3.3 Considering these aspects of the case, a show cause notice u/s 263 of the IT Act was issued to the assessee vide letter dated 13.03.2023 to explain as to why the assessment order passed by NeAC on 22.02.2021 may not be revised u/s 263 of the Act and

may not be treated as erroneous and prejudicial to the interest of the Revenue.

3.4 In response, the assessee did not file any reply to the show cause notice dated 13.03.2023, however, as matter of abundant and on account of principles of natural justice again notice was given on 23.03.2023 and in response the assessee submitted detailed reply.

3.5 On perusal of the reply the ld. PCIT noted that the defects pointed out in the show cause notice have not been addressed and the copies of contracts have been filed only. The details and evidences were not produced before the FAO even through specifically called for nor examined by him. In regular audit report issued u/s 44AB of the Act in Form no. 3CA/3CD, the auditors have again categorically stated against point no. 13(3), of 3CD for disclosures as per ICDS that contract wise books of accounts were not maintained and hence, they were unable to disclose the said disclosure in Form no. 3CD. He further noted that even though the FAO raised this issue during assessment and it was one of the reasons for the scrutiny the FAO did not apply his mind to the

material filed as well completed the assessment even when complete details called for by him relating to evidences in the form of ledgers, bills and vouchers were not even produced by the assessee. The claim of the assessee that this issue has been examined during assessment proceeding is thus found to be incorrect and based on this observation the ld. PCIT held that FAO's orders is found to be erroneous on the issue and in the result prejudicial to the interest of the Revenue. Based on this observation, the ld. PCIT hold that the order passed u/s 143(3) of the Act on 22.02.2021 for assessment year 2018-19 passed by FAO is erroneous and prejudicial to the interest of the Revenue, as the said order has been passed by the Assessing Officer in a routine and perfunctory manner without examining the issue of deduction u/s 80IA. Based on these observations PCIT holds that the order of the Assessing Officer is liable to revision under clause (a), (b) & (c) of Explanation (2) to section 263 of the IT Act and therefore, he set aside the order of the assessment and directed the ld. AO to examine the issue and pass suitable order in accordance with law.

4. Feeling dissatisfied from the order of the ld. PCIT, the ld. AR of the assessee has filed the present appeal as per grounds so raised and reiterated in para 2 above. The ld. AR of the assessee in support of the grounds so raised, filed a detailed submission which is reproduced here in below:-

"Brief facts of the case are that assessee is a private limited company and is mainly engaged in installing and commissioning operation and maintenance of the projects awarded to it by the Public Health Engineering Department (PHED), Government of Rajasthan. During the year under consideration assessee has carried out several contracts including three water supply projects. Return of Income was filed on 29.10.2018 at a total income of Rs.8,76,78,840/- after claiming deduction u/s 80IA of Rs.5,28,73,934/- **(APB 1-17)** in respect of following projects:

ESCO Kailana	Rs.1,44,92,712/-
ESCO Bharatpur	Rs.1,17,02,400/-
RO Jodhpur water project	Rs.2,66,78,822/-
	Rs.5,28,73,934/-

At this juncture, it is submitted that work in respect of all the above projects commenced in preceding assessment years and thus assessee was claiming deduction in respect of above projects since A.Y. 2015-16 (ESCO Kailana) and since A.Y. 2016-17 in respect of other two projects (i.e. ESCO Bharatpur and RO Jodhpur) and the allowability of such claim was examined by the department in scrutiny assessments of A.Y.2015-16 and 2016-17 (**APB 111-123**) when the same was first claimed under identical circumstances.

For the year under appeal the case of assessee was selected for complete scrutiny to examine the following :

Deduction claimed for industrial undertaking u/s 80IA/ 80IAB/ IC/ IBA/ 80ID/ 80IE/ 10A/ 10AA.

Various details and explanations as required to examine the above mentioned issue were sought by ld.AO, in response to which assessee furnished replies alongwith supporting documentary evidences, such as ITR, Audited Financial Statements, Audit Reports u/s 10CCB in respect of all the projects, Work orders, Assessment orders passed in earlier years, opinion obtained from expert regarding eligibility of deduction u/s 80IA, bank account statement etc. After thorough examination of such details, ld.AO completed the assessment

accepting the income declared by the assessee vide assessment order dated 22.02.2021.

Subsequently, ld.PCIT issued show cause notice u/s 263, on the observation that claim of assessee u/s 80IA was not correct and excessive and the FAO failed to examine the reason for large difference in the gross profit and net profit rate of various projects. In response to show cause notice, assessee furnished detailed reply **(APB 89-104)**, however the same was not considered and ld. PCIT passed order u/s 263 by holding that order passed by ld.AO u/s 143(3) is erroneous in so far as it is prejudicial to the interest of the revenue as the order is passed by the FAO (assessing officer) in a routine and perfunctory manner without examining the issue of deduction under section 80IA. Thus, ld. PCIT has set aside the assessment order on the issue of deduction u/s 80IA. Aggrieved of the order so passed by ld. PCIT, assessee has preferred present appeal.

With this background, submission in elaboration to the grounds of appeal is made as under:

Grounds of Appeal No. 1 to 1.3:

In grounds of appeal no. 1 & 1.1, assessee has challenged the action of ld. PCIT in exercising the Revisionary powers u/s 263 and thereby holding the order passed by ld.AO u/s 143(3) r.w.s.147 as erroneous and prejudicial to the interest of the revenue, whereas in grounds of appeal no.1.2 & 1.3, assessee has challenged the Revision order on merits as the assessee has fulfilled all the conditions prescribed u/s 80IA and has rightly claimed deduction, which stood allowed by ld.AO while completing assessment u/s 143(3). Since all the ground are related to each other thus the same are canvassed together for sake of convenience.

At the outset, submission on the issue that "order passed by ld.AO is neither erroneous nor prejudicial to the interest of the revenue" is made as under:

In this regard, as stated above, it is reiterated that the assessment in this case was selected for scrutiny to examine the deduction claimed by assessee u/s 80IA of the Income Tax Act.

At this juncture, it is submitted that during the year under consideration ld.AO, vide notices issued u/s 142(1) dated 20.11.2020 and show cause notice dated 20.01.2021 specifically directed the assessee to furnish documentary evidences in support of deduction claimed u/s 80IA, in the absence of which it was show caused that the deduction so claimed would be disallowed. Query raised by ld.AO on the issue of allowability of deduction u/s 80IA ,vide notice dated 20.11.2020 is reproduced as under:

> "*12. You have claimed 80-IA (f of Schedule 80-IA) - Profits and gains from industrial undertakings or enterprises engaged in infrastructure development i.e. WATER SUPPLY AND*

> *WATER TREATMENT PROJECT WORK (RO JODHPUR PROJECT) , etc. at Rs 5,28,73,934/-.* ***Please give full detail along with evidences, how it is allowable.*** *As per form 10CCB dated 31-3-2018 the claim was Rs 14492712/- ;vide form 10CCB dated 11-10-2018 the claim was Rs 1,17,02,400/-but vide form 10CCB dated 15- 10-18 is increased to 2,66,78,822/-. Explain this."*

In response to above notice, assessee furnished reply dated 27.01.2021 **(APB 105-110)**, whereby at serial no.12 **(APB 108-109),** detailed submission was made and following documents were furnished in support of such submission:

1. Work orders allotted from the PHED Department under Government of Rajasthan with respect to all the three projects **(APB 124-140)**;
2. Audited Profit & loss account with Form 10CCB **(APN 68-88)**
3. Assessment orders for A.Y. 2015-16 and 2016-17, whereby claim of assessee u/s 80IA was allowed under identical circumstances **(APB 11115-123)**;
4. Expert Opinion obtained regarding applicability of provisions of section 80IA **(APB 141-161)**.

After considering all such details, ld. FAO passed assessment order by specifically observing as under:

> *"Profit and gains from industrial undertaking of enterprises engaged in infrastructure development, i.e. WATER SUPPLY AND WTER TREATMENT PROJECT WORK (RO JODHPUR PROJECT), etc. The total deduction claimed under section 80IA was amount of Rs. 5,28,73,934/- and this amount related to 3 projects having name ESCO Kailana, ESCO Bharatpur, RO Hodhpur. The deduction is allowable u/s 80IA(4) of the Act."*

In other words, ld.AO after making all the necessary enquiries and after applying his mind on the documents and necessary evidences furnished with regard to the claim of deduction u/s 80IA by the assessee and being satisfied with the explanation furnished by the assessee about the genuineness and reasonableness of the claim made has ld.AO passed order u/s 143(3) of the Income Tax Act.

At this juncture, observations of ld. PCIT in para 5 of her order are reproduced for the sake of convenience:

> *"5. I have gone through the assessment order and case records and have considered the submissions filed by the assessee and in the facts and circumstances of the case I find that the contentions of the assessee are not tenable. From the above facts and circumstances of the case and having regard to the material available on record, the Assessing Officer failed to consider/apply his mind to the information* ***available*** *on record with regard to the issue of deduction under section 80IA . This in turn has resulted in passing of an erroneous*

order by the Assessing Officer in the case due to non-application of mind to relevant material, reflecting non appreciation of facts and an incorrect application of mind to law which is prejudicial to the interest of the revenue. Thus, the order passed U/s 143(3) on 22.02.2021 is erroneous and prejudicial to the interest of revenue".

From the observation of the ld. PCIT it is clear that she has treated the order passed by ld.AO as erroneous and prejudicial to the interest of the revenue on the ground that ld.AO failed to apply his mind regarding deduction u/s 80IA.

In view of above submission it is clear that all the necessary details required for verification of deduction claimed u/s 80IA were furnished before ld.AO and stood examined by him. It may be further noted that the instance case due, necessary and most pertinent enquiries to all the issues emerging from the return filed by the assessee were conducted by the Ld. AO. Therefore, in view of such factual and legal position, no action u/s 263 could have been taken. In this regard, reliance is placed on:

Commissioner of Income Tax vs Ganpat Ram Bishnoi [2006] 152 Taxman 242 (Raj.) (Case law compilation pages 1-3) Para 11 of the decision is reproduced as under:

"Undoubtedly, the jurisdiction under section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the Assessing officer, the CIT can cancel that order and require the concerned Assessing Officer to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the Assessing Officer has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why the enquiry conducted by the Assessing officer was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something."

Dharmendra Mehta vs PCIT ITA no.201/JP/2022 in **order dated 13.04.2023 (Jaipur ITAT)(Case law compilation pages 4-32)** (Relevant extracts reproduced)

"*10.8 Relying on above finding equally applicable in the present case wherein in this case also the ld. AO made enquiry and issued the show cause notice to the assessee and after due process he reached to a particular conclusion then as held in the above case that when enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but he same is apparent from the record of the*

proceedings in the present case, without anything to say how the and why the enquiry conducted by the AO was not in accordance with law the invocation of jurisdiction by the CIT was unsustainable. As the jurisdiction u/s. 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.

10.9 In the result after considering the entirety of the facts on hand after considering the submission placed before us and after perusing the orders of the lower authorities we quash the order passed by the PCIT in terms of the settled legal position as discussed in above paras.

In the result, the appeal of the assessee is allowed."

Jhunjhunu Kraya Vikraya Sahkari Samiti Ltd. vs PCIT ITA No. 150/JP/2022 (Jaipur ITAT) (Case law compilation pages 33-62) (Relevant extracts reproduced):

11. *Clearly, therefore, as long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation. As for learned PCIT's observations regarding accepting the explanation "in a routine and perfunctory manner", there is nothing to question the bonafides of the Assessing Officer or to elaborate as to what should have been 'appropriate' evidence. The fact remains that the specific issue mentioned and has been examined and the contention of the assessee accepted by the Assessing officer. Merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue".*

12. *In view of the above discussions, as also bearing in mind entirety of the case we vacate the impugned revision order. The assessee gets the relief accordingly."*

It is further submitted that, the **Hon'ble Bombay High Court** in the case of **CIT Vs. Gabrial India Ltd**., reported in **203 ITR 108**, has held that, "CIT cannot revise order merely because he disagrees with the conclusion arrived at by the ITO". Further, in the case of **CIT Vs. Sunbeam Auto Ltd.**, reported in **227 CTR 133**, the Hon'ble Delhi High Court drew a distinction between "Lack of inquiry" and "inadequate enquiry" and held that, 'in the case of inadequate enquiry, provisions under section 263 cannot be invoked.'

In Gabriel India Ltd. (supra), it was expressly observed: -

"The Commissioner cannot initiate proceedings with a view to starting fishing and roving enquiries in matters or orders which are already concluded. Such

action will be against the well-accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity [Parashuram Pottery Works Co. Ltd. vs. ITO, (1977) 106 ITR 1 (SC)].

It was further observed as under:-

"From the aforesaid definitions as it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an Income-tax Officer acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualize a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order unless the decision is held to be erroneous. Cases may be visualized where the Income-tax Officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. The Commissioner, on perusal of the records, may be of the opinion that the estimate made by the officer concerned was on the lower side and left to the commissioner he would have estimated the income at a figure higher than the one determined by the Income-tax Officer. That would not vest the Commissioner with power to re-examine the accounts and determine the income himself at a higher figure. It is because the Income-tax Officer has exercised the quasi-judicial power vested in him in accordance with law and arrived at conclusion and such a conclusion cannot be termed to be erroneous simply because the Commissioner does not feel satisfied with the conclusion.

x x x x

There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation a lesser tax than what was just has been imposed."

Hon'ble Bombay High Court in **Moil Ltd. Vs. CIT [81 Taxmann.com 420]** observed that if a query is raised during the assessment proceedings which was responded to by the assessee, the mere fact that the query was not dealt with in the assessment order then it would not lead to a conclusion that no mind has been applied to it and the Assessing Officer is not expected to raise more queries, if he was satisfied about the admissibility of claim on the basis of the material and the details supplied.

Reliance Industries Ltd. vs PCIT ITA No.578/Mum/2021 decision dated 01.09.2021 (**Case law compilation pages 63-76)** *(Mumbai ITAT)(Relevant extracts)*

"In the present case, we find that the issue was duly considered by Ld. AO after considering assessee's detailed submissions. The view could not be said to be unsustainable view and it was one of the possible view. Therefore, on the given facts and circumstances, we find that the subject matter of proposed revision was already deliberated upon by Ld. AO and a possible was taken in the matter. That view could not be said to be contrary to law, perverse or unsustainable in law, in any manner and the same would be a possible view keeping in mind the assessee's submissions during reassessment proceedings. This being the case, the assessment order could not be subjected to revision u/s 263 and the action of Ld. Pr.CIT in invoking jurisdiction u/s 263 could not be sustained in the eyes of law. Similar is the view of the Tribunal in assessee's group concern i.e. M/s Reliance Corporate IT Park Ltd. V/s Pr. CIT (ITA No.2748/Mum/2015 dated 08/03/2017) wherein it has been observed by the coordinate bench that when Ld. AO had applied his mind on the given facts and material on record and took a possible view then such an assessment order could not be cancelled u/s 263 unless it was shown that the view was not tenable either in law or on facts.

6. The Ld. CIT-DR has relied upon the decision of Hon'ble Allahabad High Court in the case of CIT V/s Bhagwan Dass (272 ITR 367) which is a case wherein it was held that the order was passed without application of mind by Ld. AO. The same is not the case here. The case law of Chennai Tribunal in Bharat Overseas Bank V/s CIT (152 TTJ 546) was a similar case wherein no inquiry was made by Ld.AO during the course of assessment proceedings. Therefore, these case laws are distinguishable on facts and not applicable to the facts of the present case.

7. Finally, on the facts and circumstances of the case, we quash the order passed by Ld. Pr. CIT in terms of settled legal position as enumerated by us in opening paragraphs. Ground nos. 1 to 3 stands allowed which render adjudication of ground no.4 merely academic in nature.

8. The appeal stands allowed in terms of our above order."

Torrent Pharmaceuticals Ltd. vs DCIT: Ahmedabad ITAT I.T.A. No. 164/Ahd/2018 (Case law compilation pages 77-123)

"9.5 We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to Section 263 of the Act and, in turn, will cause serious

unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed the order in great detail after making several allowances and disallowances on the issues involved impliedly after due application of mind. Therefore, the Explanation 2 to Section 263 of the Act do not, in our view, thwart the assessment process in the facts and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is surely missing in the present case. Resultantly, the order of the Pr.CIT passed under s.263 of the Act is set aside and cancelled and the order of the AO under s.143(3) is restored."

Indus Best Hospitality & Realtors Pvt. Ltd vs. PCIT (ITAT Mumbai) ITA No. 3125/Mum/2017 (Case law compilation pages 124-136)

S. 263 Revision: Explanation 2 to s. 263 inserted by the FA 2015 (which confers power upon the CIT to revise assessments where inadequate inquiries have been conducted by the AO) is prospective in nature and does not apply even to a case where the CIT passed the order after Explanation 2 came on the statute. The CIT should show that the view taken by the AO is unsustainable in law. The action of the CIT in directing the AO to conduct enquiry in a particular manner is contrary to the law interpreted by the Delhi High Court in CIT v. Goetze (India) Ltd 361 ITR 505. If such course of action is permitted, the CIT can find fault with each and every assessment order without making any enquiry or verification in order to establish that the assessment order is not sustainable in law.

Amira Pure Foods Pvt. Ltd vs. Pr CIT (ITAT Delhi) ITA No. 3205/Del/2017 (Case law compilation pages 137-173)

S. 263 Revision: Explanation 2 to s. 263 inserted w.e.f. 01.06.2015 does not override the law as interpreted by the various High Courts whereby it is held that the CIT cannot treat the AO's order as being erroneous and prejudicial to the interest of revenue without conducting an enquiry and recording a finding. If the Explanation is interpreted otherwise, the CIT will be empowered to find fault with each and every assessment order and also to force the AO to conduct enquiries in the manner preferred by the CIT, thus prejudicing the mind of the AO, This will lead to unending litigation and no finality in the legal proceedings which cannot be the intention of the legislature in inserting the Explanation.

Small Wonder Industries vs. CIT (ITAT Mumbai) ITA No. 2464/Mum/2013 (Case law compilation pages 174-185)

S. 263: There is a distinction between "lack of enquiry" and "inadequate enquiry". If the AO has called for the necessary details and the assessee has

furnished the same, the fact that the AO is silent in the assessment order does not mean that he has not applied his mind so as to justify exercise of revisional powers by the CIT u/s 263.

In the case of **Shri Narayan Tatu Rane vs ITO** ITA No.2690 & 2691/Mum/16**)** dated 06.05.2016 the hon'ble Mumbai ITAT has observed as under:

"20. *Further clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-à-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying out enquiries or verification, which a reasonable and prudent officer would have carried out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made. In our view, it is the responsibility of the Ld Pr. CIT to show that the enquiries or verification conducted by the AO was not in accordance with the enquries or verification that would have been carried out by a prudent officer. Hence, in our view, the question as to whether the amendment brought in by way of Explanation 2(a) shall have retrospective or prospective application shall not be relevant."*

Sanjeev Kr. Khemka vs Pr. CIT (Kolkatta ITAT)

"5.1 In view of the above we find that Ld. CIT has passed impugned order u/s. 263 of the Act by holding the order of AO as erroneous in so far as prejudicial to the interest of revenue on account of inadequate enquiry made by AO while passing order u/s. 143(3) of the Act. However, we find that proper and sufficient enquiries were conducted by the AO at the time of assessment as evident from the order of AO. Therefore it cannot be concluded that no proper enquiry has been conducted by the AO at the time of assessment proceedings. The AO has taken conscious view after considering the facts and circumstances of the case and giving proper opportunity to the assessee. Thus, the view expressed by AO in the form in his assessment order cannot be replaced with the view of Ld. CIT u/s 263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of *CIT vs. M/s. J.L. Morrison (India) Ltd.*(ITA No 168 of 2011) in GA No 1541 of 2012 dated 15.05.2014, wherein it was held as under:-

"By sections 3 and 4, the Indian Income-tax Act, 1922, imposes a general liability to tax upon all income. But the Act does not provide that whatever is received by a person must be regarded as income liable to tax. In all cases in which a receipt is sought to be taxed as income, the burden lies upon the department to prove that it is within the taxing provision."

We also rely on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Max India Limited reported in 295 ITR 282 wherein it was held as under :

"*When the CIT passed the impugned order under s. 263, two views were inherently possible on the word "profits" occurring in the proviso to s. 80HHC(3) and therefore, subsequent amendment of s. 80HHC made in the year 2005, though retrospective, did not render the order of the AO erroneous and prejudicial to the interest of the Revenue, and CIT could not exercise powers under s. 263."*

In view of the above proposition, and respectfully following principle laid down by the Hon'ble courts and keeping in view all these discussion, as also bearing in mind entirety of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly."

In view of above, it is submitted there order has been passed after due application of mind and is neither erroneous nor prejudicial to the interest of the revenue, therefore order passed by ld. PCIT is not in accordance with law and deserves to be quashed.

Without prejudice to the above and in the alternative, on merits of the allowability of deduction claimed by assessee u/s 80IA, submission is made as unde:

Ld. PCIT issued directions of revision of deduction claimed u/s 80-IA for the following reasons:

(i) As per 80IA(4)(i), assessee must keep separate books of accounts;
(ii) In regular audit u/s 44AB, while reporting ICDS –III, auditor has mentioned that Contract wise books of account not maintained; we are unable to disclose the disclosure ;
(iii) No ledgers/bills /vouchers were furnished before AO
(iv) AO has observed that there is no details of opening /closing stock and that of consumption of stock though from the perusal of the assessment order it could be seen that no such observations were made by the ld.AO.

In this regard, at the outset relevant extracts of the provisions of section 80IA are reproduced for the sake of convenience as under:

Deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

80-IA. (1) Where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains derived from such business for ten consecutive assessment years.

…….;

…….,

(4) This section applies to—

(i)** any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility **which fulfils all the following conditions, namely :—

(a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

*(b) **it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;***

(c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995:

Provided that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place:

Provided further that nothing contained in this section shall apply to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after the 1st day of April, 2017.

Explanation.—For the purposes of this clause, "infrastructure facility" means—

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea;

……

From perusal of above, it is evident that Section 80-IA provides various conditions to be fulfilled to be eligible for claiming deduction under this section, however ld. PCIT has not doubted any of such conditions except regarding maintenance of books of accounts and section 80IA-(4)(i) nowhere talks about maintenance of books of accounts leave apart separate books. Now, sub section (7) to section 80IA is reproduced:

*7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the **accounts** of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, and the assessee furnishes, along with his return of income, the report of such audit in the prescribed form duly signed and verified by such accountant.*

Now, the allegation of ld. PCIT that auditor has given qualificatory remarks in the financial statements of all the projects **(APB 74, 81 and 88) ,**is dealt with as under:

- **No separate bank account has been maintained for the project and No separate bank finance/credit has been utilized for the under taking :-**
  Section 80I-A nowhere specifies condition to maintain separate bank account or bank finance. Moreover common bank accounts are used for the sake of administrative convenience. Further, accounting through software can segregate unit-wise entries at the stage of voucher feeding itself, thus receipts/payments through common accounts does not impact working of unit wise profit. Further since the assessee is availing bank credits it is not possible for it maintain separate bank accounts for each individual project.

- **Bifurcation of sundry creditors and payables is not possible hence no such presentation has been made**

From the perusal of the financial statements it could be seen that no such observations was made by the auditors

- Purchase includes goods used for repair and maintenance of project assets

This observation does not affect either the quantum of the profit computed from the project rather it specifies that the expenditure incurred on the repairs of project assets is duly identified and debited in the each individual project separately.

- Expenses which are not directly related to the project have been taken on proportionate basis of turnover

It is submitted that this relates to the common expenditures incurred in the day to business activity and in order to compute the true and correct profit of each individual project such expenses should be bifurcated and allocated to each individual project thus nowhere has effected the claim of deduction u/s 80IA.

It is further submitted that assessee is engaged in both eligible as well as non-eligible projects. Assessee maintains regular books of accounts, which was subject to Statutory as well as tax audit by qualified chartered accountants. Assessee maintained separate books of accounts for each project and the auditors nowhere in the financial statements of each project **(APB 74,81,88)** has observed that no separate books of accounts were maintained rather as appeared that the ld. PCIT has wrongly consider the observation of separate bank account as separate books of accounts.

Further, assessee separately prepares financial statements in respect of its each eligible undertaking, which are also subject to audit in terms of sub section 7 to section 80-IA, for which audit report is issued in Form 10CCB, (unit wise) which is a detailed form and is issued after scrutiny of separate Balance Sheet and Profit & loss account of eligible undertaking **(APB 68-88).** In Form 10CCB, auditor makes a declaration that the audit report has been issued after obtaining all the information and explanation necessary for the purpose of audit and that the Balance Sheet and profit & loss accounts of eligible undertaking are in agreement with the books of accounts maintained.

It is pertinent to note here that statue mandates the preparation of accounts (i.e. Balance Sheet and profit & loss account) of the eligible undertaking and audit thereof in terms of section 80IA(7), but it nowhere states that assessee needs to maintain separate books of accounts for each individual unit. Basically, legislation intended that profit & loss for each eligible unit can be worked out and is not merged with that of non-eligible business, therefore mechanism of getting separate audit report in respect of each undertaking is provided, so that once assessee after proper allocation of expenses and income to respective unit, prepares the accounts, the same should be further be audited so as to determine correct picture of profit & loss and state of affairs of each undertaking and that of non eligible undertakings.

At this juncture, kind attention of your honours is invited to **APB 81,** i.e. Balance Sheet and Profit & loss account of ESCO Bharatpur undertaking. From perusal of which it is evident that out of total expenses of Rs.1,41,35,347/-, expenses worth Rs.1,26,99,070/- (i.e.approx.90%) are such which are directly attributable to the project. Your honours would appreciate that with progress of technology, accounting software contain such advance features, assessee only needs to define ledgers/groups in such a manner that software itself will post a particular voucher to the respective undertaking/department, which in manner amounts to separate unitwise books. At the end of the year it is only indirect expenses, which need to be allocated on some appropriate basis. In this regard, also, it is submitted that in any business, where more than one department/activities are being carried on, there may be some resources, which was commonly used by such departments and the only option to allocate such expenses is either on turnover basis or on any other suitable basis. In the instant case also expenses not directly attributable to project was allocated in proportion of turnover derived by each unit. After thorough examination of all such details, auditor has opined that:

"In our opinion the undertaking or enterprise satisfies the conditions stipulated in section 80-IA and the amount of deduction claimed under this section in item 30 is as per the provisions of the Income tax Act and meets the required conditions.

In our opinion and to the best of our information ad according to explanation given to us, the said accounts give a true and fair view-

(i) In the case of the balance sheet, of the state of affairs of the above named industrial undertaking or enterprise as at 31.03.2018; and
(ii) In the case of profit and loss account, of the profit or loss of the industrial undertaking of the enterprise for the accounting year ending on 31.03.2018." **(APB 80 for ESCO- Kailana)**

Similarly, for remaining two undertakings, i.e. ESCO Bharatpur and RO Jodhpur also, no adverse remarks have been given by auditors.

With regards to the observations of ld. PCIT that no disclosures in ICDS II could be made as separate contract accounts were not maintained, it is submitted that disclosure requirement in ICDS does not impact assessee's eligibility of deduction u/s 80IA. Also, no ledgers/bills/invoices were sought by ld.AO as alleged by ld.AO. In fact, all the details sought were furnished and after due examination of the same, claim of assessee was allowed. Thus, observations of ld. PCIT in this regard are not correct.

The **Supreme Court in Commissioner of Income-tax, Guwahati vs. Bongaigaon Refinery and Petrochemical Ltd., [2012] 349 ITR 352 (SC**) while dealing with a claim under Sections 80-HH and 80-I held:-

"9. At the outset, it may be stated that the impugned order of the High Court is cryptic. Ordinarily, we would have remitted the case to the High Court for de novo consideration. The High Court has relied upon its earlier

judgment, which, in our view, is not applicable on all fours to the facts of the present case. However, to put an end to the litigation, we are of the view, that though neither Section 80-HH nor Section 80-I (as it then stood) statutorily obliged BRPL to maintain its accounts unit-wise and that it was open to BRPL to maintain its accounts in a consolidated form in order to put an end to the litigation between the Tax Department and the public sector undertaking we remit the case to the Assessing Officer to ascertain whether the assessee had correctly calculated its net profits for the assessment year 1992–1993 in respect of its petrochemical unit for the purposes of claiming deduction under Sections 80HH and 80-I of the Income-tax Act, 1961. In the present case, BRPL has prepared its financial statements on consolidated basis from which it has worked out unit-wise net profits. If not done, it could be done by the auditors even today from the Consolidated Books of Accounts. Once such working is certified by the auditors the net profit computation (unit-wise) could be placed before the Assessing Officer who can find out whether such profit(s) is properly worked out and on that basis compute deduction under Sections 80-HH/80-I." [Emphasis supplied]

Hon'ble Punjab and Haryana High Court in the case of **Micro Instrument Company in ITA 958 of 2008 (Case law compilation pages 186-221):**

28. The issue regarding the assessee not having kept separate books of account in respect of the two units was, therefore, specifically raised by the Assessing Officer and was specifically answered by the assessee. Further, as is evident from paragraph-3 of the assessment order set out earlier, the assessment order itself expressly referred to and dealt with this aspect. The assessment order specifically referred to the assessee's reply and dealt with the issue of the assessee not having kept separate books of account for the two units. It was only thereafter that the Assessing Officer passed the assessment order where, in paragraph-3, he made the observations we set out earlier. The Assessing Officer noted and accepted the assessee's explanation that they had not done so only inadvertently as it was the first year that Unit-II was in full operation. The Assessing Officer also noted the assessee's contention that the law, in any event, did not require them to maintain separate books of account and that the assessee had relied upon authorities in this regard. The Assessing Officer also recorded that in respect of Unit-II, the assessee had been registered with the Sales Tax Department, Haryana as an independent unit with a separate registration number as well as as per the rules of the Central Excise & Customs Department to the effect that no separate registration is required if a new unit is set up in the existing premises. The claim for deduction was, therefore, considered, to wit, was allowed. There can be no doubt, therefore, that the Assessing Officer was conscious of this issue and had dealt with the same after taking into consideration the assessee's response in respect thereof.

29. Even as a matter of law, keeping separate books of account is not a condition precedent to a claim for a deduction under Section 80-IB. There

was no statutory provision making it mandatory for an assessee to maintain separate books of account. That it may be easier for an assessee to establish a claim for deduction under Section 80- IB in the event of separate books of account being maintained is another matter altogether. That is a question of evidence and not a legal obligation.

The Delhi Bench of the Tribunal in the case of Ranbaxy Laboratories ITA No. 196/Del/2013 dated 25.04.2016/ [2016] 68 taxmann.com 322 also, inter alia, held that there is no mandatory requirement to maintain separate books of account for the purpose of claiming deductions under sections 80-IB and 80-IC of the Act. To the similar effect are the following decisions:

- Banaskantha District Cooperative Milk Producers Union: ITA No.3599/Ahd/2009 Revenue‟s Appeal dismissed in Tax Appeal No. 1813 of 2010 (Guj.)
- CIT v. Sabarkantha District Co-operative Milk Producers Union Ltd.: Tax Appeal No. 473 of 2014 (Guj.)
- Ajanta (P.) Ltd. v. DCIT: [2017] 77 taxmann.com 227 (Guj.)

Hon'ble Delhi High Court in the case of Gujarat Guaradian Limited vs DCIT ITA No.1106 & 973/Del/2015 (Case law compilation pages 222-264) has decided the issue in favour of assessee.

In the last it is submitted that the assessment for the preceding assessment years were also completed u/s 143(3) where for the first time assessee claimed the deduction u/s 80IA on these projects and the facts and circumstances and the nature of the accounts were identical in those years and the ld. AO after considering the details has allowed the deductions so claimed thus following the principal of consistency also the deduction claimed by the assessee cannot be doubted.

With regard to the higher net profit in the projects eligible for deduction us. 80IA it is submitted that the assessee has declared the profits from each individual project after duly debiting the respective expenses related to the said project and nowhere in the revision order, ld.PCIT has pointed out any single example of expenses which is wrongly claimed.

In view of above, it is submitted that since assessee has duly worked out Profit & Loss from eligible undertaking by preparing separate profit & loss accounts and Balance Sheets, and has got the same audited, condition in this regard is duly fulfilled. It is therefore submitted that the claim of assessee u/s 80-IA is correct and deduction claimed deserves to be allowed as such. It is also a settled law that issues that have been settled and accepted over a period of time should not be revisited in subsequent assessment years in absence of any material change which would justify the change in view.

In the circumstances, it is submitted that assessment order passed by ld. assessing officer is neither erroneous nor prejudicial to the interest of revenue, therefore, the directions given by the ld. PCIT for making further

enquiries is not in accordance with law and revision order so passed u/s 263 of the Act deserves to be quashed."

5. The ld AR of the assessee in addition to the written submission so filed also vehemently argued before us that the assessment in this case has been completed by the faceless assessment unit. In the faceless unit there are various other sub units and the assessment order is passed after issue of specific show cause notice and the issue was raised and then closed considering the aspect of the case. Not only that in the faceless regime the order tested on various aspect on team-based assessment proceedings and then assessment unit has considered and framed the assessment. The board has prescribed various stage by which the order passes through various stages of the assessment unit and considering the faceless assessment scheme being framed the order passed u/s 263 of the Act is nothing but a review of the reasoned order of the assessing officer. Observing only the defect which are not the defect in actual order is beyond the provisions of section 263 of the Act. The ld. AR of the assessee submitted in the assessment proceedings a show cause notice dated 21.01.2021 was issued wherein the specific issue has been raised by the FAO, stating that he intent to disallow

the claim of the assessee as per point No. 9 and 13 of the query letter issued. He also stated that therefore FAO intent to disallow deduction u/s 80IA/80ID/80iC claimed by the assessee in the year under consideration. But in response the assessee has filed a detailed written submission and based on that written submission the claim of the assessee was allowed and therefore summoning the assessee again by invoking the provisions of section 263 of the Act on same issue which has been examined at length is not the purpose of provision of section 263 of the Act. The ld. AR of the assessee further submitted that this is not the first year of claim made by the assessee, the similar claim has already been allowed on the same set of fact and was not disputed by the Revenue. The ld. PCIT failed to appreciate that the assessee has already submitted separate set of books of account as audited by the same Chartered Accountant in Form No. 3CA/3CD, therefore merely there is some confusion in the note of the audit report there cannot be revision u/s 263 of the Act. The ld. AR of the assessee submitted that the issue of ICDS and maintenance of books of account are both different. Disclosure against the claim no. 13(3) is relating to the construction of contract and the issue of maintaining the books of account for three different projects is different. In the

case of the assessee the same Chartered Accountant has issued a report in form No. 10CCB specifying the profit of each of the three projects i.e. ESCO Kailana Project, ESCO Pharatpur Project and Ro Jodhpur Project . The ld. AR of the assessee as regard the non-mentioning those account has already been taken care by the FAO and not prejudicial to the claimed of the assessee. He has also so far as regards the separate bank accounts submitted that since the assessee is enjoying the credit limit, considering the RBI norms one borrower company cannot be allowed to hold many bank account not only that under the law there is no condition to maintain separate bank account per project undertaken by the assessee. As regards the second issue of mentioning the note to the account that the separate credit limit are not mentioned this is also on the same line of RBI policy issued to the monitory credit limit of the assessee. As regards the bifurcation of the sundry creditor and payable since the assessee is having maintaining books of accounts project wise all the income and expenditure is supposed to be maintained separately and there is no violation of any of the condition prescribed u/s 80IA of the Act. Based on this observation, the ld. AR of the assessee also distinguished the observation of the ld. PCIT. To support the grounds so raised by

the ld. AR of the assessee has also relied upon the following case law:-

- CIT vs Ganpat Ram Bishnoi (2006) 152 Taxman 24 (Raj.H.C.)
- Dharmendra Mehta vs. PCIT in ITA No. 201/JPR/2022 dated 13.04.2023.
- Jhunjhunu Karya Vikray Sahakari Samiti Limited vs. PCIT in ITA No. 150/JP/2022 dated 15.12.2022.
- M/s Reliance Industries Ltd. vs. PCIT in ITA No. 578/Mum/2021 dated 01.09.2021.
- Torrent Pharmaceuticals Ltd. vs. DCIT in ITA No. 164/Ahd/2018 dated 08.08.2018.
- Indus Best Hospitality & Realtors Pvt. Ltd. vs. PCIT in ITA No. 3125/JP/2017 dated 19.01.2018.
- Amira Pure Foods Pvt. Ltd. vs PCIT in ITA No. 3205/Del/2017 dated 29.11.2017.
- Small Wonder Industries vs. CIT in ITA No. 2464/Mum/2013 dated 24.02.2017.
- CIT vs. Micro Instruments Company in ITA No. 958 of 2008 dated 02.09.2016 (Punjab & Haryana H.C.)
- Gujarat Guaradian Limited vs. DCIT in ITA No. 973 & 1106/Del/2015 dated 16.08.2018.

6. On the other hand, ld. DR representing the Revenue has supported the order of the ld. PCIT and submitted that the observation made by the ld. PCIT in para 2.2 are directly linked to deduction claimed by the assessee and therefore the provision of section 263 of the act has rightly been invoked by the ld. PCIT as ld. AO has not applied his mind on the various aspect of the condition deduction claimed by the assessee as prescribed for relevant deduction u/s 80IA of the Act.

6.1 In the rejoinder, the ld. AR of the assessee against the observation of the ld. PCIT as raised by the ld. DR, the ld. AR of the assessee has relied on the decision of the Hon'ble Apex Court decision in the case of CIT vs. Bongaigaon Refinery and Petrochemical Ltd. (2012) 349 ITR 352, wherein the Court has held that there is no requirement to maintain the separate books of accounts to claim the deduction and therefore based on that decision the observation made by the ld. PCIT does not hold that the order of the Assessing Officer prejudicial to the interest of the Revenue and therefore the contention so raised are general in nature and does not support invoking of provisions of section 263 of the Act.

7. We have careful consideration the factual matrix as well as argument advanced by both the parties. It is not disputed that the FAO has raised the issue and specifically mentioned in the notice that he intends to disallowance the claim of the assessee. After consideration the reply of the assessee, in response, to the show cause notice FAO has considered the submission of the assessee and has allowed the claim of the assessee. The bench also noted from the observation of the ld. PCIT that the contention so raised

for maintenance of separate bank account and separate bank credit account is not a condition precedence to allow the claim u/s 80IA of the Act. We have also gone through the decision of Hon'ble Supreme Court in case of CIT vs. Bongaigaon Refinery and Petrochemical Ltd. (supra), wherein the Apex court has held that the assessee has prepared its financial statements on consolidated basis from it has been worked out unit-wise net profits which is also in this case that the assessee has obtained a report of Chartered Accountant in Form No. 10CCB which is from the same Chartered Accountant who has issued form No. 3CA/3CD. The qualification made in form No. 10CCB and form No. 3CD does not reveal any adverse condition to disallowance or disbelieve the claim of the assessee u/s 80IA of the Act. Thus, we are of the considered view that the issue has been carefully examined by the FAO while passing the order u/s 143 of the Act and that too under the team based faceless assessment scheme framed by the Board. There are plethora of decisions that when the Assessing Officer has considered the issue on hand and has taken a plausible view of the matter merely the Assessing Officer ought to have been verified the other fact or aspect of the case cannot support the invocation of provisions of Section 263 of the Act. On

careful perusal the various decisions relied by the ld. AR of the assessee, we have noted that in case of CIT vs. Ganpat Ram Bishnoi (supra), wherein the Hon'ble jurisdictional High Court observed as under:-

> "8. We are of the opinion in the aforesaid circumstances on the finding reached by the AO, no question of law really arises for consideration in this appeal.
> 9. It is true that in a given case not holding of any enquiry, which is relevant for assessment may indicate non-application of mind by AO or furnish the ground for taking action under Section 263 by the CIT.
> In this connection, reference may be made in the case of Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC), wherein the CIT opined that the ITO has passed the order of "nil" assessment without application of mind. The High Court accepted this part of the assertion made by the CIT in his order that the ITO has failed to apply his mind to the case in all perspectives and the order passed by him was erroneous. The High Court has also found that the assessment order was passed without application of mind. The High Court rightly held that the exercise of jurisdiction by the CIT under Section 263(1) was justified.
> 10. From the record of the proceedings, in the present case, no presumption can be drawn that the AO had not applied its mind to the various aspects of the matter. In such circumstances, without even prima facie laying foundation for holding that assessment order is erroneous and prejudicial to interest in any matter merely on spacious ground that the AO was required to make an enquiry, cannot be held to satisfy the test of existing necessary condition for invoking jurisdiction under Section 263 of the IT Act.
> 11. Undoubtedly, the jurisdiction under Section 263 is wide and is meant to ensure that due revenue ought to reach the public treasury and if it does not reach on account of some mistake of law or fact committed by the AO, the CIT can cancel that order and require the concerned AO to pass a fresh order in accordance with law after holding a detailed enquiry. But when enquiry in fact has been conducted and the AO has reached a particular conclusion, though reference to such enquiries has not been made in the order of the assessment, but the same is apparent from the record of the proceedings, in the present case, without anything to say how and why

> the enquiry conducted by the AO was not in accordance with law, the invocation of jurisdiction by the CIT was unsustainable. As the exercise of jurisdiction by the CIT is founded on no material, it was liable to be set aside. Jurisdiction under Section 263 cannot be invoked for making short enquiries or to go into the process of assessment again and again merely on the basis that more enquiry ought to have been conducted to find something.
> 12. The finding of the Tribunal that the ITO had passed assessment order after relevant enquiries and considering the aspects of the matter required by the CIT to be considered by him is a finding of fact and on the basis of which, the jurisdiction assumed by the CIT being non-existent must be held to be not sustainable."

Thus, we note that in this case also the ld. FAO has called for the detailed explanation from the assessee by issuing a show cause notice proposing to disallowance the claim of the assessee u/s 80IA of the Act and based on that detailed submission of the assessee, the ld. FAO has considered the claim of the assessee cannot hold the order to be prejudicial to the interest of the Revenue. We also note that except the notes of accounts, the ld. PCIT has not observed anything which support the invoking of provision of section 263 of the Act. The said notes on accounts are already available while passing the order, there is no other material error or negligence which are erroneous or in prejudicial to the interest of the Revenue pointed out by the ld. PCIT. In the light of the aforesaid discussion we hold that the order of the PCIT is not in accordance with the provisions of section 263 of the Act as the

issue has already been examined by the FAO. We also note that there is no observation of the PCIT or that of the ld. DR which support that the order of the FAO is erroneous and prejudicial to the interest of the revenue and thus, this twin conditions failed in this case and therefore, we vacate the order of the PCIT passed u/s. 263 of the Act.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 14/06/2023

Sd/-	Sd/-
(डा॰ एस. सीतालक्ष्मी)	(राठोड कमलेश जयन्तभाई)
(Dr. S. Seethalakshmi)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judcial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 14 /06/2023
*Santosh.
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- GA Infra Private Limited, Jaipur.
2. प्रत्यर्थी / The Respondent- PCIT, Jaipur-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 219/JPR/2023}

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar