

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "D" Bench, Mumbai.

Before Shri Satbeer Singh Godara (JM) & Shri Girish Agrawal (AM)

I.T.A. No. 78/PUN/2020 (A.Y. 2014-15)

M/s. Raj Impex 101/A Devidarshan Complex, Tembhi Naka Thane West Pincode-400 601. PAN : AALFR6800J (Appellant)	Vs.	PCIT-2 Ashar I.T. Park B Wing, 6 th Floor Wagle Industrial Estate, Thane-W Maharashtra (Respondent)
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Assessee by	Ms. Deepa Khare
Department by	Ms. Sanyogita Nagpal
Date of Hearing	01.07.2024
Date of Pronouncement	10.07.2024

ORDER

Per Satbeer Singh Godara (JM) :-

This assessee's appeal for A.Y. 2014-15, arises against the Principal Commissioner-2, Thane's order dated 27.03.2019 in proceedings under section 263 of the Income Tax Act 1961 in short "the Act".

The assessee pleads the following substantive grounds in the instant appeal.

1. The Id CIT erred in law and on facts in invoking jurisdiction u/s 263 in respect deduction u/s 80-IC on the ground that no information was called for by the Id AO and in absence of which the deduction should have been disallowed.
2. The Id CIT erred in law and on facts in not appreciating that proper enquiries were made by the Id AO during assessment proceedings in respect of deduction u/s 80-IC and the Id AO has adopted a permissible course of law.
3. The Id CIT erred in law and on facts in holding that the deduction should have been disallowed when the same has been allowed in the past

with no change in facts and no material has been brought on record to show that the deduction is not allowable.

4. The Id CIT erred in law and on facts in issuing notice u/s 263 to hold that assessee has manufactured and sold perfumes and not medicinal herbs or aromatic herbs or any product directly attributable to processing of medicinal herbs and aromatic herbs for which deduction u/s 80-IC was required to be disallowed.

5. The Id CIT erred in law and on facts in not appreciating that the appellant has clearly satisfied the provisions of section 80IC (2)(A)(ii) and the requirement of production of goods specified in Schedule 14 Part C'fs not mandatory for since the word used in section 80IC3(ii) is fulfillment of one of the sub section (i.e. sub clause (ii) of clause (a) for sub clause (ii) of clause (b) sub section (2).

6. The Id CIT failed to appreciate that the appellant fulfilled the requirements of clause 80IC(2)(b)(ii) though which is not mandatory and has produced its end products (i.e) perfumery compound and essential oil by processing different kind of medicinal and aromatic herbs. The firm has fulfilled both condition as required by Section 80IC (2)(a)(ii) though as per section it is required to fulfil any of the two.

7. The Id CIT erred in law and on facts in holding in the order u/s 263 that the assessee has failed to prove that manufacturing activity has taken place at Himachal Pradesh and claim of the deduction u/s 80IC of the Act to be disallowed while in the notice issued u/s 263, it is accepted that manufacturing activity was carried out at Himachal Pradesh on verification of record.

8. The Id CIT erred in law and on facts in seeking to revise the Assessment Order, in the proceedings u/s 263 on entirely new and contradictory ground than the one raised in show cause notice u/s 263. The Order u/s 263 being unjustified in law may kindly be cancelled.

9. The appellant craves leave to add, alter, modify or substitute any ground of appeal at the time of hearing.”

2. Both the learned representatives invited our attention to the PCIT's impugned revision discussion terming the Assessing Officer's 143(3) regular assessment herein dated 3.12.2016 as an erroneous one causing prejudice to interest of the Revenue as under :-

“06. I have duly considered the explanation offered by the assessee. On perusal of submissions it is seen that the assessee is engaged in the business of manufacturing of perfumery, Compound, Essential Oil, Attar Hina all types of Herbs 85 Species. The manufacturing unit of the

assessee firm is at Khasara No 3257, V.P. O Bhadsalihar, Tehand Dist Una, Himachal Pradesh. As per Profit and Loss account the assessee has sold perfume oil Compound. On perusal of rent agreement, it is seen that the assessee has taken this premises on rent to manufacture Perfumes, Essential Oil and Perfumery Compound. As per section 80IC(2)(b) this section applies to any undertakings which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that schedule, or which manufactures or produces any article or things, specified in the Fourteenth Schedule or commences any operation specified in that schedule. As per Schedule 14 part C, processing of medicinal and aromatic herbs is allowed in Himachal Pradesh. Processing of essential oil and fragrance is allowed in North East as per Schedule 14 Part A. The assessee is manufacturer of perfumery compound and essential oil which is allowed in North East and not in Himachal Pradesh as per Fourteenth Schedule. The assessing officer has failed to verify this issue at the time of assessment proceedings.

6.2 Further, the AO was given direction u/s 263(1) of the IT Act to verify whether manufacturing activity took place at address claimed by the assessee or a different place. The Assessing Officer has reported that the assessee has submitted notarized rent agreement, copy of registration certificate from District Industrial Centre, copy of approval from HP forest Department and certificate from Directorate of Fire Services Himachal Pradesh. However, the assessee has failed to submit proof like electricity bills, telephone bills, water supply bills etc. which can conclusively prove that manufacturing activity has actually taken place at Himachal Pradesh as these components like electricity and water are used in manufacturing process carried out by the assessee. During the course of assessment proceedings, no information was called for by the Assessing Officer about the same. In absence of any details, the same should have been disallowed and taxed. The assessing officer has failed to do so.

Clause (a) of explanation 2 to section 263 provides that if the order is passed without making enquiries or verification which should have been made, the order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue.

07. In view of the above facts & circumstances of the case, I hold that the order of the Assessing Officer is erroneous in so far as it is pre-judicial to the interests of the revenue and therefore this is a fit case where the provisions of Section 263 of the I.T. Act, 1961 are clearly applicable. Accordingly, I set aside the order of Assessing Officer passed u/s. 143(3) on 03/12/2016 with direction to redo the assessment denovo after affording adequate opportunity to the assessee.”

3. It is in this factual backdrop Ms. Khare vehemently argued during the course of hearing that the learned PCIT herein has erred in law and on facts in exercising his section 263 revision jurisdiction thereby treating

assessee's case as involving section 80IC(2)(b)(ii) deduction claim and ignoring the fact that it had actually claimed the deduction under section 80IC(2)(a)(ii) of the Act. She submits that the learned PCIT foregoing revision directions are accordingly based on an erroneous assumption of facts which deserves to be reversed.

4. Learned CIT-DR on the other hand strongly supported the impugned revision directions thereby holding the Assessing Officer not to have carried out the necessary inquiry(ies) or verification(s) in light of section 263 explanation (2)(a) of the Act. Ms. Nagpal next invited our attention to assessee's Form No. 10CCB column 7 at page No. 46 of its paper book, wherein the audit report had claimed section 80IC(2)(b)(ii) deduction only. Her case in light of said audit report is that learned PCIT has rightly exercised his jurisdiction vested u/s. 263 of the Act whilst issuing the foregoing directions.

5. Faced with this situation, Ms. Khare submitted in rejoinder that assessee's duly satisfies all the relevant conditions u/s. 80IC(2)(a)(ii) of the Act in the impugned assessment year.

6. We have given thoughtful consideration to the foregoing vehement rival stands. We find no merit in assessee's arguments challenging learned PCIT revision directions in principle. We make it clear that not only its audit report (Form No. 10CCB) had raised section 80IC(2)(b)(ii) deduction claim on one hand but also but the Assessing Officer does not seems to have carried the necessary verification(s) thereof during the course of his section 143(3) assessment dated 3.12.20216. We wish to make it clear even the assessee itself is fair enough to this clinching fact as it has not filed any notice issued by the Assessing Officer either under section 142(1) or 143(2) of the Act; raising the issue of section 80IC(2)(a) deduction.

7. Faced with this situation, we quote CIT Vs. Malabar Industrial Co. Ltd. (243 ITR 83 (SC) that such a failure on the Assessing Officer's part indeed renders the corresponding assessment as erroneous one causing prejudice to interest of the Revenue. We accordingly uphold learned PCIT's revision directions in principle in very terms.

8. We wish to make it clear before parting that there has been indeed been a serious issue between parties as to whether the assessee is entitled for section 80IC(2)(a)(ii) or section 80IC(2)(b)(ii) deduction (supra). Faced with this situation, we deem it appropriate to conclude that although we have upheld learned PCIT's impugned revision directions, it shall indeed be open to the assessee to raise all its plea(s) as per law which shall be appropriately considered in consequential proceedings.

9. This assessee's appeal is dismissed.

Order pronounced in the open court on 10th July, 2024.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Mumbai : 10.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

S.No	Description	Date	Intls	
1	Prepared by BRB	1.07.24		
2	Draft dictated on	2.07.24		Sr.P.S.
3	Draft placed before author	2.07.24		Sr.P.S.
4	Draft proposed & placed before the second Member			JM/AM
5	Draft discussed/approved by second Member			JM/AM
6	Approved Draft comes to the Sr.P.S./PS			Sr.P.S.
7	Kept for pronouncement on	.7.24		Sr. P.S.
8	File sent to the Bench Clerk	.7.24		Sr.P.S.
9	Date on which file goes to the Head Clerk			
10	Date of Dispatch of order			