

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No.1073/Ahd/2024
Assessment Year: 2018-19**

Eris Lifesciences Limited, 8 th Floor, Commerce House – IV, Nr. Shell Petrol Pump, Anandnagar Road, Ahmedabad – 380 015. [PAN – AABCE 7067 M] (Appellants)		Vs.	Principal Commissioner of Income Tax-1, Ahmedabad. (Respondent)
Assessee by	Shri Vartik Chokshi, AR		
Revenue by	Shri H. Phani Raju, CIT (DR)		
Date of Hearing	29.08.2024		
Date of Pronouncement	25.09.2024		

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assesses against order dated 30.03.2024 passed by the Principal Commissioner of Income Tax, Ahmedabad-1 for the Assessment Year 2018-19.

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

- “1. *On the facts and in the circumstances of the case and in law, the order passed by the Ld. Principal CIT u/s.263 of the Income-tax Act is ab initio void being bad in law.*
2. *On the facts and in the circumstance of the case and in law, the Ld. Principal CIT erred in setting aside the order u/s.143(3) read with sec. 144B dated 26/09/2021 passed by the NFAC, Delhi and directing the Assessing Officer to pass a fresh Assessment Order.*
3. *On the facts and in the circumstance of the case and in law, the Ld. Principal CIT erred in setting aside the order u/s.143(3) read with sec. 144B dated 26/09/2021 passed by the NFAC without having Jurisdiction as the Original Assessment Order is passed by the NFAC.*

4. *On the facts and circumstances of the case and in law, the Ld. Principal CIT erred in setting aside the order u/s. 143(3) read with sec. 144B dated 26/09/2021 as the Ld. Assessing Officer has taken particular view after carefully examining the facts of the case in detail.”*

3. The return of income for Assessment Year 2018-19 was filed on 27.10.2018 declaring total income of Rs.0/-. The Assessment Order under Section 143(3) r.w.s. 144B of the Income tax Act, 1901 was passed on 26.09.2021 at the assessed income of Rs.6,05,77,835/-. The Assessing Officer has made addition of Rs.11,62,133/- on account of disallowance under Section 14A, addition of Rs.69,39,723/- on account of disallowance of channel partners/retail promotion expenses as grouped under the head other selling & Distribution expenses, addition of Rs.33,59,890/- on account disallowance of conference related expenses as grouped under the head travelling, conveyance & vehicle expenses and addition of Rs.3,84,012/- made on account of late payment of employees contribution towards provident fund. The PCIT observed that the Assessing Officer has not established that the Long Term Capital Gain of Rs.13,97,31,310/- was earned from its Guwahati Unit/Undertaking. Therefore, the Assessing Officer ought to have disallowed deduction under Section 80IE on such Long Term Capital Gain. Furthermore, the Assessing Officer has disallowed expenses at 7.5% on account of payment to channel partners/retail promotion expenses as grouped under the head other selling and distribution expenses, though the said entire expenses of payment of channel partners should have been disallowed. Accordingly, the PCIT issued notice under Section 263 of the Act dated 01.02.2024. ((((((In response to the said notice, the assessee filed the reply and after taking into account, the PCIT held that the Assessing Officer erred in not verifying the issue of Leave Encashment as well as the entire payment/expenses paid to channel partners/retail promotion expenses. The PCIT therefore enhanced the assessee's income to Rs.6,17,61,532/- (Book profit under Section 115JB of the Act at Rs.3,18,57,87,542/- and directed the Assessing Officer to give effect to the order of the PCIT after verifying the issue of Leave Encashment.

4. Being aggrieved by the order under Section 263 of the Act, the assessee filed the present appeal before the Tribunal.

5. The Ld. AR submitted that the assessee had filed sufficient evidences and explained during the course of assessment proceedings in support of channel partners/retail promotion expenses which was duly considered by the Assessing Officer. In fact, in the earlier year, the Revenue has held that part of these expenses may include payments made to Doctors/Medical Fraternity for attending seminars/meetings/conferences [such payments are prohibited by the Indian Medical Council Regulations (Professional Conduct, Etiquettes and Ethics) Regulations 2002 as elaborated in Circular No.5/2012 dated 01.08.2012 by the CBDT) and the documentary evidences submitted by the assessee in this regard were held not complete and appropriate. Thus, in the earlier Assessment Years i.e. Assessment Years 2017-18, 2016-17, 2014-15 & 2013-14 and the Assessing Officer made similar disallowance at 7.5% of the channel partners and Retail Promotion Expenses. The Ld. AR submitted that the assessee has also given the details related to leave encashment, leave promotion paid in respect of deduction under Section 43B of the Act. The Ld. AR submitted that the PCIT is not justified in setting aside the order under Section 143(3) read with section 144B of the Act as the Assessing Officer has already taken a particular view and that view cannot be diverted with the enhancement without any basis as per Section 263 of the Act. The Ld. AR further submitted that the decision of Hon'ble Andhra Pradesh High Court in the case of Spectra Shares & Scrips (P) Limited vs. CIT (I.T.T.A. Nos. 512 of 2011 & 177 of 2012) which held that it is settled law that the Assessing Officer in the Assessment Order is not required to give detailed reasons and once it is clear that there was application of mind by an enquiry, the respondent merely because he entertains a different opinion in the matter cannot invoke his powers under Section 263 of the Act. It is, therefore, not correct to say that there was no proper enquiry by the Assessing Officer. The Ld. AR further submitted that the PCIT does not have jurisdiction to revise the order passed by NFAC.

6. The Ld. DR submitted that the PCIT has categorically mentioned that the Assessing Officer has allowed the leave encashment despite the specific remark of the Auditors in Audit Report and the Assessing Officer ought to have disallowed such leave encashment under Section 43B of the Act and, therefore, the order is prejudicial to the interest of Revenue. The Ld. DR further submitted that the Assessing Officer allowed deduction under Section 80IE despite the fact that the assessee has not

established the LTCG. Further the Ld. DR submitted that the Assessing Officer should have disallowed the entire expenses of payment of Chanel Partners rather than bifurcating the same and, therefore, the PCIT has rightly invoked Section 263 of the Act.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessment Order was passed in respect of complete scrutiny assessment whereby the deduction claimed for Industrial Undertaking under Section 80IE was specifically called for as well as the expenses incurred for earning exempt income was also called for. The fact remains that the allocation of employee expenses to Guwahati Unit was also part of the Assessment Order and after thorough verification, the Assessing Officer has taken a view and allowed the deduction. As relates to channel partners/retail promotion expenses, the same was regularly quantified and was disallowed at 7.5% in earlier Assessment Years that of Assessment Years 2013-14, 2014-15, 2016-17 & 2017-18. Thus, the Department, after verifying the same, continually taken the expenses and disallowed to the extent of 7.5%. The observation of the PCIT that the Assessing Officer ought to have taken a different view as the view related to Leave Encashment under Section 43B as well as deduction under Section 80IE and the disallowance under entire expenses of payment to channel partners is that of a different opinion of the PCIT which is not as per the provisions of Section 263 of the Act. The PCIT though simply mentioned that view taken by the Assessing Officer is erroneous and prejudicial to the interest of Revenue, yet the PCIT failed to justify that the Assessing Officer has not verified these aspects at the time of assessment. In fact, from the perusal of the Assessment Order as well as the notices issued under Section 142(1) of the Act dated 30.03.2021 and the subsequent response of the assessee alongwith details dated 03.04.2021 clearly set out that the Assessing Officer has verified all the aspects in consonance with the submissions as well as the documents provided by the assessee during the assessment proceedings and in fact the Assessing Officer has taken cognisance of each and every Sections including that of Section 43B of the Act as well as Section 80IE of the Act and also that of the expenses which should be disallowed at what percentage. Thus, the view taken by the PCIT that of enhancing the Assessment Order is not justifiable as per the provisions of Section 263 of the Act

which is a revisionary power and can be invoked only when the Assessment Order is erroneous and prejudicial to the interest of Revenue. In the present case, the Assessing Officer has taken utmost care to verify each aspect of assessee's claim of deduction as well as expenses and has passed the Assessment Order as per the provisions of Income Tax Statute. Therefore, the PCIT is not right in invoking Section 263 of the Act and passing the Order under the said provisions.

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

Order pronounced in the open Court on this 25th September, 2024.

Sd/-
(MAKARAND VASANT MAHADEOKAR)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 25th September, 2024

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
Ahmedabad benches, Ahmedabad