**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।**

# IN THE INCOME TAX APPELLATE TRIBUNAL
# 'A' BENCH: CHENNAI

**श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND**
**SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./**ITA Nos.1625/Chny/2024**

निर्धारण वर्ष **/Assessment Years: 2018-19**

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|---|---|
| **M/s. Anabond Limited**<br>**Type-II, 36, Dr. V.S.I. Estate**<br>**Tiruvanmiyur,**<br>**Chennai-600041.**<br>**[PAN: AACCA4158Q]** | **The Principal Commissioner of Income Tax-1**<br>**Chennai** |
| **(अपीलार्थी/Appellant)** | **(प्रत्यर्थी/Respondent)** |
| अपीलार्थी की ओर से/ Assessee by : | Shri B.Ramakrishnan, F.C.A. |
| प्रत्यर्थी की ओर से /Revenue by : | Shri Nilay Baran Som, CIT |
| सुनवाई की तारीख/Date of Hearing : | 02.09.2024 |
| घोषणा की तारीख /Date of Pronouncement : | 27.11.2024 |

## आदेश / O R D E R

**PER AMITABH SHUKLA, A.M :**

This appeal is filed against the order bearing DIN & Order No.ITBA/REV/F/REV5/2023-24/1063612951(1) dated 29.03.2024 of the Principal Commissioner of Income Tax [herein after "PCIT for the assessment years 2018-19. Through the aforesaid appeal the assesse has challenged order u/s 263 dated 29.03.2024 passed by PCIT, Chennai.

2.0 The appellant has raised altogether 5 grounds of appeal contesting the order dated 29.03.2024 of PCIT. Ground of appeal No.1 is general in nature and does not require any specific adjudication. Grounds of appeal No. 2 to 5 are all centering around the principal controversy of exercise of revisionary powers u/s 263 by the PCIT and hence adjudicated together. It is the case of the Ld. Counsel for the assessee that the impugned assessment order u/s 143(3) dated 18.04.2021 of the AO is neither erroneous nor prejudicial to the interest of the revenue so as to justify any invocation of exercise of revisionary powers u/s 263 by the PCIT qua assessee's claim of deduction u/s 80IE. Explaining the brief factual matrix of the case, it was submitted that return of income declaring income of Rs.15,24,14,580/- by the assessee company engaged in the business of manufacturing and marketing of anaerobic adduces and sealants for the engineering industry. The assessment was concluded at Rs.16,22,05,500/- after making disallowance of Rs.97,90,920/- towards excess claim of deduction u/s 5(2AB) and MAT provisions. The Ld. PCIT noted that during the previous year under consideration appellant assessee has set up an industrial unit in Assam for manufacture of sealants. The appellant had claimed deduction u/s 80IE of Rs. 4,53,88,725/-. The Ld. Counsel for the assessee invited our attention to para 2.2 to 4 of PCIT's order as under:-

*"….2.2 The assessee was having other units located in Chennai. While computing total income, the assessee company has claimed an amount of Rs.4,21,44,419/- u/s.35(2AB) as weighted deduction towards research and development expenditure. During the scrutiny assessment the assessing officer restricted the claim to Rs.3,25,53,500/- on the basis of amount certified in Form 3CL.*

*2.3 Further, it is observed that research and development expenditure is allocable in all units of the company and it is not meant for some units. The assessee company has not allocated the research and development expenditure to unit situated in Assam for which deduction u/s. 80IC was claimed. Accordingly, the expenditure of Rs.3,23,53,500/- allowed under section 35(2AB) has to be allocated to 80IC unit also, in proportion to the turnover of 80IC unit which bears to the total turnover of the assessee company was detailed below:*

| *Particulars* | *Amount (Rs.)* |
|---|---|
| *Deduction allowed under section 35(2AB) x Turnover of 80IC Unit Total turnover =3,23,53,500 x 27,82,97,353 / 184,63,96,117 = 48,76,469* | *4,96,56,720* |

*2.4 Thus, if the proportionate research and development expenditure of Rs.48,76,469/- is allocated to 80IC unit, the profit eligible for deduction u/s.80IC would be reduced to that extent and the same was not considered during the assessment proceedings.*

*3. From the above, it appears that the assessing officer had failed to fulfill the very purpose of CASS selection. An over all examination of the records, especially in the light of the above discussion, therefore, revealed that proper examination of issue and necessary inquiries and verification was not done by the assessing officer before passing the order u/s 143(3) of the IT act 1961 dated 18.04.2021.*

*4. In view of the above, the order passed on 18.04.2021 u/s. 143(3) of the Income tax act, 1961 without considering the above issues, was considered erroneous in so far as it was prejudicial to the interest of the revenue within the meaning of section 263 of the IT act, 1961. Therefore, the order of assessment u/s.143(3) passed by the assessing officer was proposed to be taken up u/s.263 of the IT Act, 1961 to pass appropriate revision orders…."*

3.0 The Ld. Counsel for the assessee submitted that the order u/s. 263 does not falls into a valid exercise of authority by PCIT. It was argued that the Ld. AO during assessment proceedings had conducted detailed enquiries and investigation before arriving at the appropriateness of assessee's claim of deduction u/s. 35(2AB) and 80IE. It was submitted

that the view taken by an assessing officer cannot be questioned by taking another view through invocation of proceedings u/s 263 of act. The Ld. Counsel submitted that it is neither a case of lack of enquiry nor a case of inadequate enquiry as the Ld. AO has done adequate enquiries before arriving at his decision. It was submitted that in AY-2007-08 & 2008-09 an identical issue of allocation of propionate research and development expenditure incurred with respect to Meghalaya Unit had arisen qua assessee's claim of deductions u/s 80IE. The matter had travelled till the Hon'ble Coordinate Bench of this tribunal which had decided that "…allocation of expenditure on scientific research to Meghalaya unit was not justified…". Further that in AY-2010-11 the AO had allowed assessee's claim of deduction without allocating R&D expenditure to Meghalaya Unit the issue travelled upto Hon'ble Coordinate Bench of this tribunal which dismissed the ground of appeal raised by the department in ITA 1275 / Mds/ 2015. It was further submitted in AY-2014-15 the AO had made an addition by restricting 80IE deduction in respect of Meghalaya unit. The Ld. CIT(A) had allowed the ground of appeal raised by the assessee and deleted the impugned addition. In support of it contentions, the Ld. Counsel for the assessee placed on record a voluminous paper book as well as drew strength from a plethora of judgements of Hon'ble Higher Court including jurisdictional High Court as well as the Apex Court

wherein revisionary powers u/s 263 have been comprehensively analyzed. Accordingly, the Ld. Counsel for the assessee requested for setting aside the order of the Ld.PCIT. Ld. DR argued that PCIT has rightly invoked his revisionary powers and that the same was done as the AO had not investigated the issue properly. The Ld. DR emphasized that there was a need for proportionate allocation for expenses and since the same was not done invocation of revisionary authority by PCIT was the only remedy to set the things right.

4.0 We have heard the rival submissions in the light of material available on records. As far as the issue of conduct of enquiries by the AO is concerned it is seen that the AO had conducted detailed enquiries into assessee's claim of deduction u/s. 35(2AB). Thus it is not a case where the AO had not done any enquiries. Apparently, the AO, during the scrutiny assessment, has applied his mind and arrived to a conclusion that the apportionment of R&D expenditure incurred by the assessee company to Amingaon, Assam Unit is not required as there is no nexus between the R&D expenditure incurred and operations carried on at Amingaon, Assam Unit.

4.1 We have noted that in assessee's own case a similar issue of claim of deduction u/s 80IE qua Meghalaya unit was considered by Hon'ble Coordinate Bench of this Tribunal where in the allocation of

proportionate research and development expenditure incurred to Meghalaya Unit was done during the assessment proceedings and which was affirmed by the CIT(A). On further appeal by the assessee company before the Hon'ble ITAT, Chennai Bench, the Hon'ble ITAT vide para 12 of it's order dt.13-11-2014 in ITA No.1577/Mds/2014 (Copy of the said order held that

> *"…… The first issue raised in appeal is with regard to allocation of expenditure incurred on scientific research. The assessee has incurred expenditure of Rs.99,56,455/- on scientific research. The Assessing Officer allocated 25.79% of the said expenditure i.e., Rs.25,67,770/- to Meghalya unit and accordingly re-calculated the deduction u/s.80IE. The stand of the assessee is that scientific research expenditure relates to Chennai unit only. The Meghalaya unit has not benefitted from the research and development carried out for Chennai unit. The authorities below without verifying the fact, that whether Meghalaya unit has been benefitted from the expenditure incurred on scientific research has merely allocated proportionate expenditure to that unit. The Revenue has failed to establish any nexus between expenditure on scientific research and Meghalaya unit of the assessee. The Hon'ble Bombay High Court in the case of Zandu Pharmaceutical Works Limited Vs. CIT (supra) has held that if there is no evidence to show nexus between the business of branches and the expenditure on scientific research and development, allocation of such expenses among branch units is not justified. In view of the judgment of the Hon'ble High Court, the issue is decided in favour of the assessee. Accordingly, we hold that the allocation of expenditure on scientific research to Meghalaya unit is not justified and thus deleted" .*

4.2 We have noted that in the case of CIT Vs. Tamilnadu Warehousing Corpn. (292 ITR 310) (Madras), the Hon'ble Jurisdictional High Court had confirmed the Order of Tribunal vide Para 8 as under:

*"The Tribunal correctly followed the above principles of the Supreme Court and held as follows:*

> *"…For the purpose of invoking the provisions of section 263, twin conditions, i.e., (i) that the assessment order was erroneous and (ii) it was prejudicial to the interests of the revenue, are to be satisfied. There is no finding of the fact as to what extent the amount was claimed as deduction in a particular assessment. The assessee has admitted the amount of Rs. 8,22,925 as liability in the balance-sheet. Merely because, the amount was not examined by the Assessing Officer for the purposes of income-tax cannot be a condition for cancellation of the assessment order under section263 of the Act. A positive finding has to be recorded by the Commissioner of Income-tax that the assessment order was erroneous as well as prejudicial to the interests of the revenue while invoking the provisions of section 263 of the Act. In this case the learned Commissioner of Income-tax has not given a finding as to how the order was erroneous and prejudicial to the interests of the revenue. Therefore, twin conditions necessary for invoking the provisions of section 263 are not satisfied. Such an order has no leg to stand on and deserves to be quashed. We accordingly cancel the order passed under section 263 of the Act and restore the assessment order passed by the Assessing Officer…".*

4.3 We have also noted that in the case of *CIT Vs. Bharat Aluminium Co.Ltd. (303 ITR 256)*, the Hon'ble Delhi High Court has held that for revision under section 263, the revisionary authority has to satisfy two conditions viz. (i) the order of the AO sought to be revised is erroneous and that (ii) It is also prejudicial to the interest of revenue. If one of them is absent, he cannot invoke the provisions of section 263. Again in the case of Shyam Sundar Agarwal (*2003) 131 STC 70* it was observed in para 3 as under: *"The expressions "erroneous" and "prejudicial to the interest of revenue" carry a specific and definite connotation which has been interpreted by a Division Bench judgment of this Court in the case of Shri Rajendra Singh & ors. v. The*

*Superintendent of Taxes and others, (1990) 1 GLR 449. This Court while interpreting the said expressions in the context of the parametria provisions of the Tripura Sales Tax Act, 1976, has held that to invoke the suo motu power of revision both the conditions precedent, i.e., "erroneous" and "prejudicial to the interest of revenue" must co-exist. Taking into account the expression "erroneous" "erroneous assessment and erroneous judgment" as defined in the Black's Law Dictionary, this Court has held that both the expressions "erroneous" and "prejudicial to the interest of revenue" must reflect a defect which is jurisdictional in nature in the assessment/order which is sought to be revised. The power of suo motu revision, as held by this Court, would not be available to the Commissioner merely because the learned Commissioner disagrees with the views of the authority who had passed the order sought to be revised. Merely because the learned Commissioner is of the view that the order is incorrect or that a higher quantum of tax or penalty should have been levied would not make the order of the lower authority amenable to the suo motu revisional power. The order or decision of the lower authority must disclose some jurisdictional error and it is the aforesaid jurisdictional error that makes the order amenable to correction in exercise of the suo motu power of revision."*

4.4 On the issue of allocation of R&D expenses to the Amingoan Assam unit the Ld. AO has taken a view by his application of mind and therefore the PCIT has no authority to substituting his views by invoking his revisionary powers u/s 263. It trite law that revisionary authority cannot be exercised merely because such authority holds a view different than that taken by lower authority. In this regard, we have noted that in the case of CIT Vs. Max India Ltd.(295 ITR 282)(SC), the Hon’ble

Supreme Court held that *"…At the relevant time, two views were possible on the word 'profits' in the proviso to section 80HHC(3). It is true that vide 2005 Amendment the law has been clarified with retrospective effect by insertion of the word 'loss' in the new proviso. Suffice it to state that in instant case when the order of the Commissioner was passed under section 263, two views on the said word 'profits' existed. [Para 1]*
*It was not in dispute that when the order of the Commissioner was passed, there were two views on the word 'profit' in section 80HHC. The problem with section 80HHC is that it has been amended eleven times. Different views existed on day when the Commissioner passed his order and moreover mechanics of section have become so complicated over years that two views were inherently possible. Therefore, subsequent amendment in 2005 even though retrospective would not attract provision of section 263, particularly when one had to take into account position of law as it stood on date when the Commissioner passed order dated 5-3-1997 in purported exercise of his powers under section 263. [Para 2]*
*For above reasons, the appeal filed by the revenue stood dismissed…."*

4.5 Again, in the case of CIT Vs Mepco Industries Limited (294 ITR 121) the Hon'ble Madras High Court held as under**:** *"when two views are possible and it is not the case of the Revenue that the view taken by the Assessing Officer is not permissible in law, the CIT is not justified in invoking the jurisdiction under section 263 of the Act." We are also conscious of the decision taken* In the case of CIT Vs. Arvind Jewellers 259 ITR 502 (Gujarat), where the Hon'ble Gujarat High Court held that *"… It is clear that the provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous, that section will*

*be attracted and incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the instant case, it was the finding of fact given by the Tribunal that the assessee had produced relevant material and offered explanation in pursuance of the notices issued under section 142(1) as well as section 143(2) and after considering those materials and explanation, the ITO had come to a definite conclusion. The Commissioner did not agree with the conclusion reached by the ITO. Section 263 did not empower him to take action on these facts to arrive at the conclusion that the order passed by the ITO was erroneous and prejudicial to the interest of the revenue. Since the material was there on record and the said material was considered by the ITO and a particular view was taken, the mere fact that different view could be taken, should not be the basis for an action under section 263 and it could not be held to be justified.".* The Hon'ble Supreme Court in 266 ITR 101 has dismissed the SLP filed by the Revenue against the Order passed by the Gujarat High Court in the case of CIT Vs. Arvind Jewellers 259 ITR 502 supra.

4.6 The issue of lack of enquiry Vs inadequate enquiry has also been a matter of great debate qua decisions concerning orders u/s 263. Hon'ble High Court of Delhi, in the case of CIT V. Sunbeam Auto Ltd in [2010] 189 Taxman 436 (Delhi), has held as under:

> *"There are judgments galore laying down the principle that the Assessing Officer in the assessment order is not required to give detailed reasons in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure. One has to keep in mind the distinction between 'lack of inquiry' and 'inadequate inquiry'. If there was any inquiry, even inadequate, that would not, by itself, give occasion to the Commissioner to pass orders under section 263 merely because he has*

*different opinion in the matter. It is only in cases of 'lack of inquiry' that such a course of action would be open. [Para 12]"*

We have also noted that Similar view was held in various decisions, Viz Kumar Rajaram v. Income-tax Officer (International Taxation 2(1)), Chennai [2019] 110 taxmann.com 109 (Madras), Buharia Holdings (P.) Ltd v. Assistant Commissioner CIT v. Jain Construction Co [2013] 34 taxmann.com 84 (Rajasthan of Income-tax* , Company Circle-1(2) [2011] 12 taxmann.com 192 (Chennai), Salora International Ltd. v. Addl. CIT [2005] 2 SOT 705 (Delhi) (Trib.), Baljees v. ACIT [2003] 127 Taxman 150 (Mag.) (Chd.) (Trib.). In the present case, during the scrutiny assessment, the AO has applied his mind and came to a conclusion that the apportionment of R&D expenditure incurred by the assessee company to Amingaon, Assam Unit is not required as there is no nexus between the R&D expenditure incurred and operations carried on at Amingaon,Assam Unit and no corroborative evidence was found in contrary to the view taken by the Assessing Officer. Under these circumstances, there cannot be a revision u/s 263 based on mere change of opinion or a different view being adopted by the Revisionary Authority u/s 263.

5.0 The discussions made in the preceding paragraphs clearly allude that the exercise of revisionary authority u/s 263 by the PCIT qua his order dated 03.02.2023 is not in accordance with the statutory stipulations prescribed in the contemporaneous law prescribed u/s 263 and is also not supported by a catena of judicial pronouncements on the subject. Accordingly, we hereby set aside the order of Ld. PCIT and sustain the order of Ld. AO u/s 143(3)

dated 18.04.2021. In the result, all the grounds appeal raised by the assesse are allowed.

6.0 In the result the appeal of the assesse is allowed.

Order pronounced on 27th , November-2024 at Chennai.

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|---|---|
| **Sd/-** | **Sd/-** |
| **( एबी टी. वर्की)** | **(अमिताभ शुक्ला)** |
| **(ABY T VARKEY)** | **(AMITABH SHUKLA)** |
| न्यायिक सदस्य **/ Judicial Member** | **लेखा सदस्य /Accountant Member** |

चेन्नई/Chennai, दिनांक/Dated: 27th , November-2024.

*KB/-*

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF