आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA No. 300/Chd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

A.B. Sugars Limited Dasuya H.O, Hoshiarpur Punjab, India, 144205	बनाम	The Pr. CIT Chandigarh-1
स्थायी लेखा सं./PAN NO: AABCG3045M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं. / ITA No. 299/Chd/2024
निर्धारण वर्ष / Assessment Year : 2018-19

A.B. Sugars Limited Dasuya H.O, Hoshiarpur Punjab, India, 144205	बनाम	The Pr. CIT Chandigarh-1
स्थायी लेखा सं./PAN NO: AABCG3045M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri T.N. Singla, C.A
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 19/11/2024
उदघोषणा की तारीख/Date of Pronouncement : 16/12/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

These are two appeals filed by the Assessee against the order of the Ld. PCIT, Chandigarh-1 passed u/s 263 dt. 20/03/2024 pertaining to Assessment Year 2017-18 and dated 16/03/2024 pertaining to Assessment Year 2018-19. Both these appeals were heard together and are being disposed off by this consolidated order.

2. In ITA No. 300/Chd/2024 pertaining to Assessment Year 2017-18, the Assessee has raised the following grounds of appeal:

"1. That the order of Learned PCIT is bad and against the facts and law.

2. That the order passed by the Learned PCIT is without Jurisdiction.

3. That the appellant gave all the required information to the Transfer Pricing Officer as well as to the Assessing Officer and both officers examined the issue regarding quantum of deduction allowed u/s 80IA of the Income Tax Act, 1964.

4. That the Learned PCIT has no power u/s 263 to direct the Assessing Officer under the Act to examine quantum of eligible profits u/s 80IA after reference was made to the Transfer Pricing Officer for computation of Arm's Length Price of specified domestic transactions.

5. That all the details related to depreciation as per Companies Act, 2013 and depreciation as per Income Tax Act, 1964 were provided in the Balance Sheet, Tax Audit Report, ITR and also before the Assessing Officer and Transfer Pricing Officer during the assessment proceedings.

6. That the detail, bifurcation and evidence of all expenses attributable to the exempted and non-exempted units were provided/submitted to the Transfer Pricing Officer and Assessing Officer during the assessment proceedings and hence, powers u/s 263 are wrongly used by PCIT against the appellant.

7. That the appellant craves leave to add, alter, amend or withdraw any grounds of appeal before the final hearing."

3. Briefly the facts of the case are that the assessee is a public limited company engaged in the manufacturing of sugar and its allied products, manufacturing of different kinds of alcoholic drinks and generation and distribution of power. It filed its return of income on 30/11/2017 declaring total income of Rs. 96,86,34,90/- after claiming deduction under section 80IA amounting to Rs. 23,94,34,249/-. Subsequently, the case of the assessee was selected for scrutiny and during the course of assessment proceedings, the AO referred the case to the Transfer Pricing Officer ("TPO") for computation of Arms Length Price under section 92CA with regard to the Specified Domestic Transactions undertaken by the assessee during the financial year relevant to the impugned assessment year after seeking permission from the Ld. PCIT.

4. Thereafter, the DCIT, Transfer Pricing- 1(3)(1), Delhi examined the documentation prescribed under Rule 10D and other details were called for and examined and passed order under section 92CA(3) dt. 31/07/2021 holding that in view of the functional and economic analysis of the assessee and comparables which have been examined, no adverse inference is drawn in respect of the Specified Domestic Transaction undertaken by the assessee

during the financial year relevant to the impugned assessment year. Thereafter, taking the same into consideration, the AO passed the order under section 143(3) r.w.s 144B of the Act wherein the returned income so filed by the assessee was accepted.

5. Subsequently, the assessment records were called for and examined by the Ld. PCIT, Chandigarh-1 and he noticed that the assessee had shown profit of Rs. 19,17,26,089/- from its power unit and claimed deduction under section 80IA(4)(iv) amounting to Rs. 23,94,34,249/-, thereby, excess deduction amounting to Rs. 4,77,08,160/- has been claimed by the assessee company. The Ld. PCIT further stated that the company was running its business through various units (sugar, power unit, distillery, Aligarh, L-13, USL PET and Interunit) but no separate books of account for each unit were maintained / produced by the company and the AO was required to examine the expenses attributable to exempted units and non exempted units on the basis of such books of accounts and therefore the order passed by the AO was held to be prima-facie erroneous in so far as prejudicial to the interest of the Revenue as the order has been passed in a summary manner without making requisite enquiries or verification which should have been made and a show cause was issued to the assessee dt. 29/12/2023 as to why the order so passed by the AO under section 143(3) r.w.s 144B may not be cancelled and the AO may not be directed to make fresh assessment.

6. In response to the show cause, the assessee vide its submission dt. 05/01/2024 submitted as under:

> *"This has reference to your notice dated 29.12.2023 having DIN No. ITBA/REV/F/REV1/2023-24/1059207059(1) on the captioned subject.*
>
> *In this regard we submit that our power unit is eligible for deduction @ 100% of Taxable Profit as per section 80-IA(4)(iv) being power generating and distribution unit. The Taxable profit from this eligible unit during the year was Rs. 23,94,34,249 as per the calculation given herein below:*

Particulars	Amount (Rs.)
Book Profit as per Profit and Loss Account of Power Unit:	Rs. 19,17,26,089/-
Add Back: Depreciation Claimed;, in the Books as per Companies Act, 2013 (Refer Annexure A):	Rs. 5,20,25,050/-
Less: Depreciation allowed as per Income Tax Rules (Refer Annexure B):	Rs. 43,16,890/-
Net Taxable Income from Power Generating Unit Comes to:	Rs. 23,94,34,249/-

We enclose Copy of Form 10CCB checked and audited by statutory Auditors of the company for the relevant year as per Annexure-C, wherein taxable profit is calculated/ shown as Rs. 23,94,34,249/- for eligible to deduction u/s 80-IA(4)(iv). Your goodself s kind attention is drawn towards the fact that company is eligible for 100% deduction of Profit & Gains of Power Division (Eligible Unit) from the F.Y. 2012-13 and the assessee company is regularly claiming the deduction u/s 80-IA(4)(iv) of said profit & gains which is consistently accepted by the Ld. A.O. since then without any adjustment.

Further, it is pertinent to state that our assessment was completed u/s 143(3) and the Ld. Assessing officer had referred the claim of the assessee company for verification of inter unit transactions of the company and also to determine correct taxable profit of the eligible unit u/s 92CA. The Transfer Pricing Officer after verification of complete record to determine Arm's Length Price of inter unit transactions had passed the order dated 31.01.2021, wherein the TPO had accepted our calculation of taxable profit at Rs. 23,94,34,249/- from the eligible unit. We would also like to mention that the Assessing Officer along with Transfer Pricing Officer has already examined the records and accepted the returned income. The copy of the order passed by TPO is attached as per Annexure-D and Reply submitted before TPO and A.O. along with annexures is enclosed as per Annexure-E for your honors kind perusal.

> *"In the annexed reply submitted to TPO dated 17.11.2020-*
>
> *Annexure 1 of our reply to TPO reproduces the Form 10CCB for power division filed which states the total Sales of Undertaking at Rs. 50,03,88,142/- at Point No. 27 of the said Form and also states the Book Profit derived by the undertaking from the Eligible business at Rs. 19,17,26,089 at point no. 29 along with the same Taxable Profit for which deduction is allowable under section 80-IA{4)(iv) is also stated at Rs. 23,94,34,249/- at Point No. 30.*
>
> *Annexure 2 of our Reply to TPO provides with the Computation of the company profit in which it can be observed that company claimed 100% deduction of the taxable profit of Power Division amounting to Rs. 23,94,34,249/- which is shown under "Deduction under Chapter VIA". It can also be observed that while calculated the Income from Business & Profession, Companies Act Depreciation has been added back at Rs. 14,66,75,246 (Power Division (Eligible Unit)-5,20,25,050 & Other Divisions (Non-Eligible Units)- 9,46,50,196) and Depreciation as Income Tax Act has been Reduced at Rs. 13,68,80,557 (Power Division (Eligible Unit)- 43,16,890 & Other Divisions (Non-Eligible Units)-13,25,63,667). In addition, we are enclosing copy of Depreciation Chart as per Companies Act, 2013 of*

Power Division (Eligible Unit) and Other Division (Non-Eligible Units) as Annexure-F and Copy of Depreciation Chart as per Income Tax Rules for Power Division (Eligible unit) and Other Divisions (Non-Eligible Units) as Annexure-G. A Copy of Profit & Loss Account for Power Division (Eligible Unit) is attached as Annexure-H.

Annexure 3 of our reply to TPO provides with the calculation of taxable profit in power division amounting to Rs. 23,94,34,249/- in which Depreciation as per Companies Act has been added back and reduced by Depreciation calculated as Income Tax Act from Book Profit calculated in the Profit and Loss of Power Division. "

Moreover, as per section 80-IA(4)(iv) the profit and gains of eligible unit is exempt out of total gross total income of the assessee equal to 100% of such profit and gains.

Your honor has wrongly issued the impugned notice u/s 263 for reducing the deduction from 23,94,34,249/- to 19,17,26,089/- on the basis of book profit in the profit and loss account prepared as per Companies Act, 2013, whereas exemption of eligible profit and gain is to be allowed after deduction of depreciation u/s 32 and other deductions allowable as per the Income Tax Act/ Rules to compute total income eligible for deduction u/s 80IA(4)(iv). Thus, your honor is humbly requested to kindly withdraw the said notice u/s 263, as the assessee company has claimed deduction u/s 80-IA(4)(iv) of correct taxable profit, which has been already accepted by the Transfer Pricing Officer and also by the concerned Assessing Officer in the orders passed u/s 92CA and 143(3) of the Act. The Copy of order passed u/s 143(3) is attached as Annexure I.

7. Alongwith the aforesaid submissions, the assessee filed supporting documentation and details thereof are as under:

"A. Depreciation chart of Power Division (Eligible Unit) as per Companies Act, 2013.

B. Depreciation chart of Power Division (Eligible Unit) as per Income Tax Rules.

C. Copy of Form 10CCB

D. Copy of Order Passed by TPO dated 31.01.2021

E. Reply submitted to the TPO and AO during the Assessment:

a) Transfer Pricing Officer (TPO) Replies

i. Notice dated 20.11.2019- Reply dated 14.03.2020 along with Annexures. (Page No. 1-94)

il. Notice dated 08.10.2020 & 05.11.2020- Reply dated 17.11.2020 & 19.11.2020 along with Annexures. (Page No. 95-186)

iii. Notice dated 26.11.2020- Reply dated 08.12.2020 along with Annexures. (Page No. 187-206)

iv. Notice dated 14.12.2020 & 19.12.2020- Reply dated 22.12.2020 along with Annexures. (Page No. 207-308)

v. Notice dated 28.12.2020- Reply dated 29.12.2020 (Page No. 309-316)

vi. Notice dated 04.01.2021- Reply dated 07.01.2021 (Page No. 317-330)

vii. Notice dated 13.01.2021- Reply dated 18.01.2021 along with Annexures. (Page No. 331-352)

b) Assessing Officer Replies

i. Notice dated 14.11.2019 & 21.11.2019- Reply submitted on 23.11.2019 & 27.11.2019 along with Annexures. (Page No. 353-452)

ii. Notice dated 25.02.2021- Reply dated 03.03.2021 along with Annexures. (Page No. 453-478)

F. Depreciation Chart of Power Division (Eligible Unit) & Other Divisions (Non-Eligible Units) as per Companies Act, 2013.

G. Depreciation Chart of Power Division (Eligible Unit) & Other Divisions (Non-Eligible Units) as per Income Tax Rules.

H. Copy of Profit & Loss Account of Power Division (Eligible Unit) as at 31.03.2017.

1. Copy of Order passed u/s 143(3) dated 21.04.2021."

8. Thereafter, another submission was filed by the assessee dt. 07/02/2024 and the contents thereof read as under:

"In addition to our previous reply submitted on 05.01.2024, we may like to bring to your notice the following objection to your proposed revision of order of Transfer Pricing Order:

- *We would like to state that complete information along with complete details were provided to the Transfer Pricing Officer and after examining complete details a possible view has been taken by the Transfer Pricing Officer before passing order u/s 92CA(3).*
- *The notice issued u/s 263 is without jurisdiction as per provisions of Income Tax Act, 1961.*
- *The direction to revise order u/s 263 can only be issued if the order of Transfer Pricing Officer is erroneous and prejudicial to the Interest of Revenue. In this case, aforesaid twin conditions are not fulfilled & hence the revisionary order u/s 263 should not be passed in this case. Also, we would like to state that the condition precedent to the exercise of jurisdiction u/s 263, was that the order sought to be revised must be erroneous in so far as it was prejudicial to the interest of the revenue. The two views were inherently possible and the said order thus, could not be subjected to the exercise of the jurisdiction u/s 263.*

- *Erroneous means 'erroneous assessment and erroneous judgment' have been defined in Black's Law Dictionary (Sixth Edition). According to the definition, erroneous' means 'involving error, deviating from the law'. 'Erroneous assessment' refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Transfer Pricing Officer. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles".*

From the aforesaid definitions, it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If Transfer Pricing Officer acting in accordance with law pass order u/s 92CA(3), the same cannot be treated as erroneous by the Commissioner simply because, according to him, the order should have been written differently. Section 263 does not visualize a case of substitution of the judgment of the Commissioner for that of the Transfer Pricing Officer, who passed the order, unless the decision is held to be erroneous.

The words "prejudicial to the interests of the revenue" have not been defined, but they must mean that the orders challenged is such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realized or cannot be realized.

Your Honor is therefore requested that the order passed by Transfer Pricing Officer u/s 92CA(3) should not be revised for the reasons stated herein above.

9. The submissions so filed by the assessee were considered but not found acceptable to the Ld. PCIT and the relevant findings of the ld PCIT read as under:

"4. The submissions of the assessee have carefully been considered with reference to the facts of the case from the relevant assessment records. The assessee's principal contention that the profits from the eligible unit was Rs. 23.94 crores (approx.) after deduction of depreciation of Income Tax Act rates, where as it was Rs. 19.17(approx.) crores, if depreciation as per the company rates was employed. This difference per him did not constitute any error on record. This claim of the assessee is required to be verified/examined from the facts and material available on record by the AO. which examination/verification will determine of all of the component amounts and computations have been properly, accurately and fully reported in manners compliant with statutory provisions and requirements and accounting practices and standards.

5. In the instant case, there is thus, at this time, a failure on the part of the Assessing Officer in framing the assessment order in that the same has been made without making the requisite inquiries. There is the imperative legal need in all such inquiries and investigations to comprehensively examine all applicable facts including to the relevant minutiae of their applicability, to reconcile every logical inconsistency in the arguments debated, if and as any, and to ensure total compliance to all statutory

provisions rules, regulations, instructions, accounting and other standards and stipulations. It is amply and expressly clear that the investigation/ inquiry carried out by the Assessing Officer is unsatisfactory, superficial and incomplete along several of these matters/dimensions including the due and necessary and complete examination of the documentary particulars/details mandated. A partially driven by whatever reasons - inquiry cannot be held to be a full, proper, satisfactory, complete and therefore statutorily valid inquiry, which partial enquiry as carried out by the Assessing Officer resulting in the impugned assessment order in this case has created a vacuum zone of unexplained facts which constitutes an error on facts. This would be tantamount to a premature, precipitate and erroneous decision not borne out by facts or founded on proper law. Such incomplete inquiry needs to be completed, if not to be seen as is unacceptable and outside of the pale of law, and inconsistent with the various judicial precedents of the Honble Courts cited later below. This is a failure on the part of the Assessing Officer that is being referred to and recognized in this case via this order u/s 263 of the Act. It is such failure which calls for revision of the assessment order u/s 263 of the Act. That such jurisdiction for revision proceedings u/s 263 of the Act by the Commissioner is applicable and called for is held in following cases. -

i) Where the Assessing Officer had accepted entry in the statement of account filed by the assessee showing certain income as agricultural income, without making any enquiry, the exercise of jurisdiction by the Commissioner u/s 263(1) would be justified- Malabar Industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66/243 ITR 89 (SC).

ii) Not holding an enquiry as is normal and not applying mind to the relevant material would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction. CIT v. Jawahar Bhattacharjee (2012) 20 taxmann.com 652/342 ITR 74/249 CTR 529 (Gau.)

iii) Where enquiry is warranted but not made, it would certainly constitute prejudice to revenue so that jurisdiction for the Commissioner is available for remanding the matter for such enquiry CIT Vs Raja Industries (2012) 340 ITR 344 (P&H).

iv). Honble Delhi High Court in Income Tax Officer versus DG Housing Projects Limited (2012) 343 ITR 329 (Delhi) has observed:

"The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income If the Assessing Officer fails to conduct the said investigation, he commits an error and the word "erroneous" includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits."

v) Hon'ble Delhi High Court in Gee Vee Enterprises vs. Additional Commissioner of Income-Tax, [1975] 99 ITR 375 (Delhi), has observed as under:

"The reason is obvious. The position and function of the income Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal The civil court is neutral It simply gives decision on the basis of pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls foi furthei inquiry It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

vi). Hon'ble Rajasthan High Court in the case of Commissioner of Income-Tax vs Emery Stone Manufacturing Company (213 ITR 843) has held as under:

"Simply because the facts have been disclosed by the assessee, it does not give immunity from revisional jurisdiction which the Commissioner can exercise u/s 263 and as such even in a case where the facts have been disclosed by the assessee to the Assessing Authority and the correct provisions of law have not been examined by the Assessing Authority, the power u/s 263 can be invoked

vii) Commissioner is free to exercise his jurisdiction on consideration of all relevant facts, provided an opportunity of hearing is afforded to assessee to contest facts on basis of which he had exercised revisional jurisdiction. CIT, Mumbai Vs Amitabh Bachchan [2016]69 taxmann.com 170[SC]

viii) Where no inquiry was conducted by the Assessing Officer in passing assessment order after accepting revised return filed by the assessee. Commissioner was well within his powers under Section 263 to direct fresh assessment Virbhadra singh (HUF) vs PCIT [2017] 80 ;uinann.com 113 (Himachal Pradesh).

6. In view of the discussion above at this time, the assessment order passed u/s 143(3) r.w.s. 144B of the Act dated 21 04.2021 is prima-facie erroneous as well as prejudicial to the interests of revenue as the order has been passed without making the requisite full and satisfactory inquiries which should have been done which is now to be carried out by the Jurisdictional Assessing officer on the matter of computation and complete reporting of the claim of depreciation made by the assessee. Whether the mistake is only an apparent one created by the different

conflicting rates applicable per the Income. Tax Act and the companies Act is to be examined by the Jurisdictional Assessing Officer and if such mistake is demonstrated to be illusion and reconcilable the proceedings initiated u/s 263j of the Act can be dropped in the contrary scenario the matter may be corrected and the income reassessed at the proper quantums through formal proceedings u/s 143 of the Act.

7. In consequence having considered the facts and circumstances of the instant case, I am of the considered opinion that the assessment order u/s 143(3) r.w.s 144B of the Act dated 21.04.2021 passed by the Assessing Officer is erroneous as well as prejudicial to the interests of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act. This is because the order has been passed without making proper and requisite inquiries or verifications which should have been made, thus making the assessment order passed not only erroneous but also prejudicial to the interests of revenue interalia, in the matter of differential rates and amounts of depreciation claimed by the assessee. Accordingly, the impugned assessment order is set aside on the issue of the claim of depreciation made by the assessee. The assessee is at liberty to adduce the facts as deemed relevant before the Assessing Officer at the time of the assessment proceedings in consequence to this order. The Assessing Officer shall allow the assessee adequate opportunity of being hoard and to make relevant submissions, it may be ensured that the fresh assessment order is passed within the prescribed time as stipulated under section 153(3) of the Act"

10. Here, it is noted that while the initial show-cause was issued by the ld PCIT in respect of excess claim of deduction under section 80IA(4)(iv) in respect of power unit and matter relating to allocation of common expenses among exempted (power unit) and not-exempted units, in his findings, the ld PCIT has held the order so passed by the AO as erroneous in so far as prejudicial to the interest of the Revenue on account of lack of proper and requisite inquiries/verifications limited to matter of differential rates and amounts of depreciation claimed by the assessee while claiming the deduction u/s 80IA(4)(iv) of the Act and being aggrieved with the said findings, the assessee is in appeal before us.

11. In this regard, during the course of hearing, the ld AR submitted that the assessee company is eligible for 100% deduction of Profit & Gains of its Power Division (Eligible Unit) which is engaged in the business of generation and distribution of power from the F.Y. 2012-13 and the assessee company is regularly

claiming the deduction u/s 80-IA(4)(iv) of said profit & gains which is consistently accepted by the Ld. A.O in the earlier assessment years since assessment year 2013-14. It was submitted that for the purposes of computing the profits and gains eligible for such deduction, the profits and gains of the eligible unit has to be computed as per the provisions of the Income tax Act after allowing for depreciation claim u/s 32 and other admissible deductions/allowances. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in case of Plastiblends India limited vs Add.CIT *(in Civil appeal no. 238 of 2012 dated 09/10/2017)* wherein it was held that Section 80IA not only contain substantive but procedural provisions for computation of special deduction and the assessee cannot be allowed to claim deduction without taking into consideration depreciation as the same would be anathema to the scheme of section 80IA which is linked to profits and the assessee cannot be allowed to inflate the profit linked incentives so provided. It was submitted that the Hon'ble Supreme Court has thus upheld the Full Bench decision of the Hon'ble Bombay High Court wherein it was held that the quantum of deduction eligible under section 80IA has to be determined by computing the gross total income from eligible business after taking into consideration all the deductions allowable under section 30 to 43D including depreciation under Section 32 of the Act.

12. It was further submitted that for the financial year relevant to impugned assessment year 2017-18, as per the audited books of accounts and segmental determination of book profits of each unit, the power division has reported book profits of Rs 19,17,26,089/-which has been computed after claim of book depreciation of Rs 5,20,25,050/-. And for the purposes of determination of taxable profit, the assessee company had added back book depreciation of Rs. 5,20,25,050/- and claim tax depreciation of Rs 43,16,890/- as per Income tax rules to arrive at the eligible taxable profit of Rs 23,94,34,249/- eligible for deduction under section 80-IA(4)(iv) and which has been claimed while the return of income. It was submitted that the ld PCIT has apparently considered

the figure of book profit instead of taxable profit so computed without considering the impact of book depreciation and tax depreciation while issuing the show-cause and as such, there is no excess claim of deduction as so stated by the ld PCIT. It was submitted that as far as computation of tax depreciation is concerned, the same has been computed as per the rates for the relevant block of assets so prescribed in the Income tax Rules. It was submitted that all relevant details and certification in terms of Form 10CCB are duly placed on record and the matter has been thoroughly examined by the AO as well as TPO. It was submitted that during the course of revisionary proceedings, the assessee submitted the necessary explanation and aforesaid documentation before the ld PCIT, however, he has failed to appreciate the same and has passed the impugned order setting aside the assessment order so passed by the AO. It was submitted that where the matter has been duly examined by the AO and the ld PCIT has failed to carry out any preliminary enquiry and specify what further enquiry or verification is required on part of the AO, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of Revenue. It was accordingly submitted that the order so passed by ld PCIT be set-aside and that of the AO be sustained.

13. Per contra, ld CIT/DR has taken us through the findings of the ld PCIT and relied upon the said findings which we have already taken note of and not being repeated for the sake of brevity.

14. We have heard the rival contentions and purused the material available on record. There is no dispute that the assessee is eligible for claim of deduction of 100% of eligible profits in respect of its power division u/s 80IA(4)(iv) of the Act. There cannot be any dispute that such eligible profits have to be determined by computing the gross total income of the power division business after taking into consideration all the deductions allowable under Section 30 to 43D including depreciation under Section 32 of the Act as so laid down by the Hon'ble

Supreme Court in case of Plastiblends India limited *(supra)* wherein it was held that there is no choice with the assessee to claim or not to claim depreciation and the same has to be necessary considered while computing the eligible profits for claim of deduction u/s 80-IA of the Act.

15. In the instant case, the assessee company has determined eligible profit by taking into consideration the book profits of the power division as per the audited books of accounts and the segmental reporting forming part thereof which has not been disputed by the ld PCIT. Further, the assessee company has done only two adjustments to such book profits while arriving at the eligible profits for claim of deduction. The first adjustment relates to book depreciation which has been added back to the book profits. The depreciation relates to assets of the power division so provided in the books of accounts and the same has to be necessarily adjusted/added back as the same has been computed as per the rates prescribed under the Companies Act and not as per the rates of depreciation provided in the Income tax Rules r/w Section 32 of the Act. The second adjustment relates to determining the depreciation as per Income tax Rules r/w Section 32 of the Act and which has been claimed as an eligible deduction. Accordingly, to the reported book profits of Rs 19,17,26,089/- relating to the power division, the assessee company had added back book depreciation of Rs. 5,20,25,050/- and claim tax depreciation of Rs 43,16,890/- as per Income tax rules to arrive at the eligible taxable profit of Rs 23,94,34,249/- for deduction under section 80-IA(4)(iv) of the Act. The said adjustments have been rightly done by the assessee in consonance with the tax laws and there cannot be any two views in this regard and the AO has rightly allowed the same. As far as quantum of tax depreciation of Rs 43,16,890/- is concerned, we find that relevant details were on record during the course of assessment proceedings and which has been duly examined by the AO and the same has again been submitted before the ld PCIT and are available as part of APB page 314 as well. On perusal of the same, we find that the block of assets as on

31/03/2017 was Rs 3,92,99,964/- and out of which Rs 3,92,06,992 forms part of opening block of assets as on 01/04/2016 and there were assets to the tune of Rs 93,873/- which have been purchased and added to the block of assets. We therefore have a situation where there is effectively negligible addition to the block of assets during the year and rest all figures are flowing from the previous assessment years and forming part of the opening block of assets and there cannot be two views and the AO couldn't have taken any view other than allowing claim of depreciation thereon. Further, rates of depreciation have been claimed as specified in the Income tax Rules and no specific discrepancy has been pointed out by the ld PCIT and the AO has thus rightly allowed the claim and quantum of depreciation as per section 32 of the Act while computing the eligible profits under section 80IA(4)(iv) of the Act.

16. In light of the same, we are of the considered opinion that there is no justifiable basis in holding the order so passed by the AO as erroneous in so far as prejudicial to the interest of the Revenue and the ld PCIT has thus erred in exercise of his jurisdiction u/s 263 and the order so passed u/s 263 is hereby set-aside and that of the AO is sustained.

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

18. In ITA No. 299/Chd/2024 pertaining to Assessment Year 2018-19, the assessee has taken the following grounds of appeal:

> *"1. That the order of Learned PCIT is bad and against the facts and law.*
>
> *2. That the order passed by the Learned PCIT is without Jurisdiction.*
>
> *3. That the learned PCIT has not provided opportunity of being heard asked in the written submission submitted by the appellant in the interest of natural justice.*
>
> *4. That the appellant gave all the required information to the Transfer Pricing Officer as well as to the Assessing Officer and both officers examined the issue regarding quantum of deduction allowed u/s 80IA of the Income Tax Act, 1964.*
>
> *5. That the Learned PCIT has no power u/s 263 to direct the Assessing Officer under the Act to examine quantum of eligible profits u/s 80IA after reference was*

made to the Transfer Pricing Officer for computation of Arm's Length Price of specified domestic transactions.

6. That all the details related to depreciation as per Companies Act, 2013 and depreciation as per Income Tax Act, 1964 were provided in the Balance Sheet, Tax Audit Report, ITR and also before the Assessing Officer and Transfer Pricing Officer during the assessment proceedings.

7. That the detail, bifurcation and evidence of all expenses attributable to the exempted and non-exempted units were provided/submitted to the Transfer Pricing Officer and Assessing Officer during the assessment proceedings and hence, powers u/s 263 are wrongly used by PCIT against the appellant.

8. That the appellant craves leave to add, alter, amend or withdraw any grounds of appeal before the final hearing."

19. Briefly, the facts of the case are that for the impugned assessment year, the assessee company filed its return of income on 30/11/2018 declaring total income of Rs. 57,02,12,896/- after claiming deduction under section 80IA amounting to Rs. 24,07,35,537/-. Subsequently, the case of the assessee was selected for scrutiny and during the course of assessment proceedings, the AO referred the case to the Transfer Pricing Officer (TPO) for computation of Arms Length Price under section 92CA with regard to the Specified Domestic Transactions undertaken by the assessee during the financial year relevant to the impugned assessment year after seeking permission from the Ld. PCIT.

20. Thereafter, the DCIT, Transfer Pricing - 1(3)(1), Delhi examined the documentation prescribed under Rule 10D and other details were called for and examined and passed order under section 92CA(3) dt. 31/07/2021 holding that in view of the functional and economic analysis of the assessee and comparables which have been examined, no adverse inference is drawn in respect of the Specified Domestic Transaction undertaken by the assessee during the financial year relevant to the impugned assessment year. Thereafter, taking the same into consideration, the AO passed the order under section 143(3) r.w.s 144B of the Act dated 21/09/2021 wherein the returned income so filed by the assessee was accepted.

21. Subsequently, the assessment records were called for and examined by the Ld. PCIT, Chandigarh-1 and he noticed that the assessee had shown profit of Rs. 24,07,35,537/- from its power unit and claimed deduction under section 80IA(4)(iv) amounting to Rs. 24,07,35,537/- whereas it has incurred loss of Rs 3,91,00,050/-, thereby, excess deduction amounting to Rs. 24,07,35,537/- has been claimed by the assessee company. The Ld. PCIT further stated that the company was running its business through various units (sugar, power unit, distillery, Aligarh, L-13, USL PET and Inter-unit) but no separate books of account for each unit were maintained / produced by the company and the AO was required to examine the expenses attributable to exempted units and non exempted units on the basis of such books of accounts and therefore the order passed by the AO was held to be prima-facie erroneous in so far as prejudicial to the interest of the Revenue as the order has been passed in a summary manner without making requisite enquiries or verification which should have been made and a show cause was issued to the assessee dt. 29/12/2023 as to why the order so passed by the AO under section 143(3) r.w.s 144B may not be cancelled and the AO may not be directed to make fresh assessment.

22. In response to the show cause, the assessee vide its submission dt. nil submitted as under:

> *"This has reference to your notice dated 29.12.2023 having DIN No. ITBA/REV/F/REV1/2023-24/1059211873(1) on the captioned subject.*
>
> *In this regard we submit that our power unit is eligible for deduction @ 100% of Taxable Profit as per section 80-IA(4)(iv) being power generating and distribution unit, which was set up on 31.10.2007 and deduction u/s 80-IA(4)(iv) is allowed regularly since Assessment Year 2013-14.*
>
> *In response to the Para 2, we would like to state that the assessee company has set-up an industrial undertaking in Punjab for the generation and distribution of power which begins to generate power from 31.10.2007 (Approved on 17.12.2007) during the specified period beginning on the 1" day of April, 1993 and ending on the 31" day of March, 2017. Also, the assessee company started distribution of power from AY 2008-09 as firstly the company used to generate and transmit Electricity to its other units i.e. Sugar and Distillery and thereafter company started selling/distributing power to Public and after that on 04.12.2012 assessee company executed a Power Purchase Agreement with the Punjab*

State Power Corporation Limited, Patiaia for selling/distributing the Electricity generated. The Copy of said Agreement is attached as Annexure-A.

The answers to all the questions as stated in Para 2 are already mentioned in Form 10CCB (Annexure B) at Point No. 17 which is verified and certified by the Statutory Auditors and the same is reproduced as under:

Generation, transmission, distribution of power.	
(a) Does the undertaking generate power or generate and distribute power	Yes
(ij If yes, indicate the year in which the undertaking has started generating power	2007-08
(b) Does the undertaking transmit or distribute power	Yes
(i) If yes, indicate the year in which the new transmission and distribution lines were laid	2007-08
fc) Has there been substantial renovation and modernization of the existing network of transmission or distribution lines	No
If yes, *please specify,-*	
(ij the year in which the substantial renovation and modernisation of the existing network of transmission or distribution lines took place	
(iij book value of plant and machinery as on l-4~2004{}	
(iii) value of increase in the plant and machinery in the year of substantial renovation and modernisation {)	

We would like to state that the Assessee Company has correctly Claimed deduction amounting to Rs. 24,07,35,537/- u/s 80-IA(4)(iv), which is certified by the statutory Auditors of the company as per audited accounts for the relevant year and reported in Form 10CCB (attached as per Annexure-B), wherein taxable profit is calculated/ shown as Rs. 24,07,35,537/- from Power unit as eligible profit for deduction u/s 80-IA{4){iv). Your honor's kind attention is drawn towards the fact that company was eligible for 100% deduction of Profit & Gains of Power Division (Eligible Unit) from the F.Y. 2008-09 but the assessee company is regularly claiming the deduction u/s 80-IA(4)(iv) of said profit & gains since AY 2013-14 and the same is consistently accepted by the Ld. Assessing Officer/TPO during all the years after AY 2013-14.

Further, it is pertinent to state that our assessment was completed u/s 143(3) and the Ld. Assessing officer had referred the claim of the assessee company for verification of inter unit transactions of the company and also to determine correct taxable profit of the eligible unit u/s 92CA to the TPO. The Transfer Pricing Officer after verification of complete record to determine Arm's Length Price of inter unit transactions had passed the order dated 31.07.2021, wherein the TPO had accepted our calculation of taxable profit at Rs. 24,07,35,537/- from the eligible unit. We would also like to mention that the Assessing Officer and Transfer Pricing Officer have already examined the records and accepted the eligible profit at Rs. 24,07,35,537/- for deduction u/s 80-IA(4)(iv) of the Income Tax Act. The copy of the order passed by TPO is attached as per Annexure-C and Repli.es submitted before TPO and Assessing Officer along with annexures is enclosed as per Annexure-D for your honors kind perusal.

Further, we would like to mention that it is wrongly sated in Para 3 of your impugned notice that-

"A perusal of the Information/documents furnished by the company during the course of the assessment proceedings reveals that following receipts from Cogen Unit had been shown:
Revenue from Operations: 52,24,36,616/-
Other Income: 52,048/-
Total: 52,24,83,664/-

It is however, noted that as per the Unit wise chart furnished by the company, it had total receipts of Rs. 80,23,24,250/- instead of Rs. 52,24,88,664/-from the Cogen Unit and expenses amounting to Rs. 56,15,88,714/- had been incurred on this business, by way of which the company had earned profit of Rs. 24,07,35,537/- and claimed this under section 80IA. But in actually, the company had incurred loss of Rs. 3,91,00,050/-(561588714-5224S8664) instead of profit amounting to Rs. 24,07,35,537/-. Thus, the company had claimed excess deduction amounting to Rs. 24,07,35,537/-."

In response to this, we would like to inform that Cogen Unit for production of steam for Cogen Unit & Sugar Unit uses Baggasse from Sugar unit, as Sugar Division while manufacturing sugar generates Baggasse as one of the product. The Baggasse is shown as expense in Cogen unit at market rates for burning in the boilers to generate steam. (The Baggasse sold is shown as sale in Sugar Division and as expense in Cogen Unit amounting to Rs. 44,62,26,899/ during the year.)

The steam produced is used to run turbine to generate electricity and to manufacture sugar. The steam from Cogen Unit is transferred to sugar division at Cost of steam, which is in proportion to the total cost incurred for generation of per MT of steam. The cost of steam has been certified and verified by the Cost Accountant. We are enclosing copy of certificate regarding cost of production of steam generated as Annexure-E, The said transfer of Steam is booked as sale in Cogen unit and as expense in Sugar unit at the cost price of steam produced per MT.

Your honor while considering the receipts of the Cogen Unit did not consider the sale of Steam being made to Sugar Division of the Assessee Company amounting to Rs. 27,98,35,586 due to which Total Receipts were wrongly reduced from 80,23,24,250/- to 52,24,88,664/- leading to a net difference of Rs. 27,98,35,586. Also, your honor while considering the Expense of Cogen Unit considered Purchase of Baggasse from Sugar Division but did not considered sale of steam to Sugar Division which wrongly lead to loss in Cogen Unit amounting to Rs. 3,91,00,050/-.

However, the sale of steam made to Sugar Division should be included in Total Receipts of Cogen Unit and then only the Correct and final Calculation of eligible Profit of Power generating and distribution (Cogen unit) as per Income Tax Act, 1961 comes as follows:

Receipts:	
Revenue from Operation	
a) Third Party i.e. Electricity sale to PSPCL	37,41,30,015
b) Inter-Unit	
i) Electricity Sale to Sugar Division	14,64,36,135
ii) Electricity Sale to Distillery Division	18,70,466
iii) Steam Sale to Sugar Division	27,98,35,586
Other Income	
a) Third Party	52,048
Total Receipts (Aj	80,23,24,250
Expenditure:	
Cost of Raw Material & Components Consumed	
a) Third Party	58,85,729
b) Inter-Unit	
i) Baggasse purchased from Sugar Division	44,62,26,899
(Increase/ Decrease in inventories of finished goods, WIP and traded goods	2,28,39,000
Employee Benefit Expenses	43,43,021
Depreciation and Amortization Expenses	4,54,86,758
Other Expenses	3,68,07,307
Total Expenditure (B)	56,15,88,713
Profit from COGEN Division {A-B) (80,23,24,250-56,15,88,713)	24,07,35,537

From the above it is absolutely clear that the profit from Cogen Unit during the year as per your calculation is incorrect whereas the correct profit earned from Cogen unit during the Year comes to Rs. 24,07,35,537 after including sale of Steam to sugar Division by- Cogen Unit during the year amounting to Rs. 27,98,35,586/- and reduction of cost of bagasse from the sale of electricity/ steam.

The Correct Profit after inclusion of sale of steam to sugar division by Cogen unit in profit as per your calculation is as under:

A.	*Loss in Cogen Unit as wrongly calculated by your honor*	*(3,91,00,050)*
B.	*Add: Sale of Steam to Sugar Division by Cogen Unit during the year wrongly not considered in Revenue from Operation by your honor*	*27,98,35,586*
C.	*Correct Profit of Cogen Unit after inclusion of Sale of steam to Sugar Division (A+B) (-3,91,00,050 + 27,98,35,586)*	*24,07,35,536*

It is pertinent to mention that the loss of Rs. 3,91,00,050 is wrongly calculated by your goodself without including sale proceeds of steam amounting to Rs. 27,98,35,586 sold to Sugar Division by Cogen Unit.

Also, we would like to state that we have already submitted detail of revenue of the company from each unit as well as consolidated accounts to the Assessing Officer and TPO. However, in the segment reporting provided to the TPO Officer, one row in the excel sheet remained hidden in which all the Inter-unit Sale made were mentioned due to which total value of Receipts of Power Division i.e. 80,23,24,250 are not matching with total of Head wise values in the Profit & Loss Account. However, later on we clarified this mistake to the TPO & after verification of all inter-unit transaction the TPO accepted the total receipt of power division at 80,23,24,250, after including sale of steam to sugar unit of Rs. 27,98,35,586 by Power Unit & after deduction of expenses of Baggasse used from sugar unit by power unit for production of steam amounting to Rs. 44,62,26,899 as per the separate segment reporting/ profit & loss submitted by Us and after verification of complete data & documents submitted by us, the TPO accepted the correct taxable profit from eligible unit at 24,07,35,536 during the AY 2018-19.

Therefore, we are submitting separate Profit & Loss account of each division pertaining to FY 2017-18 with bifurcation of each unit separately. We are enclosing statement of Profit & loss Account for the FY 2017-18 by showing each transaction amongst different units separately to clarify that amount of Rs. 27,98,35,586/- of steam transferred from Power Division to Sugar Division is shown as income of Cogen division and the same is claimed as expense in Sugar Division. This amount of Rs. 27,98,35,586/-is shown under sale in Cogen unit and as expense in Sugar Division as per chart enclosed in Annexure-F In this annexure we have also enclosed separate sheets of Profit & loss Account of each unit to substantiate our claim. Without prejudice to our aforesaid submission & right of appeal, we may like to submit that, as in Para 3 your honor has not considered Inter-unit sale of Steam to Sugar Division in your calculation of eligible profit, then all Inter-unlt Sale and inter-unit purchases may also be eliminated. The Calculation of Profit of Cogen Unit (Eligible Unit) after elimination of Inter-unit sale & purchase amounting to Rs. 25,88,20,248/- is as under:

Particulars	Amount (in Rs.)
Receipts:	
Revenue from Operation	
a) Third Party i.e. PSPCL	37,41,30,015
b) Inter-Unit	
i) Electricity Sale to Sugar Division	Eliminated
ii) Electricity Sale to Distillery Division	Eliminated
iii) Steam Sale to Sugar Division	Eliminated
Other Income	
a) Third Party	52,048
Total Receipts (A)	37,41,82,063
Expenditure:	
Cost of Raw Material & Components Consumed	
a) Third Party	58,85,729
b) Inter-Unit	

i) Baggasse purchased from Sugar Division	Eliminated
(Increase/ Decrease in inventories of finished goods, WIP and traded goods	2,28,39,000
Employee Benefit Expenses	43,43,021
Depreciation and Amortization Expenses	4,54,86,758
Other Expenses	3,68,07,307
Total Expenditure (B)	11,53,61,815
Profit from COGEN Division (A-B) (37,41,82,063-11,53,61,815)	25,88,20,248

For clarification of Doubt, we are enclosing Segment-wise copies of statement of Profit & Loss Account for FY 2017-18 one of which is before elimination of Inter-unit transactions and other is after elimination of Inter-unit transactions, both shows same profit of assessee company amounting to Rs. 76,09,59,488/- as a whole, which depicts that the Inter-unit Balances does not affect Profitability of the Company as a whole, but only effects the profitability of Individual units of the Company. (Annexure-G)

It is pertinent to state that the assessee company neither has any Foreign Transaction nor any Foreign Associate. The case of Assessee company was referred by the Assessing officer to the TPO only to examine Inter-unit transaction with its unit eligible for deduction u/s 80-IA(4)(iv) and whether the such transactions has been made at Arm's Length Price or not. Thus, the values of Inter-unit transactions in Cogen Unit were examined and approved by the TPO i.e. whether inter-unit transactions were made at Arm's Length Price or not.

Moreover, as per section 80-IA(4)(iv) the profit and gains of eligible unit is exempt out of total gross total income of the assessee equal to 100% of profit and gains of eligible unit.

Your honor has wrongly issued the impugned notice u/s 263 for reducing the deduction u/s S0-IA(4)(iv) from 24,07,35,537/- to Nil on the basis of Wrong Premises and calculations, without considering the sale of steam made by the Cogen Plant to Sugar Division. Thus, your honor is humbly requested to kindly withdraw the said notice u/s 263, as the assessee company has claimed deduction u/s 80-IA(4)(iv) of correct taxable profit from eligible unit, which has been already examined & accepted by the Transfer Pricing Officer and also by the concerned Assessing Officer in the orders passed u/s 92CA and 143(3) of the Act. The Copy of order passed u/s 143(3) is attached as Annexure-H.

However, if your honor is till not satisfied with our submission, kindly grant us an opportunity of hearing."

23. Alongwith the aforesaid submissions, the assessee filed supporting documentation and details thereof are as under:

"A. Copy of Power Purchase Agreement executed with the Punjab State Power Corporation Limited, Patiala.
B. Copy of Form 10CCB
C. Copy of Order Passed by TPO dated 31.07.2021

D. Reply submitted to the TPO and AO during the Assessment:
a) Transfer Pricing Officer (TPO) Replies

1. Notice dated 21.06.2021- Reply dated 05.07.2021 and 10.07.2021 along with Annexures. (Page no. 1-236)
ii. Notice dated 30.06.2021- Reply dated 08.07.2021(Page no. 237-244)
iii. Notice dated 10.07.2021- Reply dated 13.07.2021 along with Annexures. (Page no. 245-299)
Iv. Notice dated 21.07.2021- Reply dated 28.07.2021 along with Annexures. (Page no. 300-312)
b) Assessing Officer Replies

1. Notice dated 22.09.2019- Reply dated 13.10.2019(Page no. 313-322)
ii. Notice dated 31.08.2021- Reply dated 08.09.2021 along with Annexures. (Page no. 323-457)
E. Cost Accountant Certificate regarding cost of production of steam.
F. Expanded Profit & Loss Account of all divisions with Inter-Unit Transactions along with separate Profit & Loss of each division.
G. Expanded Profit & Loss Account of all divisions after eliminating Inter-unit transactions.
H. Copy of Order passed u/s 143(3) dated 21.09.2021."

24. The submissions so filed by the assessee were considered but not found acceptable to the Ld. PCIT and the relevant findings of the ld PCIT read as under:

"4. The submissions of the assessee have carefully been considered with reference to the facts of the case from the relevant assessment records. In view of this, it is pertinent to mention here that deduction u/s 80-IA(4)(iv) of the Act is accorded at an amount equal to 100% Profit & Gains of the Eligible Unit. This unit being the Cogen Unit (plant) has apparently sold steam to the sugar division, which appears to be yet another Unit in the assessee's business structure and affairs. The assessee has also stated that the above inter-unit sales are fully reflected in the company's accounts and that the matter concerning the value of the inter-unit transactions has already been examined by the Transfer Posting Officer and the AO concerned. The above facts and features may be caused to be conclusively and comprehensively examined by the AO. Further, the following conditions also apply and may be caused to be examined by the AO: -

(a). Whether there is a development agreement with the government, local authority or statutory body which is a mandate of condition of sub-section 4 of section 80IA and whether such agreement is required to be fulfilled?

(b). The decisions of the Hon'ble Madras High Court in the case of CIT. Madurai Vs. Thiagarajar Mills Ltd. Kappalur (Tax Appeal No. 68 to 70/2010 dated 07.06.2010) and in T N Paper Products Vs. ACIT, 338 ITR 643 may be examined in details by the AO. while deciding the matter in this case.

The 1st decision above was appealed against by the department through an SLP, which has been dismissed on 21.02.2011. The question of whether an intra-unit sale within the same company (being the assessee) would be permitted to avail

of the deduction u/s 80IA may be examined in detail also, since the dismissal of an SLP is not a final decision on the merits of the case.

(c). All of the facts and figures applicable in the matter as presented and reported in the statement of account by the assessee are to be examined.

5. In the instant case there is thus clear failure on the part of the Assessing Officer in framing the assessment order without making the requisite inquiries. There is the imperative legal need in all such inquiries and investigations to comprehensively examine all applicable facts including to the relevant minutiae of their applicability, to reconcile every logical inconsistency in the arguments debated, if and as any, and to ensure total compliance to all statutory provisions, rules, regulations, instructions, accounting and other standards and stipulations. It is amply and expressly clear that the investigation/ inquiry carried out by the Assessing Officer is unsatisfactory, superficial and incomplete along several of these matters/dimensions including the due and necessary and complete examination of the documentary particulars/details mandated. A partially driven by whatever reasons - inquiry cannot be held to be a full, proper, satisfactory, complete and therefore statutorily valid inquiry, which partial enquiry as carried out by the Assessing Officer resulting in the impugned assessment order in this case has created a vacuum zone of unexplained facts which constitutes an error on facts. This would be tantamount to a premature, precipitate and erroneous decision not borne out by facts or founded on proper law. Sucn incomplete inquiry is unacceptable and outside of the pale of law, and inconsistent with the various judicial precedents of the Hon'ble Courts cited later below. This is a clear failure on the part of the Assessing Officer that is being referred to and recognized in this case via this order u/s 263 of the Act. It is such failure which calls for revision of the assessment order u/s 263 of the Act. That such jurisdiction for revision proceedings u/s 263 of the Act oy tne Commissionei is applicaole and called for is held in following cases: -

i) Where the Assessing Officer had accepted entry in the statement of account filed by the assessee showing certajn income as agricultural income, without making any enquiry, the exercise of jurisdiction by the Commissioner u/s 263(1) would be justified- Malabar industrial Co. Ltd. Vs CIT [2000] 109 Taxman 66/243 ITR 89 (SC).

ii) Not holding an enquiry as is normal and not applying mind to the relevant material would certainly be 'erroneous' assessment warranting exercise of revisional jurisdiction. CIT v. JawaharBhattacharjee (2012) 20 taxmann.com 652/342 ITR 74/249 CTR 529 (Gau.)

iii) Where enquiry is warranted but not made, it would certainly constitute prejudice to revenue, so that jurisdiction for the Commissioner is available for remanding the matter for such enquiry. CIT Vs Raja Industries (2012) 340 ITR 344 (P&H).

iv). Honble Delhi High Court in Income Tax Officer versus DG Housing Projects Limited (2012) 343 ITR 329 (Delhi) nas observed:

'The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the

Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word "erroneous" includes failure to make the enquiry. In such cases, the order becomes erroneous because enquiry or verification has not been made and not because a wrong order has been passed on merits."

v) Hon'ble Delhi High Court in Gee Vee Enterprises vs. Additional Commissioner of Income-Tax, [1975] 99 ITR 375 (Delhi), has observed as under:

'The reason is obvious. The position and function of the Income-Tax Officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the-circumstances of the case are such as to provoke an inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."

vi). Hon'ble Rajasthan High Court in the case of Commissioner of Income-Tax vs Emery Stone Manufacturing Company (213 ITR 843) has held as under:

"Simply because the facts have been disclosed by the assessee, it does not give immunity from revisional jurisdiction which the Commissioner can exercise u/s 263 and as such even in a case where the facts have been disclosed by the assessee to the Assessing Authority and the correct provisions of law have not been examined by the Assessing Authority, the power u/s 263 can be invoked."

vii) Commissioner is free to exercise his jurisdiction on consideration of all relevant facts, provided an opportunity of hearing is afforded to assessee to contest facts on basis of which he had exercised revisional jurisdiction CIT, Mumbai Vs Amitabh Bachchan [2016]69 taxmann.com 170[SC]

viii) Where no inquiry was conducted by the Assessing Officer in passing assessment order after accepting revised return filed oy the assessee, Commissioner was well within his powers under Section 263 to direct fresh assessment Virbhadra singh (HUF) vs PCIT [2017] 86 Taxmann.com 113 (Himachai Pradesh).

6. In view of the discussion above, the assessment order passed u/s 143(3) r.w.s. 144B of the Act dated 21 09.2021 is prima-facie erroneous as well as prejudicial to the interests of revenue, as the order has been passed without

making the requisite full and satisfactory inquiries, which should have been done. There is thus a failure on the part of the Assessing Officer which has resulted in the error being the incomplete, unsatisfactory and improper, and therefore legally untenable.

7. In consequence having considered the iac:s and circumstances of the instant case, I am of the considered opinion that the assessment order u/s 143(3) r.w.s 144B of the Act dated 21.09.2021 passed by the Assessing Officer is erroneous as well as prejudicial to the interests of revenue in accordance with the Explanation 2(a) below section 263(1) of the Act. This is because the order has been passed without making proper and requisite inquiries or verifications which should have been made, thus making the assessment order passed not only erroneous but also prejudicial to the interests of revenue interalia, in the matter of proper, detailed, satisfactory and complete inquiries into the expenses separately and differentially attributable to the exempted and non-exempted units, the fulfillment of the mandates/conditions of Sub-Section 4(b) of Section 80IA and compliance of the assessee in harmony with the decisions of the Hon'ble Madras High Court in the cases mentioned in clause 4(b) (supra) the deduction u/s 80IA(4)(iv) claimed by the assessee to determine if any excess deduction has been claimed and to disallow such claimed excess, if any. Accordingly, the impugned assessment order is set aside on the issue of re-examination of and re-inquiry into the facts/details of the said issue. The assessee is at liberty to adduce the facts as deemed relevant before the Assessing Officer a; the time of the assessment proceedings in consequence to this order. The Assessing Officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions. It may be ensured that the fresh assessment order is passed within the prescribed time as stipulated under section 53(3) of the Act."

25. Being aggrieved with the aforesaid order and the findings of ld PCIT, the assessee is in appeal before us.

26. In this regard, during the course of hearing, the ld AR submitted that the assessee company is eligible for 100% deduction of Profit & Gains of its Power Division (eligible Unit) which is engaged in the business of generation and distribution of power from the F.Y. 2012-13 and the assessee company is regularly claiming the deduction u/s 80-IA(4)(iv) of said profit & gains which is consistently accepted by the Ld. A.O in the earlier assessment years since assessment year 2013-14. It was submitted that the assessee has been generating electricity and steam and the revenues have been reported from sale of electricity to PSPCL, sale of electricity and steam to sugar division and sale of electricity to Distillery division. It was submitted that there has been no dispute regarding captive generation and inter-unit supply of electricity and steam to other units as the

same has been reported in the earlier years and consistently allowed by the AO. It was submitted that for the year under consideration, the matter relating to specified domestic transactions which include these inter-unit transactions were referred to TPO and the matter has been thoroughly examined by the TPO and our reference was drawn to the proceedings conducted by the TPO by way of show-cause notices and queries raised from time to time and submissions/documentation filed before the TPO and pursuant to which, the inter-units transactions have been accepted without drawing any adverse inference. It was accordingly submitted that even for the year under consideration, all relevant details/documentation and certification in terms of Form 10CCB are duly placed on record and the matter has been thoroughly examined by the AO as well as TPO and thereafter, claim of deduction u/s 80IA(4)(iv) has been allowed.

27. It was submitted that in the show-cause notice, the ld PCIT has talked about the excess claim of deduction u/s 80IA(4)(iv) of the Act and in this regard, the assessee explained that revenues from sale of stream to the sugar division amounting to Rs 27,98,35,586/- were not considered by the ld PCIT while working out the quantum of deduction and necessary details/documentation were duly submitted and as such, no excess claim of deduction has been made or allowed by the AO and the matter has been examined by the AO as well as TPO, however, the ld PCIT has failed to appreciate the same and has passed the impugned order setting aside the assessment order so passed by the AO. It was submitted that where the matter has been duly examined by the AO and the claim has been lawfully allowed by the AO and the ld PCIT has failed to point out how the order so passed is erroneous and carry out any preliminary enquiry and specify what further enquiry or verification is required on part of the AO, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of Revenue.

28. It was further submitted that while passing the impugned order, the ld PCIT has enlarged the scope of the revisionary proceedings whereby he has asked the AO to examine the issue of inter-unit sale within the same company and eligibility for deduction u/s 80IA relying on the decision of the Hon'ble Madras High Court in case of T N Paper Products and that too, without issuing any show-cause to the assessee. It was submitted that the said matter was never in dispute and as submitted earlier, has been consistently allowed by the AO and even for the year under consideration, the matter has been thoroughly examined by the AO as well as TPO. It was submitted that for the preceding assessment year 2017-18, the ld PCIT himself has accepted the said claim of the assessee and no adverse finding has been recorded while exercising his jurisdiction u/s 263 of the Act. It was accordingly submitted that the order so passed by ld PCIT be set-aside and that of the AO be sustained.

29. Per contra, ld CIT/DR has taken us through the findings of the ld PCIT and relied upon the said findings which we have already taken note of and not being repeated for the sake of brevity.

30. We have heard the rival contentions and purused the material available on record. The ld PCIT has invoked his jurisdiction u/s 263 by issuing the show-cause dated 29/12/2023 and thereafter, after considering the submissions so filed by the assessee and not finding the same acceptable has passed the impugned order. Other than the initial show-cause notice dated 29/12/2023, wherein the ld PCIT has talked about the fact that the assessee had shown profit of Rs. 24,07,35,537/- from its power unit and claimed deduction under section 80IA(4)(iv) amounting to Rs. 24,07,35,537/- whereas it has incurred loss of Rs 3,91,00,050/-, thereby, excess deduction amounting to Rs. 24,07,35,537/- has been claimed by the assessee company, there are two further notices of even date 9/01/2024 adjourning the matter to 25/01/2024 and thereafter, the impugned order has been passed on 16/03/2024. We therefore find that other

than the initial show-cause, no fresh show-cause notice or an opportunity has been provided to the assessee during the revisionary proceedings whereby the assessee has been put to notice and its explanation sought as to its claim of deduction in respect of inter-unit transfer and sale of electricity and steam u/s 80IA(4)(iv) of the Act. We find that the same is clearly in violation of express provisions of sub-section (1) to section 263 of the Act which talks about the exercise of revisionary power by the ld PCIT after giving the assessee an opportunity of being heard. The opportunity of being heard has to be given on the matters on which the ld PCIT propose to decide against the assessee and on such matters, the ld PCIT propose to set-aside the assessment order. The same is not an empty formality especially where the assessee has gone through the rigours of examination and investigation by the AO and the TPO as in the instant case and has thus a vested right in the order so passed in its case by not one but two quasi-judicial authorities. For the said reasons, we therefore have no hesitation to accept the contention advanced by the ld AR that while passing the impugned order, the ld PCIT has enlarged the scope of the revisionary proceedings whereby he has asked the AO to re-examine the issue of inter-unit sale within the same company and eligibility for deduction u/s 80IA(4)(iv) of the Act.

31. Having said that, we find that as far as determining arms length price of specific domestic transactions relating to inter-unit transfer and sale of electricity and steam to sugar and distillery division as well as purchase of baggasse by the cogen unit, the matter has been referred to the TPO during the assessment proceedings, and on such examination, no adverse finding has been recorded and the transaction value as reported by the assessee has been accepted. In the impugned order as well, no adverse finding has been recorded by the ld PCIT and thus, on this account, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of the Revenue.

32. As far as the assessee's eligibility to claim of deduction on such inter-unit sale and transfer of electricity and steam under section 80IA(4)(iv) is concerned, we find that this is not the first year where such claim has been made and the assessee has been consistently claiming the same starting A.Y 2013-14. The claim so made has been allowed to the assessee in the earlier assessment years and in particular, reference can be drawn to the immediately preceding assessment years 2017-18, wherein the ld PCIT has invoked his jurisdiction 263 of the Act and the same has been accepted in absence of any adverse findings recorded by him. For the year under consideration as well, the assessee has made the claim while filing its return of income and all necessary documentation and certification in Form 10CCB has been placed on record and duly examined by the AO and no specific defect/deficiency has been pointed out by the ld PCIT except the matter stated in show-cause which again we have found has no basis as discussed subsequently. We find that the decision of the Hon'ble Madras High Court in case of T N Paper Products *(supra)* infact supports the case of the assessee which has in turn followed its earlier decision in case of CIT vs Thiagarajar Mills Ltd and the decision of the Hon'ble Supreme Court in case of CIT vs Tanfac Industries Ltd where the value of steam used for captive consumption was held entitled for deduction u/s 80-IA of the Act. We therefore find that there is no dispute that the assessee is eligible for claim of deduction of 100% of eligible profits in respect of its power division and in particular, inter-units sale and transfer of electricity and steam u/s 80IA(4)(iv) of the Act and the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of the Revenue.

33. Coming to the matter in the show-cause notice, the ld PCIT has talked about the excess claim of deduction u/s 80IA(4)(iv) of the Act and in this regard, we find that the assessee has rightly explained that revenues from sale of stream to the sugar division amounting to Rs 27,98,35,586/- were not considered by the ld PCIT while working out the quantum of deduction. The said explanation is

duly corroborated by necessary details/documentation placed on record by the assessee, the contents of which have not been rebutted by the Revenue and therefore, on this ground as well, the order so passed by the AO cannot be held as erroneous by allowing excess claim of deduction and prejudicial to that extent to the Revenue.

34. In light of the aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered opinion that there is no justifiable basis in holding the order so passed by the AO as erroneous in so far as prejudicial to the interest of the Revenue and the ld PCIT has thus erred in exercise of his jurisdiction u/s 263 and the order so passed u/s 263 is hereby set-aside and that of the AO is sustained.

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

36. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open Court on 16/12/2024.

Sd/-	Sd/-
परेश म. जोशी	**विक्रम सिंह यादव**
(PARESH M. JOSHI)	**(VIKRAM SINGH YADAV)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य/ ACCOUNTANT MEMBER**

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar