

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI MANU KUMAR GIRI, HON'BLE JUDICIAL MEMBER
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **1570 & 1571/Chny/2024**

निर्धारण वर्ष / Assessment Years: 2016-17 & 2017-18

Indian Overseas Bank,
763, Anna Salai,
Anna Road,
Chennai – 600 002.

[PAN: AAACI-1223-J]

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by

प्रत्यर्थी की ओर से/Respondent by

सुनवाई की तारीख/Date of Hearing

घोषणा की तारीख/Date of Pronouncement

The Principal Commissioner of
v. Income Tax,
Chennai -4,
Chennai -600 034.

(प्रत्यर्थी/Respondent)

: Shri. C. Naresh, CA

: Shri. Nilay Baran Som, CIT

: 25.09.2024

: 18.12.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

These appeals by the assessee are filed against the common order of the Principal Commissioner of Income Tax (Appeals), Chennai-4, for the assessment years 2016-17 & 2017-18 vide order dated 29.03.2024.

2. The grounds of appeal raised by the assessee for the assessment year 2016-17 are as under:

"1. On the facts and in the circumstances of the case and in law the Ld. PCIT erred in invoking the provisions of section 263 and revising the order of AO passed u/s.143(3) r.w.s 147 dated

31/3/2022 without coming to conclusion the order was erroneous but merely directing the AO to re-examine various issues.

2. On the facts and in the circumstances of the case and in law the Ld.PCIT erred in passing the order u/s.263 without taking into consideration the specific submissions made by appellant to the show cause notice.

3. On the facts and in the circumstances of the case and in law the Ld.PCIT ought to have noted that specific enquiries on all issues raised by AO in the notice u/s.148 were met with supporting evidences by appellant, and therefore the order u/s.263 remanding the said order back to the AO is unwarranted.

4. On the facts and in the circumstances of the case and in law the Ld PCIT failed to note that since issues considered and concluded in order u/s 143(3) dated,31/12/2018 were again reconsidered in proceedings u/s 147 which is under revision u/s 263, the time limit for revision u/s 263 would run from order u/s143(3) dated 31/12/2018 and hence the present revisionary proceedings initiated on 29/02/2024 is beyond limitation period.

Without prejudice to above grounds on jurisdiction, even on merits

5. On the facts and in the circumstances of the case and in law the profit arising on assets sold to reconstruction companies were correctly offered to tax in the return of income as against charging to tax the entire sale proceeds as contended by Ld.PCIT.

6. On the facts and in the circumstances of the case and in law the notional gain on Foreign Currency Transitional Reserve (FCTR) is not chargeable to tax as held in various judicial decisions and same could not be held as erroneous and prejudicial to revenue.

7. On the facts and in the circumstances of the case and in law interest on IPDI bonds were correctly claimed and a part of these bonds were repaid establishing the fact that these are borrowings and therefore order of AO allowing interest thereof is not erroneous and prejudicial to revenue.

8. On the facts and circumstances of the case and in law, the Id. PCIT erred in directing the AO to examine the submissions on all other issues in the notice. notwithstanding the fact that these amounts had been correctly claimed as deduction.

Your appellant craves leave to add, to amend and/or vary the grounds of appeal before or at the time of assessment.

3. The grounds of appeal raised by the assessee for the assessment year 2017-18 are as under:

"1. On the facts and in the circumstances of the case and in law the Ld. PCIT erred in invoking the provisions of section 263 and revising the order of AO passed u/s.143(3) r.w.s 147 dated 30/3/2022 without coming to conclusion the order was erroneous but merely directing the AO to re-examine various issues.

2. On the facts and in the circumstances of the case and in law the Ld.PCIT erred in passing the order u/s.263 without taking into consideration the specific submissions made by appellant to the show cause notice.

3. On the facts and in the circumstances of the case and in law the Ld.PCIT ought to have noted that specific enquiries on all issues raised by AO in the notice u/s.148 were met with supporting evidences by appellant, and therefore the order u/s.263 remanding the said order back to the AO is unwarranted.

4. On the facts and in the circumstances of the case and in law the Ld.PCIT failed to note that since issues considered and concluded in order u/s.143(3) dated 23/12/2019 were again reconsidered in proceedings u/s.147 which is under revision u/s 263, the time limit for revision u/s.263 would run from order u/s.143(3) dated 23/12/2019 and hence the present revisionary proceedings initiated on 29/02/2024 is beyond limitation period.

Without prejudice to above grounds on jurisdiction, even on merits

5. On the facts and in the circumstances of the case and in law the profit arising on assets sold to reconstruction companies were correctly offered to tax in the return of income as against charging to tax the entire sale proceeds as contended by Ld.PCIT.

6. On the facts and in the circumstances of the case and in law the notional gain on foreign Currency Transitional Reserve (FCTR) relating to monetary assets was correctly offered to tax and same could not be held as erroneous and prejudicial to revenue.

7. *On the facts and in the circumstances of the case and in law the notional gain on FCTR relating to the previous year cannot be taxed in the current year and accordingly, the order of AO could not be held as erroneous and prejudicial to revenue.*

8. *On the facts and in the circumstances of the case and in law interest on IPDI bonds were correctly claimed and a part of these bonds were repaid establishing the fact that these are borrowings and therefore order of AO allowing interest thereof is not erroneous and prejudicial to revenue.*

9. *On the facts and circumstances of the case and in law, the Ld. PCIT erred in directing the AO to examine the submissions on all other issues in the notice notwithstanding the fact that these amounts had been correctly claimed as deduction.*

Your appellant craves leave to add, to amend and/or vary the grounds of appeal before or at the time of assessment."

4. Brief facts of the case:

4.1 The assessee is a public sector bank and filed the return of income for the A.Y. 2016-17 on 30.11.2016 showing a total loss of Rs.480,17,11,158/- and a book loss of Rs.4008,60,72,638/- u/s.115JB of the Act. The Assessment u/s.143(3) was completed on 31.12.2018 and total income was determined at Rs.2730,83,54,930/- and a book profit of Rs.2775,93,47,431/- u/s.115JB of the Act. The case was reopened u/s.148 of the Act by issuing notice on 29.03.2021 on the grounds that;

- *Since the investments classified under Held to Maturity (HTM) are not held as stock in trade, they have to be valued at acquisition cost and therefore, the amortization premium on investments held under HTM category of Rs.103.87 Crores is not allowable as deduction under the Act,*
- *In respect of accounts sold to ARCs, since the entire amount is received at one go and all the credit risks are transferred to the ARCs, the entire amount received should be recognised as revenue and should not be deferred to subsequent years and*

- *The gain of Rs.105.62 crores related to translation of assets and liabilities in respect of overseas branch has been omitted to be taxed.*

However, the reassessment was completed without making any addition by passing an order u/s.143(3) r.w.s.147 of the Act on 31.03.2022 by accepting the income as determined in the assessment order u/s.143(3) of the Act dated 31.12.2018. Subsequently, the Id.PCIT issued a show cause notice dated 29.02.2024 to the assessee to explain as to why the said assessment order be set aside by invoking the revisionary powers u/s.263 of the Act.

4.2 The Ld.PCIT, on perusal of the submissions made by the assessee, passed an order dated 29.03.2024, directing the AO to examine the issues raised in SCN by holding as under for the A.Y.2016-17 & 2017-18 respectively:

Assessment year 2016-17:

"05. The submissions and the contentions of the assessee have been duly duly considered. It is apparent from the reassessment order that the AO failed to examine a number of issues, involving substantial tax implication. As regards the contention of the assessee that the reassessment was only in respect of three of the grounds and therefore, the scope of 263 cannot be invoked in respect of-the other issues being raised related to a) interest on IPDI Bonds, b) claim of amortization respect of HTM premium as well as depreciation in securities and c) reworking the deduction us 36(1)(viiia), it is pertinent to note that if a fresh issue comes up in course of reassessment proceedings. the same can also be examined and as such there is no bar on restricting the reassessment proceedings only to the issues for which the case has been originally reopened.

5.1 Further, it is noted that the assessee during the relevant year has received a gross amount of Rs.396.25 crores on sales to ARCS Which comprised of the cash component of Rs.58.87 crores and the balance Rs.337.38 crores on account of investment in ARCs. The assessee has computed the gains of Rs.54.1 crores on sale to ARCS by considering only the cash component of Rs.58.87 crores. Since the assessee had transferred all the risks to ne ARGs on sale of assets etc., the entire gross amount of Rs.396.25 crores should have adopted while computing the gains on sale of assets etc. to ARCS. It is but obvious that the investment of the assessee in ARCs will be as per their valuation on the date of the agreement for sale of assets, etc., entered by the assessee with ARCs. However, the AO has failed to examine the issue from this angle and omitted to consider the said amount of Rs.337.38 crores received by way of investment in ARCS while computing the gains on sales made to ARCs.

5.2 As regards, the amount of Rs.105.62 Crores credited to foreign currency translation reserve account, the assessee's contention that it is only a notional gain and therefore, cannot be charged to tax, is not acceptable since as per the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd. (312 ITR 254), it has been held that an assessee has to report the outstanding liability as per the closing rate of foreign exchange and any difference, loss or gain, arising on conversion of the said liability at closing rate should be recognised in Profit & Loss account for the reporting period. Just as the loss is being claimed as a deduction, similarly whenever there is a gain, the same should be offered for tax by the assessee. Moreover, it is observed that whenever there is a loss on conversion, the assessee is Claiming it as a deduction while computing its taxable profits, however the gains are not been offered for taxation. For example, in AY 2017-18, the assessee had claimed deduction of Rs.30.82 crores as loss on conversion while computing the taxable profits, however the gain of Rs.28.72 crores on conversion was directly credited to foreign currency translation reserve account and not offered for taxation. The AO is therefore directed to examine this issue and take appropriate action as per law.

5.3 As regards interest paid on IPDI Bonds, it is observed that RBI Circular on IPDI Bonds provides that this interest has to be paid out of the appropriation of profits. A natural corollary to the said guideline of RBI is that the same cannot be claimed as a deduction while computing the taxable profits. Thus apparently the said interest payment is in violation to the circular issued by RBI. The AO is therefore directed to examine this issue and take appropriate action as per law.

5.4 Moreover, the AO is also directed to examine the submissions made in respect of the other issues raised in course of the revisionary proceedings and decide as per law.

6. In view of the aforesaid discussion, the clauses (a) and (b) of Explanation 2 to Section 263 are clearly attracted since the AO has failed to conduct enquiries especially in respect of the gain shown on sales made to ARCS by only considering the cash component and not considering the amount of R\$.337.38-erores received by way of investment in ARCs, in respect of the amount of Rs105.62 Crores credited to foreign currency translation reserve account but not offered to tax and in respect of allowability of deduction of interest on IPDI Bonds. Therefore the reassessment order u/s 147 ws 144B dated 31.03.2022 passed by the Assessing Officer for A.Y. 2016-17 is considered to be erroneous and prejudicial to the interests of revenue, within the meaning of Sec. 263 of the 1.T. Act, 1961. Therefore, the reassessment order passed under section The same is hence partly set aside, with the direction to the Assessing Officer to pass appropriate fresh assessment order within the stipulated time after making necessary enquiries as per the discussion in the preceding paragraphs, after providing due opportunity to the assessee of being heard."

Assessment year 2017-18:

"08. The submissions and the contentions of the assessee have been duly considered. It is apparent from the reassessment order that the AO failed to examine a number of issues, involving substantial tax implication. It is noted that the assessee during the relevant year has received a gross amount of Rs.148.8 crores on sales to ARCs which comprised of the cash Component of Rs.24.69 crores and the balance Rs. 124.11 crores on account of investment in ARCs. The assessee has computed the gains on sale to ARCs by considering only the cash component of Rs. 24.69 crores. Since the assessee had transferred all the risks to the ARCs on sale of assets etc, the entire gross amount of Rs. 148.8 crores should have adopted while computing the gains on sale of assets etc to ARCs. It is but obvious that the investment of the assessee in ARCs will be as per their valuation on the date of the agreement for sale of assets, etc. entered by the assessee with ARCs. However, the AO has failed to examine the issue from this angle and omitted to consider the said amount of Rs.124.11 crores received by way of investment in ARCs while computing the gains on sales made to ARCs.

8.1 As regards, the amount of Rs.28.72 Crores credited to foreign currency translation reserve account, it was submitted that the gross

gain was of Rs.59.55 crores and the gross loss was of Rs.30.83 crores. After setting the gross gain against the gross loss, an amount Rs.28.72 crores being the net gain was credited to the foreign currency translation reserve account. Since the entire an amount of gain of Rs.59.55 crores was related to non-monetary items, the same was not offered for taxation, However, no evidences were submitted in support of the claim that the entire amount of Rs.28.72 crores of gain solely relates to non-monetary items. Surprisingly, the entire amount of loss of Rs.30.83 Crores which has been claimed as deduction is being claimed as a monetary item whereas the entire gain of Rs.59.55 crores is being claimed as non-monetary item and not offered for taxation. Moreover, as per Para 9 of ICDS, the amount recognised of Rs.105.62 as on the last date of the year ending 31.03.2016 in FCTR account is also required to be treated as income u/s 43AA especially the monetary amount of Rs.39.21 crores. The AO is therefore directed to examine this issue in-depth and take appropriate action as per law.

8.2 As regards interest paid on IPDL Bonds of Rs.100 crores, it is observed that RBI Circular on IPDI Bonds provides that this interest has to be paid out of the appropriation of profits. A natural corollary to the said guideline of RBI is that the same cannot be claimed as a deduction while computing the taxable profits. Thus apparently the said interest payment is in violation to the circular issued by RBI. The AO is therefore directed to examine this issue and take appropriate action as per law, The AO is therefore directed to examine this issue and take appropriate action as per law.

8.3 Moreover, the AO is also directed to examine the submissions made in respect of the other issues raised in course of the revisionary proceedings and decide as per law.

9. In view of the aforesaid discussion, the clauses (a) and (b) of Explanation 2 to Section 263 are clearly attracted since the AO has failed to conduct enquiries especially (i) in respect of the gain shown on sales made to ARCs by only considering the cash component and not considering the amount of Rs.124.11 crores received by way of investment in ARCs, (ii) in respect of the amount of Rs.59.55 Crores credited to foreign currency translation reserve account but not offered to tax, (iii) in respect of the taxability of the amount recognised of Rs.105.62 crores as per Para 9 of ICDS, as on the last date of the year ending 31.03.2016 in FCTR account, especially the monetary amount of Rs.39.21 crores and (iv) in respect of allowability of deduction of interest on IPDI Bonds. Therefore, the reassessment order u/s 147 r.w.s. 144B dated 30.03.2022 passed by the Assessing Officer for A.Y. 2017-18 is considered to be erroneous and prejudicial to the interests of revenue, within the meaning of Sec. 263 of the I.T. Act, 1961.

Therefore, the reassessment order passed under section the same is hence partly set aside, with the direction to the Assessing Officer to pass appropriate fresh assessment order within the stipulated time after making necessary enquiries as per the discussion in the preceding paragraphs, after providing due opportunity to the assessee of being heard."

Aggrieved by the order of the Id.PCIT u/s.263 of the Act, the assessee has challenged the same before us.

5. The Ld.AR for the assessee submitted that the issues raised by the Id.PCIT has been already examined by the AO during the proceedings under section 147 and the detailed submissions were made before AO. Copy of letter filed before AO was also given to the Hon'ble bench and learned Id.PCIT at the time of hearing. As explained at the time of hearing, the detailed submissions on these issues were considered by the AO and order u/s.147 r.w.s 144B passed and accordingly it is submitted that the Id.PCIT erred in treating the said order as erroneous and prejudicial to the interest of the revenue. Further in respect of a number of issues the Id.PCIT had not formed an opinion that the order of AO was erroneous and prejudicial to the interest of the revenue but merely set aside the order of AO without drawing a conclusion based on facts and law that the order is erroneous and prejudicial to the interest of the revenue. Reliance for this view is placed on following decisions of Hon'ble Courts:

- Delhi High court - Vikas Polimers (194 Taxman 57)
- Bombay High Court - Gabreil India Ltd (71 Taxman 585) and
- ITAT Ahmedabad - Comtrade Commodities Services Ltd (156 taxmann.com 369).

5.1 In respect of the issues which were not covered in the proceedings u/s.147 of the Act, the assessee respectfully submits that these are barred by limitation as agreed by the Id. CIT-DR at the time of hearing based on the decisions of Hon'ble Supreme Court and other Hon'ble courts:

- CIT Vs. Alagendran Finance Limited (162 Taxmann 465) – (SC),
- CIT Vs.IDBI Ltd (152 taxmann.com 591) –(SC) and
- Indira Industries (95 Taxmann.com 103) – Madras High court.

In view of the above it is respectfully submitted that the Learned Id.PCIT grossly erred in treating the order under section 147 of the Act as erroneous and prejudicial to the interest of the revenue.

5.2 Without prejudicial to the above, the Id.AR submitted the following on each of the issue raised by Id. PCIT.

a) Amortisation on investments:

The detailed submission made by assessee is reproduced in page 13 para 6 (for A.Y.2016-17) and page 8 & 9 para 5 (for A.Y.2017-18).

The Ld. PCIT has not given any findings as to why the order of the AO is erroneous and prejudicial to the interest of the revenue and accordingly is invalid as per the decisions cited above.

b) Sale of Asset to ARC

The assessee had demonstrated at the time of hearing that the entire profit on sale was credited to profit and loss account and offered to tax whereas the Id.PCIT considers the order under section 147 to be erroneous for the reason that the entire sale proceed should be offered to tax. It is only basic proposition that what can be charged to tax is only the profits and the not the sale consideration.

The learned Id.PCIT grossly erred in treating the order under section 147 to be erroneous and prejudicial and the interest of the revenue by incorrectly assuming that the sale proceeds is to be offered to tax.

C) Foreign Currency Translation Reserve;

The assessee had submitted before the AO that the translation gain which arises on account of revaluation of assets and liabilities of overseas branches is purely notional and unrealised gain. The assessee had relied on binding precedents of Hon'ble Supreme court in the cases of Chainrup Sampathram (24 ITR 481) and Sanjeev Woollen Mills Ltd (279 ITR 434). The assessee in the books of accounts had credited the notional unrealised gain to Foreign Currency translation reserve as per the mandatory requirement of Accounting Standard (AS) -11.

The Ld. PCIT by wrongly relying on the decision of Hon'ble Supreme Court in the case Woodward Governor India Pvt Ltd (312 ITR 254) concluded the notional gain is chargeable to tax. The said decision relates to trading liability which was outstanding in the books and the restatement of which resulted in the loss. The said loss was required to be debited to profit and loss account as per AS-11. The Hon'ble Supreme Court clearly stated that treatment given as per AS-11 should be the basis of computing the tax. Accordingly, in assessee's case the amounts which is credited to reserves is in accordance with AS-11 cannot be brought to tax. The Ld. PCIT therefore erred in concluding the order under section 147 as erroneous and prejudice to the interest of the revenue.

d) Interest on IPDI bonds:

The assessee clearly submitted before the Ld. PCIT that as per RBI circular the interest has to be debited to the profit and loss account and in the event of losses they can be paid out of reserves. It was further submitted that, the entire bond outstanding was repaid before 31-03-2020. This is evident from the Submissions extracted in page 12 (for A.Y. 2016-17 and page 6 & 7 (for A.Y. 2017-18) of the order of the Ld. PCIT.

The Ld. PCIT ignoring the said submissions concluded that interest has to be paid by way of appropriations of profit and accordingly the

deduction of interest cannot be allowed. That said conclusion of Id.PCIT is clearly contrary to facts and accordingly treating the order of AO under section 147 as erroneous and prejudice to the interest and revenue is unwarranted

e) Depreciation / Appreciation on securities:

The detailed submission made by assessee is reproduced in page 6 to 8 para 2 (for A.Y. 2016-17) and page 12,13 and 16 para 4,3 (for A.Y.2017-18). The claim is also in accordance with CBDT circular 18 of 2015 which is binding on department.

The Ld.PCIT has not given any findings as to why the order of the AO is erroneous and prejudicial to the interest of the revenue and accordingly is invalid as per the decisions cited above.

f) Deduction u/s 36(1)(viiia) before setting of brought forward losses:

There were no brought forward losses set off in assessment and hence the issue does not arise as submitted by assessee in pages 13, 14 para 7 (for A.Y.2016-17) and page 12 para v1 (for A.Y. 2017-18).

The Ld. PCIT has not given any findings as to why the order of the AO is erroneous and prejudicial to the interest of the revenue and accordingly is invalid as per the decisions cited above.

g) ROC fees (AY 2017-18 only):

The assessee had not paid any fees as it is not a company under Companies Act as submitted before Id.PCIT and hence this issue does not arise as submitted in page 7,8 para 4.

The Ld. PCIT has not given any findings as to why the order of the AO is erroneous and prejudicial to the interest of the revenue and accordingly is invalid as per the decisions cited above.

h) Long term capital loss (for AY 2017-18 only);

The long-term capital loss was only carried forward and not set off against other income as explained in page 16 para 2.

The Ld. PCIT has not given any findings as to why the order of the AO is erroneous and prejudicial to the interest of the revenue and accordingly is invalid as per the decisions cited above.

6. Per contra, the Id.DR relied on the orders of the Id.PCIT.

7. We have heard the rival contentions, perused the materials available on record and gone through the orders of the lower authorities. In the circumstances before adjudicating the issues arising from the impugned order, we have to first examine the scope of revisional jurisdiction u/s. 263 of the Act. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR

83(SC) wherein their Lordship have held that twin conditions should be satisfied before jurisdiction u/s.263 of the Act is exercised by the Ld.CIT. The twin conditions which need to be satisfied are that

- (i) the order of the Assessing Officer must be erroneous and
- (ii) as a consequence of passing an erroneous order, prejudice is caused to the interest of the Revenue.

In the following circumstances, the order of the AO can be held to be erroneous i.e.

- (i) if the Assessing Officer's order was passed on assumption of incorrect facts; or assumption of incorrect law;
- (ii) Assessing Officer's order is in violation of the principles of natural justice;
- (iii) if the AO's order is passed without application of mind; or
- (iv) if the AO has not investigated the issue before him.

7.1 In the circumstances enumerated above only the order passed by the Assessing Officer can be termed as erroneous for the purpose of Section 263 of the Act. Coming next to the second limb, the AO's erroneous order can be revised by the Ld. CIT only when it is shown that the said order is prejudicial to the interest of Revenue. When this aspect is examined, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case

of Malabar Industries (supra) held that this phrase i.e. "prejudicial to the interest of the revenue" has to be read in conjunction with an "erroneous" order passed by the Assessing Officer. The Hon'ble Supreme Court held that for invoking powers conferred by Section 263; the CIT should not only show that the AO's order is erroneous as a result of any of the situations enumerated above but CIT must also further show that as a result of an erroneous order, some loss is caused to the interest of the revenue. Their Lordship in the said judgment held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. It was further observed that when the Assessing Officer adopts one of the course permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the Ld. CIT does not agree, it cannot be treated as an order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

7.2 Keeping the aforesaid legal principles in mind when we apply the same to the facts of the present case, we note that the issues that has been raked up by the Ld.PCIT in the present case, emanated from perusal of order u/s.147 r.w.s. 144B of the Act of

the AO dated 31.03.2022 for the A.Y. 2016-17 and 30.03.2022 for the A.Y. 2017-18:

Assessment year 2016-17:

- Amortisation on Investments
- Sale of assets to ARC
- Foreign currency translation reserve
- Interest paid on IPDI Bonds
- Depreciation / Appreciation on securities
- Deduction u/s.36(1)(viiia) before setting off brought forward losses.

Assessment year 2017-18:

- Foreign currency translation reserve
- Depreciation on investments
- ROC Fees
- Sale of assets to ARC
- Interest paid on IPDI Bonds
- Amortisation on Investments
- Long Term capital loss
- Deduction claimed u/s.36(1)(viiia)

7.3 The Id.PCIT was of the view that the action of the AO was erroneous and prejudicial to the interest of Revenue and by setting aside the AO's order u/s.147 of the Act directed the AO to examine the above issues and take appropriate action as per the law for both the A.Y. 2016-17 & 2017-18.

7.4 The aforesaid assertion of the Id.PCIT that the AO while scrutinizing the reassessment has failed to verify the issue stated (supra) is contrary to the facts revealed from the records and found

to be incorrect assertion of the Ld.PCIT. This fact is revealed from perusal of the documents filed before us that the AO had reopened the assessment with a reason to believe that the following issues which are escaped income for the A.Y. 2016-17 & 2017-18 and completed the reassessment:

Assessment year 2016-17:

(Reply dated 17.03.2022 filed by the assessee before the AO in response to notice u/s.142(1) vide DIN – ITBA/AST/F/142(1)/2021-22 /1040658205(1) dated 12.03.2022)

Issues raised	Response given in	Page No.
Amortisation on Investments	Para 1	page 2
Sale of assets to ARC	Para 2	page 2
Foreign currency translation reserve	Para 3	page 3

Assessment year 2017-18:

(Reply dated 17.03.2022 filed by the assessee before the AO in response to notice u/s.142(1) vide DIN – ITBA/AST/F/142(1)/2021-22 /1040658218(1) dated 12.03.2022)

Issues raised	Response given in	Page No.
Foreign currency translation reserve	Para 1	page 2
Depreciation on investments	Para 2	page 4
ROC Fees	Para 3	page 5
Sale of assets to ARC	Para 4	page 6
Interest paid on IPDI Bonds	Para 5	page 6
Amortisation on Investments	Para 6	page 8
Long Term capital loss	Para 7	page 9

7.5 Firstly, we note that the Ld.PCIT has also raked up the issues which are not covered in the proceedings and subsequent order u/s.147 of the Act passed by the AO for the A.Y. 2016-17 & 2017-18. The following issues have been raised and concluded the

assessment by the AO during the proceedings u/s.143(3) of the Act for both the assessment years:

Assessment year 2016-17:

- Interest paid on IPDI Bonds
- Depreciation / Appreciation on securities
- Deduction u/s.36(1)(viiia) before setting off brought forward losses.

Assessment year 2017-18:

- Deduction claimed u/s.36(1)(viiia)

7.6 It is admitted fact that these issues are not covered by the order U/s.147 of the Act for both the impugned assessment years and hence barred by limitation. This fact is not disputed by the Id.CIT, DR. at the time of hearing based on the reliance placed by the Id.AR on the decisions of Hon'ble Supreme Court and other Hon'ble courts relied by the assessee:

- CIT Vs. Alagendran Finance Limited (162 Taxmann 465) – (SC),
- CIT Vs.IDBI Ltd (152 taxmann.com 591) - (SC) and
- Indira Industries (95 Taxmann.com 103) – Madras High court.

7.7 In view of the above, we are of the considered view that the Id.PCIT has grossly erred in treating the issues which are not covered in the order under section 147 of the Act as erroneous and

prejudicial to the interest of the revenue for the both the A.Y. 2016-17 & 2017-18.

8. The other issues which are covered under the order of the AO u/s.147 of the Act, for both the A.Y. 2016-17 and 2017-18 are considered by the AO specifically raised the question by issuing notice to the assessee and the same have been addressed by the written submissions and the AO has drawn conclusions in accordance with law while framing the reassessment orders. The AO issued notice u/s.143(2) of the Act on 10.02.2022 for the A.Y. 2016-17 by providing the reasons for reopening the assessment to verify the following issues:

- Amortisation on Investments
- Sale of assets to ARC
- Foreign currency translation reserve

8.1 It is observed that the AO in the order u/s.147 of the Act dated 31.03.2022 in para No.5 stated that in response to the notice issued, the assessee made their submission on 18/03/2022, 24/03/2022 and 29/03/2022 and the same was considered and reassessment was completed. Similarly, for the A.Y. 2017-18 also the following issues were raised for reopening of assessment:

Assessment year 2017-18:

- Foreign currency translation reserve

- Depreciation on investments
- ROC Fees
- Sale of assets to ARC
- Interest paid on IPDI Bonds
- Amortisation on Investments
- Long Term capital loss

8.2 It is observed that the AO in the order u/s.147 of the Act dated 30.03.2022 in para No.5 stated that in response to the notice issued, the assessee made their submission on 01.12.2021, 02.12.2021, 18.03.2022, 24.03.2022 and 29.03.2022 and the same was considered and reassessment was completed.

8.3 Therefore, the detailed submissions as noted in para 7.4(Supra) on these issues were considered by the AO and the order u/s.147 r.w.s 144B passed for both the A.Y.2016-17 and 2017-18 and hence the Id.PCIT erred in treating the said order as erroneous and prejudicial to the interest of the revenue.

8.4 We also note that in respect of a number of issues the Id.PCIT had not formed an opinion that the order of AO was erroneous and prejudicial to the interest of the revenue but merely set aside the order of AO without drawing a conclusion based on facts and law that the order is erroneous and prejudicial to the interest of the revenue. Therefore, we concur with the assessee's reliance on the following decisions of Hon'ble Courts:

- Delhi High court - Vikas Polimers (194 Taxman 57)
- Bombay High Court - Gabreil India Ltd (71 Taxman 585) and
- ITAT Ahmedabad - Comtrade Commodities Services Ltd (156 taxmann.com 369).

8.5 Hence, we are of the view that the AO has considered the submissions after making enquiry of the issues based on the reasons for reopening of assessments and framed the reassessment, cannot be found faulted with by the Id.PCIT.

9. In the light of the aforesaid facts, we are of the view that the assessee succeeds and the Id.PCIT erred in invoking his jurisdiction u/s.263 of the Act and hence the same is quashed for both the A.Y.2016-17 & 2017-18.

10. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 18th December, 2024 at Chennai.

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 18th December, 2024

JPV

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