

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM “DIVISION” BENCH, VISAKHAPATNAM
(HYBRID HEARING)

श्री रवीश सूद ,न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, HON’BLE JUDICIAL MEMBER

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SHRI S BALAKRISHNAN, HON’BLE ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.316/VIZ/2025
(निर्धारण वर्ष/ Assessment Year:2020-21)

M/s. Devi Sea Foods Limited 50-1-51/1, ASR Nagar Seethammadhara Visakhapatnam – 530013 Andhra Pradesh [PAN:AABCD0248B]	Vs.	Pr.CIT-1 Visakhapatnam
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri D. Anand
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri Badicala Yadagiri, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	02.09.2025
घोषणा की तारीख/Date of Pronouncement	:	08.10.2025

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal filed by the assessee against the order under section 263 of the Act Income Tax Act, 1961 (in short ‘Act’) passed by the Learned Principal Commissioner of Income-tax, Visakhapatnam-1 [hereinafter in short

“Ld.Pr.CIT”] vide Din & Order No. ITBA/COM/F/17/2024-25/1075201062(1) dated 28.03.2025 for the A.Y. 2020-21.

2. Brief facts of the case are that, assessee-Company is engaged in the business of production, processing and preservation of fish and fish product, manufacturing of animal feeds and production, collection and distribution of electricity, filed its return of income on 14.02.2021 admitting a total income of Rs.2,60,67,22,150/-. Subsequently, the case was selected for complete assessment scrutiny under CASS and the scrutiny assessment under section 143(3) r.w.s. 144B of the Act, was completed on 25.09.2022 determining the total income at Rs.2,61,15,78,150/-. The Ld. AO made an addition of Rs.48,56,000/- under section 14A of the Act.

3. Ld.Pr.CIT under powers vested in him as per provisions of section 263 of the Act examined the assessment records and noticed that assessee has debited an amount of Rs.15,17,22,510/- towards “Fair value loss on derivative instruments” which is not an eligible expenditure. Further, Ld.Pr.CIT also noticed that the assessee has debited an amount of Rs.8,27,838/- towards interest on TDS payments which is not an eligible expenditure. Thus, he considered the assessment order passed under section 143(3) r.w.s. 144B of the Act dated 25.09.2022 prima-facie to be erroneous and prejudicial to the interest of the revenue. Thereafter, he issued show-cause notice on 25.09.2024 requiring the assessee to show-cause why the assessment order under section

143(3) r.w.s. 144B of the Act should not be revised as per the above lines. In response, assessee furnished its explanation on 09.10.2024, 19.12.2024 and finally on 19.02.2025. On perusal of the assessee submissions, Ld.Pr.CIT being satisfied, deleted the addition of Rs.8,27,838/-, however, on the issue of “Fair value loss on derivative instruments” amounting to Rs.15,17,22,510/- the assessee has furnished reply stating that it worked out the loss of Rs.15,17,22,510/- which is debited to the Profit & Loss Account by following Ind AS Accounting Standard and also as per the Income Computation Disclosure Standards – VI (in short “ICDS-VI”) prescribed under section 145 of the Act. It was submitted that there is slight variation in the measurement of value of loss as per ICDS disclosures and the assessee has worked out the same at Rs.14,14,19,625/-. After verification of the assessee’s above submissions, the Ld.Pr.CIT found the contentions of the assessee as not acceptable for the reason that hedging forward contracts of foreign currency cannot be “marked to Market” on balance sheet date as already there is a underlying asset and there is no extra outgo for settlement of the forward contract other than already determined in the contract and thus there is no additional liability or benefit to the assessee on the settlement date. He further concluded that once there is no liability or benefit on the settlement date, there is no possibility of liability or benefit to the assessee on balance sheet date also. The Ld.Pr.CIT also extracted Para -8(5) of ICDS-VI which is reproduced as follows:-

*"premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be **recognized at the time of settlement.**"*

4. The Ld.Pr.CIT by relying on the CBDT Instruction No. 03/2010 dated 23.03.2010 and the decision of the Co-ordinate Bench of Delhi in the case of Bechtel India (P.) Ltd. v. ACIT (2017) (82 taxmann.com 301) determined that the exchange rate difference on the foreign currency amount covered by the forward contracts outstanding as on the balance sheet date of Rs.18,06,51,740/- shall not be allowed as deduction. He therefore directed the Ld. AO to disallow the exchange rate difference on foreign currency covered by the forward contracts outstanding as on the balance sheet date amounting to Rs.18,06,51,740/- and compute the total income accordingly.

5. On being aggrieved by the directions of the Ld.Pr.CIT, the assessee is in appeal before us by raising following grounds of appeal : -

"1. The Learned Principal Commissioner of Income Tax (PCIT), Visakhapatnam-1 erred in law and on facts in invoking the provisions of Section 263 of the Income Tax Act, 1961 and holding that the assessment order passed under Section 143(3) r.w.s. 144B dated 25.09.2022 is erroneous and prejudicial to the interest of the revenue.

2. The impugned order passed by learned PCIT-1 under Section 263 is bad in law and is liable to be quashed as it fails to meet the jurisdictional requirements under Section 263, namely that the order sought to be revised must be both erroneous and prejudicial to the interests of the Revenue.

3. The learned Principal Commissioner of Income tax, PCIT-1, Visakhapatnam ought to have seen that the order of assessment is neither erroneous nor prejudicial to the interest of the revenue and that the learned CIT can assume jurisdiction under section 263 only if the twin

condition of the assessment order being erroneous and pre-judicial to the interest of the revenue is satisfied.

4. *The Ld. PCIT grossly erred in treating the assessment order dated 25.09.2022 passed under Section 143(3) r.w.s. 144B of the Act as erroneous merely because he holds a different view on the allowability of fair value loss on derivative instruments, even though the Assessing Officer had duly examined this issue during scrutiny.*

5. *The learned PCIT ought to have seen that the assessing officer acting in accordance with law makes certain assessment, the same cannot be branded as erroneous by the Commissioner simply because according to him the order should have been written more elaborately, This section does not visualize a case of substitution of judgment of the Commissioner for that of the assessing officer, who passed the order, unless the decision is held to be erroneous.*

6. *That the Ld. PCIT failed to appreciate that the Assessing Officer, having considered and verified the facts, had taken a plausible view based on legal provisions, and hence the assessment order cannot be held to be erroneous and prejudicial merely because the PCIT holds a different opinion.*

7. *The learned PCIT ought to have seen that while exercising revisional jurisdiction under Section 263, the learned PCIT may set aside or modify an erroneous and prejudicial order, and may direct further enquiry or consideration, but cannot direct a specific outcome or addition. The impugned directions by the learned PCIT-1 prejudge the matter and leave no room for the Assessing Officer's independent application of mind, thereby vitiating the reassessment process.*

8. *The learned Principal Commissioner Of Income tax ought to have seen that there is a distinction between lack of enquiry and inadequate enquiry. The learned PCIT ought to have seen that if there was any enquiry, even inadequate that would not by itself give occasion to Ld. Pr. CIT to pass orders u/s 263, merely because he has different opinion in the matter. It is only in cases of "lack of enquiry that such a course of action would be open for the Ld. Pr. CIT.*

9. *The Ld. PCIT erred in not appreciating that the assessee is engaged in export trade, and forward exchange contracts were entered purely as hedging instruments to cover receivables, and such losses are not speculative in nature and are allowable under ICDS-VI.*

10. *That the reliance placed by the Ld. PCIT on CBDT Instruction No. 3/2010 and the case of Bechtel India Pvt. Ltd. is misplaced and distinguishable on facts, as those relate to speculative mark-to-market losses or unsettled contracts, whereas in the assessee's case the losses are for hedging instruments against confirmed receivables and computation is as per ICDS.*

11. That the Ld. PCIT failed to consider that detailed working for ICDS-VI adjustment was provided in the return of income and supported by ledger extracts, computation statement, tax audit report (Form 3CD), and multiple submissions made during assessment and 263 proceedings, all of which clearly establish that due methodology was followed.

12. That the Ld. PCIT failed to appreciate that the alleged loss of Rs.15,17,22,510/- shown in the books of account was not claimed as deduction in the computation of income, and instead, the assessee claimed a lower amount of Rs. 14,14,19,625/- computed strictly in accordance with ICDS-VI as prescribed under Section 145 of the Act, and necessary adjustment of Rs.99,81,753/- was also made and disclosed in the ITR.

13. That the Ld. PCIT erred in disallowing the amount of Rs. 18,06,51,740/- representing exchange difference on the forward contracts, even though such loss was never claimed in full and only the ICDS-computed amount after deducting amortized premium amount was adjusted in the ITR. The disallowance is therefore contrary to facts and based on incorrect appreciation of the computation mechanism.”

6. The assessee has challenged the exercising of jurisdiction by the Ld.Pr.CIT under section 263 of the Act, on the count of lack of enquiry by the Ld. AO. Further the assessee has also challenged the validity of the order passed under section 263 of the Act wherein the Ld.Pr.CIT has directed the Ld.AO for a specific addition to be computed by the Ld. AO. Further, the assessee has also challenged the disallowances of Rs.18,06,51,740/- whereas the assessee has claimed loss of Rs.14,14,19,625/- only.

7. On the above issues, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the assessee has followed the IND-AS-109 and ICDS-VI which are mandatorily to be followed by the assessee-Company. Accordingly, the assessee computed the loss of Rs.14,14,19,625/- with respect to the outstanding forward contracts. He further submitted that the Ld. AO

issued notice under section 142(1) of the Act dated 29.10.2021 has specifically in Question No.6 requested the assessee to furnish the foreign currency fluctuations. He further submitted that assessee in detail reply on 08.11.2024 has furnished the computation of foreign exchange loss in accordance with the ICDS-VI before the Ld. AO. Further he also submitted that the Ld. AO vide notice under section 142(1) of the Act dated 22.02.2022, after considering the assessee reply submitted on 08.11.2021 has specifically requested the assessee to submit the details of Rs.15,17,22,510/- representing the “Fair value loss on derivative instruments”. Assessee on 20.02.2022 once again furnished the computation before Ld. AO. He further submitted that the Ld. AO after considering the submissions, on being satisfied, did not make any addition with respect to the foreign exchange loss arising on account of forward contracts computed in accordance with ICDS-VI. He therefore submitted that the Ld.Pr.CIT has taken another view and has considered the order of the Ld.AO as erroneous and prejudicial to the interest of the revenue. He further submitted that various judicial pronouncement has held that when two views are possible and when Ld. AO while taking a view has applied his mind considering the replies furnished by the assessee, the Ld.Pr.CIT does not have jurisdiction to invoke revisionary proceedings under section 263 of the Act. He therefore pleaded that the order of the Ld. AO be restored. Further, he also submitted that the Ld.Pr.CIT cannot give specific directions to the Ld. AO to make additions. He further submitted that the Ld.Pr.CIT has also not directed the Ld. AO to

provide opportunity of being heard to the assessee during the remand proceedings.

8. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] submitted that as per the provisions of ICDS-VI notified by the CBDT, no adjustment can be made by the assessee when the assessee intends to hedge the foreign currency risk of a firm commitment. He further submitted that the exchange difference on contracts shall be recognised at the time of settlement and not at the balance sheet date. Further he also submitted that the exchange differences on a contract can be recognised as income or as expense over the life of the contract and shall be amortised accordingly. It was also submitted that as per ICDS-VI these shall not apply for trading or speculation purposes. He therefore pleaded that order of the Ld.Pr.CIT be upheld.

9. We have heard rival contentions and perused the material available on record including the case cited by the rival parties. It is the contention of the Ld.Pr.CIT, even though, the provisions of ICDS-VI are applicable in the case of the assessee, however, any premium or discount arising at the inception of forward exchange contract shall be amortised as expenditure or income over the life of the contract. We extract below the Para 8 of ICDS-VI for reference: -

“Forward Exchange Contracts: -

8. (1) Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of

the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change. Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.

(2) *The provisions of sub-para (1) shall apply provided that the contract:*

(a) *is not intended for trading or speculation purposes; and*

(b) *is entered into to establish the amount of the reporting currency required or available at the settlement date of the transaction.*

(3) *The provisions of sub-para (1) shall not apply to the contract that is entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. For this purpose, firm commitment, shall not include assets and liabilities existing at the end of the previous year.*

(4) *The premium or discount that arises on the contract is measured by the difference between the exchange rate at the date of the inception of the contract and the forward rate specified in the contract. Exchange difference on the contract is the difference between:*

(a) *the foreign currency amount of the contract translated at the exchange rate at the last day of the previous year, or the settlement date where the transaction is settled during the previous year; and*

(b) *the same foreign currency amount translated at the date of inception of the contract or the last day of the immediately preceding previous year, whichever is later.*

(5) *Premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognised at the time of settlement.”*

10. Accordingly, in the present case on hand, the Ld.Pr.CIT has correctly exercised his power and based on the submissions by the assessee found that the order passed by the Ld. AO is erroneous and prejudicial to the interest of the

revenue. The Ld.Pr.CIT has considered the order of the Ld. AO as erroneous and prejudicial to the interest of the revenue while exercising his powers conferred under section 263 of the Act. The Hon'ble Supreme Court in the judgment reported in Malabar Industrial Co. Ltd. v. CIT[2000] 243 ITR 83, held that the power under section 263 of the Act is rather wide provided the Commissioner will have to satisfy himself with the order passed by the Ld. AO is erroneous and prejudicial to the interest of the revenue. There is no dispute on the fact that in the contention of the revenue needs to be accepted when the Ld.Pr.CIT has exercised his power under section 263 of the Act in the right manner. However, the grievance of the assessee is that the Ld.Pr.CIT while exercising such power, whether he can direct the Ld. AO to complete the assessment in a particular manner in accordance with law with specific directions. The Hon'ble Madras High Court in the case of CIT v. Smt. Tasneem Z. Madraswala [2010] 324 ITR 67 (Madras) in Para No. 8 held as follows: -

“8. A reading of the abovesaid judgment would clearly show that while remanding the matter, the Commissioner of Income-tax ought not to have given a specific direction to complete the assessment in a particular manner. Further, the Tribunal has only set aside the abovesaid direction by which the Assessing Officer was directed to complete the assessment by following section 50C(2)(b) of the Act. We do not find any error in the order passed by the Tribunal. The questions of law raised by the Revenue are answered against the Revenue. Accordingly, the tax case appeal is dismissed. No costs.”

11. Section 263 empowers the PCIT to call for and examine records of any proceedings under the Act, and if he considers that any order passed therein by

the AO is erroneous in so far as it is prejudicial to the interests of the Revenue, he may pass such order as the circumstances justify, including an order enhancing, modifying or cancelling the assessment, or directing a fresh assessment.

12. It is thus clear that the revisional power is of a supervisory nature. The PCIT cannot step into the shoes of the AO and substitute his own findings of fact, nor can he dictate the precise manner in which the assessment is to be framed.

13. Accordingly following the ratio laid down by Hon'ble Madras High Court in the case of CIT v. Smt. Tasneem Z. Madraswala (supra), we set-aside the order of the Ld.Pr.CIT passed under section 263 of the Act to the extent of the specific directions given to the Ld. AO to complete the assessment. Ld.Pr.CIT ought not to have given a specific direction by which Ld. AO was directed to complete the assessment, without providing an opportunity of being heard to the assessee. However, since there is no whisper in the order of the Ld.AO regarding the allowability of foreign exchange loss in accordance with ICDS-VI, we direct the Ld. AO to examine the matter in accordance with the provisions prescribed as per ICDS-VI and decide the issue on merits by passing a speaking order after providing opportunity of being heard to the assessee. We therefore uphold the order of the Ld.Pr.CIT on the limited issue of examining

the allowability of foreign exchange loss as per ICDS-VI. Accordingly, grounds raised by the assessee are partly allowed for statistical purposes.

14. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 08th October, 2025.

Sd/-
(रवीश सूद)
(RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

Dated: 08.10.2025
Giridhar, Sr.PS

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

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

1. निर्धारिती/ The Assessee : **M/s. Devi Sea Foods Limited**
50-1-51/1, ASR Nagar
Seethammadhara
Visakhapatnam – 530013
Andhra Pradesh
2. राजस्व/ The Revenue : **Pr.CIT-1**
Visakhapatnam
3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam