

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'सी', अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ C ” BENCH, AHMEDABAD**

सर्वश्री राजपाल यादव, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष।  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**And SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

1. आयकर अपील सं./I.T.A. No.198/Ahd/2013  
2. आयकर अपील सं./I.T.A.No.1315/Ahd/2013  
(निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06)

Fine Line Circuits Company Plot No.E-8, GIDC Manjusar, Savli Dist: Baroda – 391 775	बनाम/ Vs.	The Commissioner of Income Tax-I Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFF 7253 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Milin Mehta, AR
प्रत्यर्थी की ओर से/Respondent by :	Ms. Vibha Bhalla, CIT-DR

सुनवाई की तारीख / Date of Hearing	10/01/2017
घोषणा की तारीख /Date of Pronouncement	20/01/2017

**आदेश / O R D E R**

**PER PRADIP KUMAR KEDIA, AM:**

Both these captioned appeals by the Assessee are directed against the separate orders of the Commissioner of Income Tax(Appeals)-I, Baroda dated 28/11/2013 and 14/03/2013 for Assessment Years (AYs) 2004-05 & 2005-06 respectively.

2. The Grounds of appeal raised by the Assessee in ITA No.198/Ahd/2014 for AY 2004-05 read as under:-

*All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.*

- 1. The learned Commissioner of Income Tax-I, Baroda ("the CIT") erred in fact and in law in revising the assessment by invoking powers u/s.263 of the Income Tax Act, 1961 ("the Act") despite the fact that the conditions stipulated for invoking such extra-ordinary jurisdiction were not satisfied.*
- 2. The learned CIT erred in fact and in law in initiating the proceedings u/s.263 of the Act beyond the period of limitation.*
- 3. The learned CIT erred in fact and in law in computing the time limit for initiating the proceedings u/s.263 of the Act from the end of the financial year in which the order u/s.147 was passed and not from the end of the financial year in which order u/s.143(3) of the Act was passed.*
- 4. The learned CIT erred in fact and in law calculating the time limit for passing the order u/s.263 of the Act from the end of the financial year in which the order u/s.147 was passed ignoring the fact that the issue of incremental subsidy and set off of brought forward unabsorbed depreciation was not there in the reassessment proceedings u/s.147 and there is no discussion in the reassessment order on these issues.*
- 5. The learned CIT erred in fact and in law in passing the order u/s.263 of the Act beyond the period of limitation.*
- 6. The learned CIT erred in fact and in law in setting aside the order passed u/s.154 dated 28.02.2012 despite the fact that the AO had correctly applied the law while passing the said order and there was no error in the same.*
- 7. The learned CIT erred in fact and in law holding that incremental subsidy is not eligible for reduction u/s.10B of the Act.*
- 8. The learned CIT erred in fact and in law in not allowing the set off of brought forward depreciation amounting to Rs.87,46,089/- on the*

*ground that the set off of brought forward depreciation was allowed in AY 2003-04.*

3. The Grounds of appeal raised by the Assessee in ITA No.1315/Ahd/2013 for AY 2005-06 read as under:-

*All the grounds of appeal in this appeal are mutually exclusive and without prejudice to each other.*

- 1. The learned Commissioner of Income Tax-III, Baroda ("the CIT") erred in fact and in law in passing the order u/s.263 of the Income Tax Act, 1961 ("the Act") beyond the period of limitation.*
- 2. The learned CIT erred in fact and in law in computing the period of limitation from the passing of order u/s.147 of the Act instead of section 143(3) of the Act.*
- 3. Without prejudice to above, the learned CIT erred in fact and in law in revising the assessment by invoking powers u/s.263 of the Act, which was completed by way of assessment made u/s.143(3) r.w.s. 147 of the Act by the Assistant Commissioner of Income Tax, Circle-3, Baroda ("the AO") despite the fact that the conditions stipulated for invoking such extraordinary jurisdiction were not satisfied.*
- 4. The learned CIT erred in fact and in law in not dropping the proceedings u/s.263 despite the fact that the Appellant had duly explained the issues raised by the CIT and had given full explanation with respect to the issues raised by the CIT.*
- 5. The learned CIT erred in fact and in law in holding that an amount of Rs.4,34,121/- is not eligible for deduction u/s.10B of the Act and thereby directing the AO to withdraw the deduction granted earlier.*

4. Briefly stated, the assessee-firm is a 100% Export oriented undertaking. The assessment was originally completed under section

143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 29/12/2006 wherein certain additions and disallowances were made on the total income returned at Rs.19,04,380/- returned by the assessee. The case was thereafter reopened by issuance of notice under section 148 of the Act and reassessment order under section 143(3) r.w.s.147 of the Act was passed vide order dated 14/12/2011. As per the reasons recorded by the AO, the case of the assessee was reopened questioning eligibility of deduction u/s.10B of the Act on export of Copper Claded Glass Epoxy Laminates/Sheets (CCGL). While computing the assessed income under section 147 of the Act, the AO denied the deduction under section 10B in respect of “incremental turnover subsidy” of Rs.42,70,068/-.

5. Aggrieved by the reduction of the incremental subsidy for the purpose of computation of deduction under section 10B of the Act, the assessee moved petition for rectification of the re-assessment order under section 154 of the Act. The AO vide order under section 154 dated 28/02/2012 rectified the alleged mistake by restoration of subsidy amount in the profits of the business for the purpose of computation of deduction under section 10B of the Act.

6. The Commissioner of Income Tax found the aforesaid order passed under section 147 dated 14/02/2011 and subsequent order under section

154 dated 28/02/2012 to be erroneous in so far as prejudicial to the interests of the Revenue and accordingly issued show-cause notice under section 263 of the Act dated 17/10/2013 to the assessee in this regard. The CIT alleged error on two counts namely (i) set off of unabsorbed depreciation of Rs.87,46,089/- pertaining to AY 2002-03 was wrongly allowed in the impugned assessment year 2004-05 and therefore directed the AO to withdraw the excess allowance of set off towards impugned unabsorbed depreciation (ii) the CIT also found fault with the AO in granting rectification under section 154 of the Act towards incremental subsidy claim purportedly on the premise that this subsidy was not integral to foreign remittance and therefore not amenable to deduction under section 10B of the Act. He accordingly, cancelled the order of the AO passed under section 154 of the Act and with a direction to pass fresh order keeping in view the directions given in the order under section 263 of the Act. The order under section 147 was also directed to be modified for withdrawal of set off towards unabsorbed depreciation.

7. Aggrieved by the order with the CIT, the assessee was knocked the door of the Tribunal in second appeal.

8. The Ld.AR for the assessee Mr.Milin Mehta submitted that the exercise of power under section 263 of the Act by the Commissioner is without jurisdiction. The Ld.AR submitted that the AO had initiated

proceedings under section 147 of the Act for the limited purpose of disallowing the claim of deduction under section 10B of the Act in respect of export of CCGL. However, while computing deduction under section 10B in reassessment proceedings, the AO inadvertently reduced the amount of incremental subsidy in addition to turnover of CCGL. To correct the error, the rectification application was filed by Assessee before the AO. Since the issue of rectification of incremental subsidy was never raised during reassessment proceedings, it is mistake apparent from record. Responding to the rectification application, the AO rectified the error as pointed out by passing an order under section 154 of the Act dated 28/02/2012. The Ld.AR submitted that the CIT has wrongly assumed jurisdiction under section 263 to revise the order passed by the AO under section 147 of the Act as well as under section 154 of the Act which is impermissible in the circumstances. It was contended that reopening of the assessment was done to disallow deduction under section 10B of the Act on manufacture of CCGL. The AO has examined the issue in the reassessment order and therefore there is no error in the order of the AO passed under section 147 of the Act. It was contended that owing to the fact that the reopening was done on limited aspect of disallowing deduction under section 10B on manufacture of CCGL, the issue of incremental subsidy cannot be reviewed in proceedings under section 263 with reference to order under section 147 of the Act. The Ld.AR for the assessee also took a stand that

the CIT has assumed the jurisdiction under section 263 of the Act in contravention of the limitation period prescribed under section 263(2) of the Act.

9. The Ld.AR submitted that the CIT has computed the period of limitation from the date of passing of order under section 147 dated 14/12/2011 wherein reopening was done on the issue of disallowing claim of deduction under section 10B on manufacture of CCGL. As can be seen from the reasons rendered under section 148(2), the issue of incremental turnover subsidy was not subject matter of reopening of the assessment under section 147. Therefore the time limit ought to have been computed from the date of passing regular assessment order earlier under section 143(3). The regular assessment order was passed on 29/12/2006, wherein both the issues; namely, brought forward depreciation of Rs.87,46,089/- as well as incremental subsidy were embedded and were part of assessment process. The Ld.AR in elaboration submitted that the impugned brought forward depreciation of Rs.86,46,089/- was duly claimed in the original assessment and accepted by the AO. To justify the assertion, he referred to the computation of income placed in the paper-book and the original assessment order and submitted that the brought forward depreciation claimed as set off against the current year business income was duly accepted by the AO in the original assessment in as much as the total income declared at

Rs.19,04,380/- was taken as a starting point for various adjustments while proposing the original assessment order. Similarly, while framing the reassessment order pursuant to section 147, the identical figure of total income was taken as a base for re-computing the assessed income. There is no whisper about the eligibility or otherwise of set off of unabsorbed depreciation during the year either in the reasons recorded or in the re-assessment order. Therefore, the issue in relation to set off which was decided and accepted in the original assessment order do not stand merged in the subsequent re-assessment order for the purpose of computation of limitation period stipulated under section 263(2) of the Act. The Ld.AR in short submitted that as regards, set off of unabsorbed depreciation, the limitation period will have to be necessarily counted from the date of original order. Since the subsequent re-assessment order has been rendered on a totally unconnected issue, the limitation period will not get extended with reference to reassessment order passed in later time.

10. As regards, adjustments towards incremental liability for the purpose of computation of deduction under section 10B of the Act, the Ld.AR similarly submitted that since the issue involved is unconnected to the re-assessment proceedings, the limitation period cannot be counted from the re-assessment order but will have to be determined with reference to the date of original order. The Ld.AR thus submitted that



the action initiated under section 263 of the Act is *void ab initio* owing to embargo of limitation for initiation of such action. The Ld.AR for the assessee relied upon the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Gujarat Forging (P) Ltd. in Income Tax Reference No.42 of 1996, order dated 02/07/2008 and decision of Hon'ble Bombay High Court in the case of Ashoka Buildcon Ltd. vs. ACIT reported in (2010) 325 ITR 574 (Bom.) to buttress his point that in respect of issues which are not subject matter of reassessment proceedings, period of limitation provided for in section 263(2) would commence from the date of original assessment order and not from the date on which order of reassessment has been passed.

11. The Ld.AR next submitted that notwithstanding the arguments advanced on non-maintainability of action under section 263 of the Act due to bar of limitation, the action of the CIT cannot be sustained in the absence of any error in allowing deduction towards incremental subsidy under section 10B of the Act. The issue of eligibility of deduction on incremental subsidy stands settled in favour of assessee by the CBDT Circular No.39/2016, wherein it has been noted that subsidy is part and parcel of profit and gains of business for the purpose of deduction. The Ld.AR also canvassed that the aforesaid issue on merit has to be decided in favour of the assessee on merits in view of the decision of the Karnataka High Court in the case of CIT vs. Yokogawa India Ltd.

Reported in 341 ITR 385 (Kar.). The Ld.AR in conclusion that the order passed under section 147 and section 154 cannot be revised under section 263 of the Act both owing to bar of limitation as well as in the absence of any demonstrable error in the orders which are subject matter of revision.

12. The Ld.DR Ms.Vibha Bhalla for the Revenue relied on the order of the Commissioner and in furtherance submitted that the set off of depreciation was granted in the reassessment order as well which was admittedly allowed in the earlier assessment years. This was resulted in set off of the same amount from business income twice in two different assessment years. Thus, there was an apparent error in the re-assessment order which has been rightly revised under section 263 of the Act. The Ld.DR further submitted that incremental subsidy was specifically reduced in the assessment order which was later reversed in rectification proceedings under section 154 without there being any apparent mistake and thus action of the AO was liable for revision as done by the CIT. The Ld.DR submitted that the scope of section 147 is wide and encompasses assessment of other income which has escaped assessment. Additionally, the case was reopened for denial of section 10B on CCGL, the incremental subsidy forming part of the deduction of section 10B could have very well been taken into account in proceedings under section 147 which was done by the AO. The AO thus has fell into error in accepting the plea of the assessee in rectification petition and granting

relief in rectification proceedings under section 154 of the Act. The Ld.DR accordingly submitted that when computed with reference to date of re-assessment order, the action of CIT is within the statutory limitation period of two years from end of the relevant financial year in which the re-assessment order was passed. It was thus pleaded that no inference with the order of CIT under section 263 is called for.

13. We have perused the records placed before us in the light of submissions advanced by respective sides. In the instant case, the assessee has assailed the action of the CIT in invoking section 263 of the Act with reference to the re-assessment order in respect of the issues raised on the premise that the alleged error were not subject matter of reassessment proceedings at all. It is the case of the assessee that since the alleged errors pointed out by the CIT in the revisional order are totally unconnected to the reassessment proceedings or rectification thereon, the doctrine of merger will not apply. The reassessment order passed in subsequent period is independent of the original assessment order. Therefore, the period of limitation will run from the date of the original assessment order in respect of issues which emanate from that order and bar of limitation cannot thus be reckoned from reassessment order or rectification order framed later. Thus, the entire proceedings under section 263 of the Act is vitiated due to bar of limitation.

14. The contention of the assessee is required to be seen in the light of two set of errors pointed out by Commissioner in action under section 263 of the Act which is in challenge. The first alleged error is wrongful set off of unabsorbed depreciation while computing the business income. We find that the set off was duly claimed in the original assessment order was admitted in full. Similar set off was granted in repetition while making the revised computation under section 147 of the Act. The reasons recorded also do not cast any aspersions on the correctness of the allowability of set off of unabsorbed depreciation claimed. There is no discussion on the point in the reassessment order either. Besides, as noted, the set off of unabsorbed depreciation has been duly accepted in the original proceedings. Thus, the set off of unabsorbed depreciation claimed rightly or wrongly was not subject matter of reassessment at all. Hence, it is manifest that cause of action under section 263 of the Act will arise, if any, with reference to original assessment proceedings only. The subsequent re-assessment proceedings will not obviate the bar of limitation prescribed under section 263(2) of the Act on an unconnected issue. The law in this regard is very clear. The issue as to when the period of limitation would commence for an order under section 263 was considered by the Hon'ble Apex Court in the case of CIT vs. Alagendran Finance Ltd. reported in (2007) 293 ITR 01 (SC). The decisions cited by the assessee in Gujarat Forging (P) Ltd.(supra) and Ashoka Buildcon Ltd. (supra) merely restate the aforesaid ratio following the decision of

Hon'ble Apex Court. Thus, in so far as alleged wrong set off of unabsorbed depreciation against the business income of the current year is concerned, the issue is clearly time barred due to lapse of statutory time limit with reference to the original assessment order. Hence, we are of the firm of opinion that the jurisdiction of CIT to invoke the revisional power in respect of claim of set off is time barred and cannot be sustained.

15. In so far as the second alleged error namely wrongly acceptance of eligibility of incremental subsidy for the determination of deduction under section 10B of the Act is concerned, while we may agree in principle with the contention of the Revenue that the re-assessment proceedings were initiated for correct determination of deduction under section 10B of the Act and incremental subsidy being integral part thereto, the action of the CIT has to be seen with reference to the re-assessment order which is within the limitation and therefore the action of the CIT cannot be assailed on the ground of bar of limitation; we also note in the same vein that the CIT has to demonstrate the "error" in the impugned order which has caused prejudice to the interests of the Revenue. The AO has denied the incremental subsidy under section 10B of the Act in the re-assessment proceedings which was reversed in section 154 of the Act. Both these orders have been subjected to revision under section 263 of the Act. When the issue of eligibility of incremental

subsidy for the purpose of deduction under section 10B is seen in the light of the CBDT Circular (supra) and the judicial precedent cited on the issue, we find it difficult to hold that the AO committed “error” *per se* in accepting the stand of the assessee. In the absence of error, the CIT could not have proceeded under section 263 of the Act. Thus, the action of the CIT under section 263 is without authority of law in so far as the second issue is concerned.

16. Thus, on both counts, the action of the CIT is without sanction of law and is liable to be set aside and cancelled.

17. In the result, appeal of the assessee in ITA No.198/Ahd/2013 for AY 2004-05 is allowed and the order of the CIT passed under section 263 of the Act dated 28/11/2013 is quashed.

**ITA No.1315/Ahd/2013 for AY 2005-06**

18. In the captioned appeal relevant to AY 2005-06, the CIT has issued show-cause notice under section 263 of the Act for wrongful deduction towards “incremental subsidy” of Rs.4,34,121/- while calculating deduction under section 10B of the Act.

19. As noted in earlier paras, the aforesaid issue is squarely covered in favour of assessee relevant to Assessment Year 2004-05.

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20. For the parity of reasoning, we find no error in the order passed under section 147 of the Act dated 24/12/2010. Accordingly, the action of the CIT under section 263 of the Act cannot be approved.

21. In the result, appeal of the assessee in ITA No.1315/Ahd/2013 for AY 2005-06 is allowed.

22. In the combined result, both the appeal of the assessee are allowed.

<b>This Order pronounced in Open Court on</b>	<b>20/ 01/2017</b>
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Sd/-  
(राजपाल यादव)  
न्यायिक सदस्य  
(RAJPAL YADAV)  
**JUDICIAL MEMBER**

Sd/-  
(प्रदीप कुमार केडिया)  
लेखा सदस्य  
( PRADIP KUMAR KEDIA )  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 20/ 01 /2017

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Baroda
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad