

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)  
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 655/KOL/2018  
Assessment Year: 2012-2013**

***Eveready Industries India Limited,.....Appellant***  
***1, Middleton Street, Kolkata-700 071***  
***[PAN: AAACE 5778 N]***

**-Vs.-**

***Deputy Commissioner of Income Tax,.....Respondent***  
***Circle-11(1), Kolkata,***  
***Aayakar Bhawan,***  
***P-7, Chowringhee Square,***  
***Kolkata-700 069***

**Appearances by:**

*Shri D.S. Damle, FCA, for the Appellant*

*Shri Devi Sharan Singh, CIT, D.R., for the Respondent*

Date of concluding the hearing : November 26, 2018

Date of pronouncing the order : February 13, 2019

**O R D E R**

**Per Shri P.M. Jagtap, Vice-President (KZ):-**

This appeal filed by the assessee is directed against the order of Id. Principal Commissioner of Income Tax, Kolkata-4, Kolkata dated 29.03.2018 passed under section 263 of the Income Tax Act, 1961.

2. The assessee in the present case is a Company, which is engaged in the business of manufacture and sale of Dry Cell Batteries, Flash-lights, etc. and also in the manufacture and sale of tea. The return of income for the year under consideration was filed by it on 29.09.2012 declaring a loss of Rs.8,29,07,711/-. The case of the assessee was selected for

scrutiny and in the assessment completed under section 143(3) read with section 144C(3) of the Act vide an order dated 15.03.2016, the total income of the assessee was determined by the Assessing Officer at a loss of Rs.6,27,68,848/- after making the following additions:-

(i)	T.P. Adjustment	Rs.1,96,77,739/-
(ii)	Disallowance u/s 40(a)(ia)	Rs. 3,00,000/-
(iii)	Disallowance u/s. 40A(9)	Rs. 1,61,124/-

The record of the assessment completed by the Assessing Officer under section 143(3) read with section 144C(3) of the Act was examined by the Id. Principal CIT, Kolkata-4, Kolkata. On such examination, he was of the view that there were following errors in the said assessment, which were prejudicial to the interest of the Revenue:-

*"(i) It is noticed that the details of miscellaneous expenses (Note 23 of P&L account) assessee company are given, which indicate 'Share issue expenses 'and 'Stamp fee/Registration'. Both being capital in nature (Ref. Punjab State Industrial Development Corpn. Ltd., [1997] 93 Taxman 5 (SC), Berger Paints India Ltd., [2017/ 79 taxman.com 450 (SC), Gruh-Finance Ltd.. [2016] 72 taxman.com 48 (Ahmedabad - Trib.) etc.) should have been added back.*

*(ii) The details of liabilities & provisions no longer required. Apart from provision for disputed tax of Rs.3.22 crs, none of the other items was added back, enquire & examination in this regard is to be needed.*

*(iii) Again no disallowance u/s 14A of the Act was made as the no dividend was received, which violates Departmental Circular No. 5/2014 [F. No. 225/182/2013-ITA-II]. Further, fresh shares were purchased as apparent from Note 12 of balance sheet.*

*(iv) The 'Exceptional Item' of Rs.1.84 crs at Note-24 of P&L account. As VRS payment as referred has already been allowed u/s.35DDA of the Act, additional claim under this head appears to be irregular. If such payment is termed as payment of superannuation, it is covered u/s. 36(1)(iv) of the Act and availed by assessee. Any supplementary claim in this regard is not allowable even u/s 37 of the Act as the said section starts with non obstante clause "Any expenditure of the nature described in section 30 to 36 ".*

*(v) TAR at clause 13(d)(iii) refers to creation Foreign Translation Reserve. Note 4(f) of balance sheet confirms it. Source of creation of such reserve not enquired into. Further, as per (b) of Explanation 1 of section 115JB of the Act any such claim is supposed to be added back.*

*(vi) TAR at clause 15(a) indicates that on account of scientific research, related revenue expenses were claimed in the P&L account twice, once Rs.2.57 crs. as such and again Rs.1.73 crs u/s 35(J)(i) of the Act. Proper verification was not done.*

*(vii) TAR at clause 15(a) indicates that u/s. 35(2AB) of the Act Rs.1.68 crs was claimed in the P&L account. Same claim was made again in the computation of income and profit was reduced.*

*(viii) TAR at clause 15(a) and computation of income indicates that similar claims u/s 35DD and 35DDA of the Act were made twice by the assessee.*

*(ix) Note 23 of P&L accounts indicate provision for indirect taxes claim of Rs.1.25 crs. ascertain ability of this provision was not questioned.*

*(x) Interest free loans to subsidiary (Doubtful advances) were given as per Note 9(iii), 13©, 25.3 and 25.15b. No rationale behind such an action was questioned.*

*(xi) Foreign currency transaction loss Note 22(c) & 23 not verified as per provision of section 43 of the Act.*

*(xii) Receipts per From 26AS vis-a-vis those disclosed in the accounts were also not checked".*

The Id. Principal CIT accordingly issued a notice under section 163 to the assessee on 15.12.2017 requiring it to show-cause as to why the assessment made by the Assessing Officer under section 143(3) read with section 144C(3) dated 15.03.2016 should not be revised on the points raised by him. In reply, written submission was filed by the assessee offering its explanation on each and every point raised by the Id. Principal CIT in the notice issued under section 263. The said explanation offered by the assessee was found acceptable by the Id. Principal CIT in respect of errors no. (i), (iv), (vi), (viii), (ix) and (x). As regards the explanation offered by the assessee in respect of other errors pointed out

by him in the notice issued under section 263, the Id. Principal CIT did not find the same to be acceptable for the reasons given in his impugned order. According to him, the said issues pointed out by him in the show-cause notice issued under section 263 required further enquiry and verification, which the Assessing Officer had failed to do. He accordingly held the order passed by the Assessing Officer under section 143(3) read with section 144C(3) on the said points as erroneous as well as prejudicial to the interest of the revenue as per Explanation 2(c) below section 263(1) of the Act and setting aside the order of the Assessing Officer on the said points, he directed the Assessing Officer to make the assessment afresh after providing reasonable opportunity to the assessee-company of being heard. Aggrieved by the order of the Id. Principal CIT passed under section 263, the assessee has preferred this appeal before the Tribunal.

3. Ground No. 1 raised by the assessee in this appeal is general while Grounds No. 2 & 3 read as under:-

*(2) For that on the facts and in the circumstances of the case, the assessment of the appellant having been selected for scrutiny under CASS the CIT could not consider the assessment order to be erroneous in so far as it was prejudicial to the interest of the revenue with reference to the issues for which the appellant's case was not selected under CASS parameters.*

*(3) For that on the facts and in the circumstances of the case, the AO having conducted in-depth enquiry with reference to the CASS selection reasons the CIT was unjustified in law and on facts in exercising his revisionary jurisdiction with reference to issues not coming within the ambit of CASS.*

4. In support of the assessee's case on the issue raised in Grounds No. 2 & 3, the Id. Counsel for the assessee submitted that the case of the assessee was selected for scrutiny as per CASS Selection and the scope of the said assessment, therefore, was limited. He invited our attention to page no. 131 of the paper book to point out that the reasons given for selection of the assessee's case under CASS were as under:

***"CASS Reasons***

1. Depreciation claimed at higher rates / Higher additional Depreciation
2. Low Income shown by Large Contractors
3. Large refund claim of Advance tax
4. Large deduction u/s 35, 35(2AA), 35 (2AB)
5. Higher Ratio of Refund to TDS
6. Large Amount of Sundry Creditors
7. Low Net Profit or Loss shown from Large Gross Receipts

Reference of our reply made during scrutiny assessment u/s 143(3) on reason for CASS as above:

CASS Reasons	Reference of Reply	Page No. of Paper Book
1. Depreciation claimed at higher rates/ Higher additional depreciation	Point no. 1 of our letter dtd.18.11.15 and point no. 3 of letter dtd.08.03.16	136 137
2. Low Income shown by the contractor	Not applicable for EIL	
3. Large refund claimed of advance tax	Point no. 3 of our letter 140 dtd.21.12.15	140
4. Large deduction u/s 35, 35(2AA) & 35(2AB)	Point no. 2 of our letter dtd.18.11.15 and point no. 2 of 08.03.16	136 & 137
5. High Ratio of Refund to TDS	Point no. 6 of our letter dated 08.03.2016	138
6. Large amount of sundry creditors	Point no. 5 of our letter dated 08.03.2016	138
7. Low Net Profit or Loss shown from Large Gross Receipts	Point no. 3 & 5 of our letter dtd.21.12.15 and point no.4 of letter dtd.08.03.16	138 & 140

He contended that all these seven issues were duly considered and examined by the Assessing Officer, but the ld. Principal CIT raised altogether new twelve issues in the notice issued under section 263, which is not permissible. He contended that out of the said twelve issues raised by the ld. Principal CIT, only one issue was of CASS selection while other issues were not covered by CASS. He invited our attention to the letter dated 04.11.2015 issued by the Assessing Officer during the course of assessment proceedings to point out that specific queries were raised

by the Assessing Officer, which were duly clarified by the assessee by filing a written submission. Relying on the decision of the Tribunal in the case of Sanjiv Kumar Khemka -vs.- PCIT-15 (ITA No. 1361/KOL/2016 dated 02.06.2017) he contended that the Id. Principal CIT cannot go beyond the CASS points and revise the assessment under section 263 on the points, which were beyond CASS.

5. The Id. D.R., on the other hand, submitted that all cases are selected for scrutiny under CASS, some for limited scrutiny and others for regular assessment. He contended that there is nothing in the assessment order passed by the Assessing Officer under section 143(3) read with section 144C(5) to indicate that the case of the assessee was selected for limited scrutiny. He invited our attention to the letter dated 04.11.2015 issued by the Assessing Officer during the course of assessment proceedings (copy at page no. 133 of the paper book) to show that queries were raised by the Assessing Officer on various issues over and above the seven issues stated to be raised for limited scrutiny under CASS. He contended that these queries raised by the Assessing Officer clearly show that the case of the assessee was not selected for limited scrutiny and it was a case of regular assessment.

6. We have considered the rival submissions and also perused the relevant material available on record. Although the Id. Counsel for the assessee by relying on the CASS reasons given on page no. 131 has contended that the case of the assessee was selected for limited scrutiny, the letter dated 04.11.2015 issued by the Assessing Officer during the course of assessment proceedings clearly shows that queries were raised by him on various issues over and above the said seven issues. As rightly contended by the Id. D.R., there is nothing in the assessment order passed by the Assessing Officer under section 143(3) read with section 144C(5) to indicate that the case of the assessee was selected for limited scrutiny. On the other hand, the fact that the additions were made by the Assessing

Officer in the said assessment on account of T.P. adjustment, disallowance under section 40(a)(ia) and disallowance under section 40A(9) clearly shows that the case of the assessee was not selected for a limited scrutiny and it was a case of regular assessment. We, therefore, find no merit in the case of the assessee on this issue and rejecting the same, we dismiss Grounds No. 2 & 3.

7. Grounds No. 4 & 5 raised by the assessee in this appeal read as under:-

*(4) For that on the facts and in the circumstances of the case, and without prejudice to the preceding grounds the CIT was unjustified in law in passing the impugned order u/s 263 setting aside the assessment with reference to 6 specific issues for conducting enquiry afresh without establishing as to how the assessment order was erroneous even though the appellant had furnished specific replies and facts to substantiate that the assessment order was not erroneous.*

*(5) For that on the facts and in the circumstances of the case, the CIT having issued the show cause notice pointing out specific instances of errors committed by the AO and thereafter the appellant having furnished his explanations to prove that no error was committed by the AO, CIT was unjustified in setting aside the assessment requiring the AO to re-verify the facts without pointing out any specific infirmity either in the explanations furnished or the AO's order.*

8. We have heard the arguments of both the sides on the issue raised in Grounds No. 4 & 5 and also perused the relevant material available on record. The limited contention raised by the Id. Counsel for the assessee on this issue is that the Id. Principal CIT has not given any reason or basis for not accepting the explanation of the assessee before holding the order of the Assessing Officer to be erroneous as well as prejudicial to the interest of the revenue. As rightly contended by the Id. D.R. in this regard, total twelve points were raised by the Id. Principal CIT in the notice issued under section 263 and the explanation of the assessee on six points was accepted by him. As regards the remaining six points, the

explanation of the assessee was not accepted by the Id. Principal CIT and that too for the reasons given in his impugned order. We, therefore, find no merit in Grounds No. 4 & 5 raised by the assessee and dismiss the same.

9. The grounds no. 6 & 7 raised by the assessee in this appeal read as under:-

*(6) For that on the facts and in the circumstances of the case, the CIT was unjustified in considering the assessment to be erroneous on account of lack of enquiry in relation to provision for liability written back even though it was established before him that none of the liabilities written back and credited in the Profit & Loss A/c were excluded from the ambit of the assessed total income by the AO.*

*(7) For that on the facts and in the circumstances of the case, the CIT was unjustified in holding the assessment to be erroneous for non furnishing of alleged reconciliation even though it was apparent from the audited accounts that none of the provisions written back in the Profit & Loss A/c were excluded by the AO from the ambit of assessed total income.*

10. The Id. Counsel for the assessee submitted that the second issue raised by the Id. Principal CIT in the notice under section 263 was that the details of liabilities and provisions no longer required were not properly examined by the Assessing Officer and apart from provisions for disputed tax of Rs.3.22 crores, none of the other items was added back. He invited our attention to the letter dated 04.11.2015 issued by the Assessing Officer during the course of assessment proceedings to show that specific query was raised by the Assessing Officer asking the assessee to reconcile the difference between the amount credited to the Profit & Loss Account as provision no longer required written back and the corresponding amount reflected in the Tax Audit Report. He also invited our attention to the reply filed by the assessee before the Assessing Officer, wherein following explanation was offered by the assessee:-

*“(1) Liability no longer required written back and credited to the Statement of Profit and Loss = Rs.1,78,88,987/-*



*(2) Provision no longer required written back and credited to the Statement of Profit and Loss Rs.5,86,12,638/-. Out of the said amount Rs.2,99,40,465/- was debited to Revaluation Reserve in accordance with the Scheme of Arrangement dated 17.01.2005 sanctioned by the Hon'ble High Court at Kolkata with effect from 01.04.2004 and was not debited to the Statement of Profit and Loss in F.Y. 2004-05".*

He also invited our attention to the relevant details furnished by the assessee during the course of revision proceedings before the Id. Principal CIT placed at page no. 160 and contended that both the figures of liability no longer required written back and provision no longer written back were separate and there was no need for any reconciliation. He contended that this explanation offered by the assessee, however, was not accepted by the Id. Principal CIT without giving any reason and the order of the Assessing Officer was wrongly treated by him on this issue as erroneous as well as prejudicial to the interest of the revenue.

11. The Id. D.R., on the other hand, invited our attention to the relevant portion of the impugned order of the Id. Principal CIT and relied on the reasons given by the Id. Principal CIT in support of the revenue's case for not accepting the explanation of the assessee as under:-

*"From the perusal of Profit & Loss accounts it is noticed that an amount of Rs.3.22 crore has been written back from the provision no longer required. Moreover, as per Para 20 of note to TAR the figure of provision no longer required is shown at 5,86,12,638/-. The reconciliation of the two figures have not been provided by the assessee during the assessment proceeding. Further, reconciliation of break-up of the liability no longer required written back amounting to Rs.1,78,88,987/- was also not furnished by the assessee during the assessment proceeding. In fact, in the submission dated 04-03-2016 before the A.O, the assessee has only shown breakup of liability & provisions no longer required. The assessee in his letter dated 04-03-2016 before the A.O stated "..... Please note that the auditors after thorough checking and verification of details and documents have certified that both the items have been credited to the Profit & Loss account and have been offered to tax." However closer examination of relevant material fact on record, it is seen that the statistical submission of the assessee and the statement referred to above do not address the*

*question of reconciliation. Moreover, neither any further reconciliation has been called for by the A.O nor any explanation has been furnished by the assessee. The A.O has in fact failed to enquire and bring on record the required reconciliation and take the issue to logical end”.*

12. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the assessee during the course of assessment proceedings was called upon by the Assessing Officer to reconcile the difference between the amount of Rs.1,78,88,987/- indicated in the Tax Audit Report as provision for liability no longer required written back and the amount of Rs.5,86,12,638/- credited in the Profit & Loss Account. In reply filed in writing before the Assessing Officer, it was pointed out by the assessee that the amount of Rs.1,78,88,987/- represented liability no longer required written back while the amount of Rs.5,86,12,638/- represented provision no longer required written back. Even during the course of proceedings under section 263, the details of these two amounts credited to the Profit & Loss Account were furnished by the assessee to point out that they were separate figures representing liability no longer required written back and provision no longer required written back and there was no need to reconcile the same. It appears that the Id. Principal CIT, however, failed to appreciate this position clearly evident from the details furnished by the assessee and held the order of the Assessing Officer erroneous on this issue on the ground that there was failure on the part of the Assessing Officer to make necessary enquiry. As already noted by us, a specific query was raised by the Assessing Officer on this issue during the course of assessment proceedings and the same was duly clarified by the assessee by furnishing the relevant facts and figures. In our opinion, there was thus no error in the order of the Assessing Officer on this issue as alleged by the Id. Principal CIT calling for any revision under section 263. Grounds No. 6 & 7 of the assessee's appeal are accordingly allowed.

13. Grounds No. 8 to 10 raised by the assessee in this appeal read as under:-

*(8) For that on the facts and in the circumstances of the case, the CIT was unjustified in law and on facts in setting aside assessment on the ground of non-enquiry relating to sources of investments in shares even though it was apparent from records that during the relevant year the appellant had not earned any dividend income from the Investments and in that view of the matter CIT was unjustified in treating the order to be erroneous for non-disallowance u/s 14A.*

*(9) For that on the facts and in the circumstances of the case, the reasons for which the CIT revised the AO's order on account of non disallowance u/s 14A being different from the reasons set out from the show cause notice the CIT's order on this issue deserves to be vacated.*

*(10) For that on the facts and in the circumstances of the case, the AO's order making no disallowance u/s 14A read with Rule 8D on account of non earning of tax-free dividend, being in consonance with the judgment of the jurisdictional High Court in the case of REI Agro Limited the CIT was unjustified in considering the assessment order to be erroneous for not making disallowance u/s 14A.*

14. The Id. Counsel for the assessee submitted that no disallowance under section 14A was made by the Assessing Officer in the assessment completed under section 143(3) read with section 144C(5) as there was no exempt dividend income actually earned by the assessee during the year under consideration. He pointed out that a specific query was raised by the Assessing Officer in his letter dated 04.11.2015 and after having noticed that there was no dividend income actually earned by the assessee, no disallowance under section 14A was made by him. He contended that the Id. Principal CIT accepted the fact that there was no dividend income actually earned by the assessee during the year under consideration but still held the order of the Assessing Officer to be erroneous on this issue which is no justified.

15. The Id. D.R., on the other hand, relied on the following reasons given by the Id. Principal CIT for rejecting the explanation of the assessee on this issue and holding the order of the Assessing Officer as erroneous:-

*“As regards issue in para 2(iii) above the reply of the assessee in respect of disallowance u/s 14A of the Act so far related to shares of foreign company appears to be only partially correct. The sources of such purchases of fresh domestic shares requires further enquiry since the A.O has merely accepted the submission of the assessee on this point without making enquiry regarding the source thereof. It is also relevant to observe that during the assessment proceeding, the assessee had submitted that the said investment is in the equity of subsidiary company. In this regard it is observed that the reply of the assessee on this point has been general and neither the A.O has called for specific details regarding the fresh investment nor the assessee has furnished specific details regarding fresh investments. Thus mere submission of general reply on the part of the assessee and mere acceptance on the part of the A.O indicate that the issue remained unexamined and un-enquired. Thus there is a prima facie failure on the part of the A.O to judicially adjudicate the issue after making enquiry and bring on record material evidences/details. Accordingly, this order is held to be erroneous so far as prejudicial to the interest of revenue and hence comes under the revisionary ambit of provision U/S 263 of the Income Tax Act, 1961. This issue has also been stressed upon in the case of Dbanuka & Sons (2011) 12 taxmann.com 227 (Calcutta) as well in Maxopp Investment Ltd. [2018] 91 taxmann.com 154 (SC) (para 41). Assessee's theory of strategic investment cannot come to its help as per order of the Hon'ble Apex Court in the case of Maxopp Investment Ltd. (supra)”.*

16. We have considered the rival submissions and also perused the relevant material available on record. As rightly submitted by the Id. Counsel for the assessee, if there was no exempt income in the form of dividend was actually earned by the assessee during the year under consideration, the question of disallowance under section 14A would not arise and, therefore, no such disallowance under section 14A read with Rule 8D was made by the Assessing Officer in the assessment completed under section 143(3) read with section 144C(5) taking a possible view. It appears that the Id. Principal CIT, however, overlooked this vital aspect while holding the order of the Assessing Officer on this issue as

erroneous. As rightly contended by the Id. Counsel for the assessee, there was no error in the order of the Assessing Officer on this issue and the Id. Principal CIT was not justified in revising the same under section 263. Grounds No. 8 to 10 of the assessee's appeal are accordingly allowed.

17. Grounds No. 11 to 13 raised by the assessee in this appeal read as under:-

*(11) For that on the facts and in the circumstances of the case, the CIT was grossly unjustified in treating the order to be erroneous for not considering Foreign Currency Translation Reserve as income without properly understanding the explanations furnished.*

*(12) For that on the facts and In the circumstances of the case, the CIT was grossly unjustified in holding that Foreign Currency Translation Reserve was created as a result of gain in loan repayment due to Rupee devaluation even though such reserve had no connection whatsoever with the appellant's liability to repay foreign currency loans.*

*(13) For that on the facts and in the circumstances of the case, the CIT was unjustified in setting aside assessment even though detailed explanations & facts were furnished before him to prove that Foreign Currency Translation Reserve was on account of appellant's Foreign Currency transaction on capital account and without showing any factual and legal infirmity the CIT was unjustified in holding the AO's order to be erroneous on incorrect understanding of material facts and applicable legal provisions.*

18. The Id. Counsel for the assessee submitted that the nature of Foreign Currency Translation Reserve was duly explained by the assessee during the course of proceedings under section 263 before the Id. Principal CIT. He contended that the Id. Principal CIT, however, failed to appreciate the same and treated the order of the Assessing Officer on this issue as erroneous.

19. The Id. D.R., on the other hand, submitted that the details filed by the assessee in respect of Foreign Currency Translation Reserve during the course of assessment proceedings before the Assessing Officer were not sufficient and it was difficult to ascertain the nature of the said

transactions on the basis of the details furnished by the assessee. He contended that the Assessing Officer, however, did not make any further enquiry to find out the exact nature of the Foreign Currency Translation Reserve and accepted the claim of the assessee. He contended that there was thus an error in the order of the Assessing Officer on this issue and the Id. Principal CIT was fully justified in revising the same under section 263.

20. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the explanation of the assessee on this issue was not accepted by the Id. Principal CIT for the following reasons given in his impugned order:-

*“On the issue pointed out in Para 2(v) above us regards Foreign Currency Translation Reserve reply of the assessee clearly indicates gain in loan repayment due to rupee devaluation. In the present case, the purpose of the loan as stated was not for the financing of fixed asset. Accordingly, provision of section 43A of the Act and amendment therein w.e.f. A.Y. 2003-04 will not be attracted. Accordingly, any gain or loss on account of foreign exchange fluctuation to be treated as revenue in nature. As per AS-II, the outstanding foreign currency loan is required to be translated into Indian currency by applying rate of exchange on the day of closing of the reporting period and net exchange difference as a result of such conversion is to be recognized as income or expenditure in the respective financial year. Foreign exchange fluctuation gain or loss has a direct nexus with the interest costs and no new capital asset was brought into existence. Therefore, gain in loan repayment due to rupee devaluation is revenue in nature and should have been prima facie offered to taxation. The reply of the assessee on this point states that the issue was raised by A.O during the assessment proceeding and the relevant details were furnished vide his reply dated 21-12-2015 before the Assessing Officer. However on perusal of the said reply of the assessee before the A.O., it is seen that though various break ups of loss on foreign currency transaction and translation has been furnished. However, again the said reply of the assessee is not clearly indicative of the nature of transaction and hence mere acceptance of such reply without calling for details of the nature of such transaction makes the order erroneous so far as prejudicial to the interest of revenue”.*

21. A perusal of the reasons given by the Id. Principal CIT clearly shows that the details furnished by the assessee during the course of assessment proceedings before the Assessing Officer were not sufficient to ascertain the exact nature of the relevant transactions and there was thus an error in the order of the Assessing Officer accepting the claim of the assessee without making any further enquiry to find out the exact nature of the relevant transactions. In our opinion, there was thus an error in the order of the Assessing Officer on this issue and the Id. Principal CIT was fully justified in setting aside the same on this issue with a direction to the Assessing Officer to consider it afresh after making the necessary enquiry. Grounds No. 11 to 13 of the assessee's appeal are accordingly dismissed.

22. Ground No. 14 raised by the assessee in this appeal reads as under:-

*“(14) For that on the facts and in the circumstances of the case, the CIT was grossly unjustified in considering the order to be erroneous for allowing deduction u/s 35(2AB) even though the appellant had furnished before the AO Certificate in Form-3CL issued by the D.S.I.R. being the Competent Authority entrusted by the Legislature to certify the allowability of expenses for the purpose of grant of deduction u/s 35(2AB) of the Act”.*

23. The Id. Counsel for the assessee invited our attention to the letter dated 04.11.2015 issued by the Assessing Officer during the course of assessment proceedings to point out that the assessee was required by the Assessing Officer to furnish the details of deduction claimed under section 35(2AB) with supporting evidences/documents. He also pointed out from the reply dated 18.11.2015 filed by the assessee before the Assessing Officer that the copy of approval received from DSIR, Government of India in Form 3CL for the amount of deduction under section 35(2AB) was filed by the assessee. He also invited our attention to the computation of total income of the assessee for the year under consideration placed at page no. 155 of the paper book to show as to how the claim under section 35(2AB) was made by the assessee. He contended that the claim of the assessee for the deduction under section 35(2AB)

thus was allowed by the Assessing Officer after making the necessary enquiry and there was no error in the order of the Assessing Officer on this issue calling for any revision under section 263.

24. The Id. D.R., on the other hand, relied on the following reasons given by the Id. Principal CIT in his impugned order while not accepting the explanation of the assessee on this issue and holding the order of the Assessing Officer to be erroneous:-

*“On the issue pointed out in Para 2(v) above us regards Foreign Currency Translation Reserve reply of the assessee clearly indicates gain in loan repayment due to rupee devaluation. In the present case, the purpose of the loan as stated was not for the financing of fixed asset. Accordingly, provision of section 43A of the Act and amendment therein w.e.f. A.Y. 2003-04 will not be attracted. Accordingly, any gain or loss on account of foreign exchange fluctuation to be treated as revenue in nature. As per AS-II, the outstanding foreign currency loan is required to be translated into Indian currency by applying rate of exchange on the day of closing of the reporting period and net exchange difference as a result of such conversion is to be recognized as income or expenditure in the respective financial year. Foreign exchange fluctuation gain or loss has a direct nexus with the interest costs and no new capital asset was brought into existence. Therefore, gain in loan repayment due to rupee devaluation is revenue in nature and should have been prima facie offered to taxation. The reply of the assessee on this point states that the issue was raised by A.O during the assessment proceeding and the relevant details were furnished vide his reply dated 21-12-2015 before the Assessing Officer. However on perusal of the said reply of the assessee before the A.O., it is seen that though various break ups of loss on foreign currency transaction and translation has been furnished. However, again the said reply of the assessee is not clearly indicative of the nature of transaction and hence mere acceptance of such reply without calling for details of the nature of such transaction makes the order erroneous so far as prejudicial to the interest of revenue”.*

25. After considering the rival submissions and perusing the relevant material available on record, we find ourselves in agreement with the Id. Principal CIT on this issue. Although some enquiry was made by the Assessing Officer on the issue of assessee's claim for deduction under section 35(2AB) as pointed out by the Id. Counsel for the assessee, the



same was not sufficient as specifically made out by the Id. Principal CIT in his impugned order. The insufficiency of enquiry made by the Assessing Officer was established by him by pointing out specifically the proper and sufficient enquiry that should have been made by the Assessing Officer in the facts and circumstances of the case before allowing the claim of the assessee for deduction under section 35(2AB), which the Assessing Officer had clearly failed to do. In our opinion, the order of the Assessing Officer on this issue, therefore, was erroneous and the Id. Principal CIT was fully justified in revising the same under section 263 with a direction to the Assessing Officer to make the assessment afresh after making proper and sufficient enquiry on this issue. Ground No. 14 is accordingly dismissed.

26. Grounds No. 15 & 16 raised by the assessee in this appeal read as under:-

*(15) For that on the facts and in the circumstances of the case, the CIT was unjustified in law and on facts in holding that foreign currency transaction loss was allowed by the AO without carrying out necessary examination even though full particulars of such loss were furnished before the AO prior to completion of assessment.*

*(16) For that on the facts and in the circumstances of the case, a foreign currency transaction loss having been arisen entirely out of appellant's trading transactions the CIT was grossly unjustified in law in treating the assessment order to be erroneous for lack of enquiry.*

27. The Id. Counsel for the assessee invited our attention to the letter dated 04.11.2015 issued by the Assessing Officer during the course of assessment proceedings to point out that the assessee was required by the Assessing Officer to furnish the details of loss on foreign currency transaction and translation of Rs.299.43 lakhs, which had been considered as finance loss. He also pointed out that the assessee was also required by the Assessing Officer to furnish the details of loss on foreign currency transaction and translation of Rs.168.06 lakhs (other than

considered as finance cost). He submitted that these details required by the Assessing Officer were duly furnished by the assessee vide letter dated 28.12.2015 and the explanation of the assessee on this issue was also offered during the course of proceedings under section 263 before the Id. Principal CIT. He contended that the Id. Principal CIT, however, did not rebut the explanation offered by the assessee and proceeded to hold the order of the assessment made by the Assessing Office as evidence on this issue, which is not justified.

28. The Id. D.R., on the other hand, relied on the following reasons given by the Id. Principal CIT in his impugned order for treating the order of assessment made by the Assessing Officer on this issue as erroneous as well as prejudicial to the interest of the revenue:-

*“As regards issue pointed out in Para 2(vii) supra it is observed that explanation given by the assessee in respect of scientific research appears to be only partially correct. On examination of details in respect of expenditure on account of Scientific Research it is seen that the A.O during the assessment proceeding has not specifically enquired about the details of Research & Development facility on which the claim U/S 35(2AB) of the Income Tax Act, 1961 has been made by the assessee and allowed by the A.O. The A.O. was required to call for copy of approval in Form No. 3CM. In this regard it is relevant to observe that though the assessee has furnished copy of form No. 3CL which conveys approval of Department of Scientific and Industrial Research but the A.O has not examined the issue by calling for Form No. 3CM which specifically contains the location of such R&D facility. Further, no enquiry has been made to verify the genuineness of the claim of the assessee making the order erroneous so far as prejudicial to the interest of revenue”.*

*“As regards issue pointed out in Para 2(xi) regarding foreign currency transaction loss the assessee has stated that in relation to its trading liabilities or trading transactions involving payments and receipts in foreign currency, the losses and gains were incurred/earned due to exchange rate fluctuations, Such losses being related to ordinary working of the Company's business: the same were allowable as revenue deduction. The plea of the assessee considered. However. on perusal of assessment record it is noticed that under head of 'Finance Costs' at Sch 22C(c) of P&L account Rs. 2.99 crs was debited as foreign currency transaction & translation losses. Indeed the assessee had given a break up of such claim but the*

*AO has not examined and enquired into nature of transaction. In short the eligibility of these claims were not examined in the light of Auditor's comment given at Note 25.4(1) at Page 47 of the Annual Report wherein it is mentioned that :-*

*.. 25.4. Details of derivatives instruments and unhedged foreign currency exposures*

*1. The following derivative positions are open as at March 31,2012. These transactions have been undertaken to act as economic hedges for the Company's exposures to various risks in foreign exchange markets and may/may not qualify or be designated as hedging instruments.*

*(a) Forward exchange contracts and options [being derivative instruments], which are not intended for trading or speculative purposes but for hedge purposes to establish the amount of reporting currency required or available at the settlement date of ceria in payables and receivables.*

*(i) Outstanding forward exchange contracts entered into by the Company as on March 31,2012*

<i>Currency</i>	<i>Rs. In Lakhs</i>	<i>Buy/Sell</i>	<i>Cross Currency</i>
<i>USD</i>	<i>66.11 (16.96)</i>	<i>Buy Buy</i>	<i>Rupees Rupees</i>
<i>EURO</i>	<i>5.60 -</i>	<i>Buy -</i>	<i>Rupees -</i>
<i>USD</i>	<i>5.58 (1.82)</i>	<i>Sell Sell</i>	<i>Rupees Rupees</i>
<i>JPY</i>	<i>3.36 -</i>	<i>Buy -</i>	<i>Rupees -</i>

*From above comments prima facie it appears that a part of foreign currency transaction was hedged. Thus, if the assessee had entered into forward contracts at predetermined exchange rate of foreign currency to safeguard its payable/receivables from any fluctuation in foreign exchange, the assessee had already hedged its receivables and immune itself from effect of any change in exchange rate of foreign currency. The issue thus requires further enquiry to determine its tax treatment. With aforesaid observation, on this issue also the order suffers from infirmity of lack of enquiry and hence comes within the ambit of revisionary provisions u/s 263 of the Income Tax Act, 1961. The plea of the assessee could be judicially examined only after examination/verification of relevant material facts. Without making enquiry and ascertaining full facts the issue cannot be judicially adjudicated".*

29. We have considered the rival submissions on this issue and also perused the relevant material available on record. It is observed that even though some of the details relating to the assessee's claim on this issue were called for by the Assessing Officer, there was no discussion

whatsoever made by him in the assessment order on this issue giving any reason for accepting the claim of the assessee. Moreover, as specifically pointed out by the Id. Principal CIT in his impugned order, proper and sufficient enquiry was not made by the Assessing Officer before allowing the claim of the assessee on this issue and such enquiries which the Assessing Officer ought to have made but failed to do was also specifically pointed out by him. We, therefore, find no infirmity in the impugned order of the Id. Principal CIT holding the order of assessment made by the Assessing Officer on this issue to be erroneous and revising the same with a direction to the Assessing Officer to consider and decide this issue afresh after making proper and sufficient enquiry. Grounds No. 15 & 16 of the assessee's appeal are accordingly dismissed.

30. Ground No. 17 raised by the assessee in this appeal reads as under:-

*(17) For that on the facts and in the circumstances of the case, the CIT was unjustified in considering the order to be erroneous for the alleged failure to cross verify Party-wise particulars of receipts as per Form-26AS vis-a-vis the accounts even though the AO had carried out the reconciliation of income as reflected in the books with income reflected in Form-26AS.*

31. After considering the rival submissions and perusing the relevant material available on record, we find that the claim of the assessee for TDS was allowed by the Assessing Officer after making proper and sufficient enquiry as pointed out by the Id. Counsel for the assessee from the letters dated 02.03.2015 and 08.03.2016 submitted during the course of assessment proceedings. The allegation of the Id. Principal CIT that the claim of the assessee for such credit on account of TDS was accepted by the Assessing Officer without making proper and sufficient enquiry thus was factually incorrect and we do not subscribe to the view of the Id. Principal CIT that there was any error in the order of the Assessing Officer on this issue calling for revision under section 263. Ground No. 17 of the assessee's appeal is accordingly allowed.

32. Keeping in view our decision rendered above on each and every issue raised in this appeal of the assessee, we modify the impugned order passed by the Id. Principal CIT under section 263 and allow partly this appeal of the assessee.

**33. In the result, the appeal of the assessee is partly allowed.**

Order pronounced in the open Court on February 13, 2019.

<b>Sd/-</b> <b>(S.S. Viswanethra Ravi)</b> <b>Judicial Member</b>	<b>Sd/-</b> <b>(P.M. Jagtap)</b> <b>Vice-President (KZ)</b>
<b>Kolkata, the 13<sup>th</sup> day of February, 2019</b>	

- Copies to :*
- (1) **Eveready Industries India Limited,  
1, Middleton Street, Kolkata-700 071**
  - (2) **Deputy Commissioner of Income Tax,  
Circle-11(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069**
  - (3) **Principal Commissioner of Income Tax, Kolkata-4, Kolkata,**
  - (4) **Commissioner of Income Tax- ,**
  - (5) **The Departmental Representative**
  - (6) **Guard File**

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**