

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 206/CHD/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Sh. R.P. Kapur Prop M/s Mandav Air Industries, Plot No.: 12, Phase -1, Industrial Area Sauli Khad, Distt. Kandi (H.P)	Vs. बनाम	The Principal Commissioner of Income Tax, Shimla
स्थायी लेखा सं./PAN NO.AKZPK1895L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Parkishit Aggarwal, CA
राजस्व की ओर से/ Revenue by : Sh. G.S. Phani Kishore, CIT DR

सुनवाई की तारीख/Date of Hearing : 02.05.2019
उदघोषणा की तारीख/Date of Pronouncement : 30.05.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 4.12.2017 of the Principal Commissioner of Income Tax, Shimla [hereinafter referred to as 'PCIT'].

2. The assessee in this appeal has agitated the action of the Ld. PCIT in invoking the provisions of section 263 of the Act, whereby, he has set

aside the assessment order dated 28.2.2016 of the Assessing officer passed u/s 143(3) of the Income-tax Act, 1961 (in short 'the Act') for de novo assessment.

3. A perusal of the impugned order of the Ld. PCIT passed u/s 263 of the Act reveals that the Ld. PCIT noticed the following errors / discrepancies in the order of the Assessing officer:

“a. Deduction u/s 80IC of the Income Tax Act, 1961 was allowed to you in respect of Unit -II where Dissolved Acetylene Gas was being produced which falls under the negative List of Schedule XIII of the Income tax Act, 1961. The assessment order was passed on 28.12.2016. However, the information related to the production of Dissolved Acetylene Gas (that it falls under the list) was available with the A.O. from the letters issued by Directorate of Industries, H.P. and Department of Industrial Policy and Promotion, Govt. of India vide letter dated 03.06.2016 and 11.03.2016 respectively despite thereof the deduction u/s 80IC is allowed by the A.O.

b. In profit & Loss account Unit I (IU-II) you have shown income on account of rent at Rs. 60,000/- and net income was shown at Rs.45,97,055/- Said income was not derived from manufacturing activities and also had no direct nexus between the profits and gains from industrial undertaking. Hence you are not eligible for deduction u/s 80IC of the Income Tax Act,1961. However, the A.O. has not verified the same and had wrongly allowed deduction u/s 80IC on this income.

c. On perusal of Note 7, short term loans and advances, it is noticed that you had deposited securities with sales tax department amounting to Rs.

5,000/- and Rs. 4,58,000/- with HPSEB. On verification of form No. 26AS, it is also noticed that you had received interest income of Rs. 35,179/- from HPSEB on which TDS of Rs. 3624/- was also deducted. The interest earned on these deposits is not eligible for claiming deduction u/s 80IC. However, it appears that interest income was not disclosed by you.

d. On perusal of the Profit & Loss account in respect of Unit I (IU-II), you had shown net profit of Rs. 45,97,055/- on which deduction @ 25% was claimed at Rs. 11,49,264/-. Nevertheless, the said claim was rejected by the A.O., by holding that it is splitting up/reconstruction of existing business i.e. Unit-I(IU-I) instead of new industrial undertaking but still deduction was allowed to you; whereas, the department is already in appeal in ITAT against allowance of the same by CIT(A) for A.Y. 2012- 13.

e. On perusal of profit & Loss account in respect of Unit I(IU-II) in which you had claimed deduction @ 25% u/s 80IC, expenses on account of electricity and Water has been claimed at Rs. 82,70,484/-, whereas only Rs. 1,66,020/- (there is no schedule or details of these expenses also) has been claimed for Unit-II as electricity and Water expenses, in which 100% deduction under section 80IC was claimed. It is also noticed that there is no electricity security deposited with the HPSEB for installation of electric connection in respect of this unit. Thus, there appears to be no electric connection for unit-II and therefore, whole electricity/water expenses have been claimed in Unit -I only. In the absence of any details, the expenses should have been apportioned amongst the Units in same proportionate as per the sales/turnover and accordingly, deduction u/s 80IC has been excessively allowed. Similarly, it is noticed that the expenses on account of employees benefits have been claimed in respect of Unit I at ₹ 29.87 Lac and for Unit II only ₹

10.49 Lac, whereas turnover of Unit II is more than 45% of Unit I at Rs. 3.05 crore and Rs. 2.10 crore respectively. Thus, it appears that you have diverted the expenses to claim higher deduction u/s 80IC.”

4. The Ld. PCIT thereafter show cause the assessee as to why the assessment order being erroneous and prejudicial to the interest of Revenue be not set aside. The assessee thereafter replied to the aforesaid show cause notice. The Ld. PCIT did not agree with the submissions of the assessee and held that since the required enquiries had not been made by the Assessing officer before completing the assessment and also since the assessee had not been able to satisfactorily explain the issues raised by the Ld. PCIT, hence, the order passed by the Assessing officer was erroneous and prejudicial to the interest of Revenue. He also observed that the Assessing officer even while calculating the tax had wrongly applied the provisions of section 115JC of the I.T. Act, whereas, the said section was not applicable to the assessee being an individual. He, therefore, set aside the order of the Assessing officer and directed the Assessing officer to frame the assessment afresh in accordance with law after giving due and reasonable opportunity to the assessee to present his case.

5. Being aggrieved by the said order of the Ld. PCIT, the assessee has come in appeal before us. The argument of the Ld. Counsel for the assessee has been restricted to only point ‘a’ as noted by the Ld. PCIT

in the impugned order. The issue raised vide point 'a' was as to whether the product manufactured by the assessee i.e. Dissolved Acetylene Gas falls in negative list of Schedule XIII of the I.T. Act, hence, not eligible to claim deduction u/s 80IC of the Act. The Ld. PCIT was of the view that the product manufactured by the assessee was not eligible for deduction u/s 80IC of the Act. However, the Ld. Counsel for the assessee, before us, has submitted that the product manufactured by the assessee does not find mention in the negative list as provided under the Thirteenth Schedule of the Income Tax Act. That the Sub-Class under National Industrial Classification (NIC), 1998 mentioning product code is '24117' in respect of Serial No.5, Part B of the Thirteenth Schedule. That, whereas, the product manufactured by the assessee as per the activity and product classification given by Statistics & Databank Division, Ministry of Micro, Small & Medium Enterprises, Government of India bears code '24119' and, hence, the same does not fall in the negative list. However, the Ld. Counsel for the assessee has not addressed any arguments about the remaining points on account of which also Ld. PCIT held that the order of the Assessing officer was erroneous and prejudicial to the interest of Revenue. The Ld. Counsel though orally submitted that the Ld. PCIT did not find any error in respect of point 'd' raised by him in the impugned order. May it be so, the Ld. Counsel for the assessee has not addressed any arguments regarding point 'b', point 'c' and point 'e' before us. We have been

conveyed that even in the set aside proceedings, the assessee could not convince the Assessing officer apart from point 'a', regarding point 'b' and point 'c' also as mentioned in the impugned order of the PCIT. From the above discussion what emerges is that there were certain errors in the order of the Assessing officer passed u/s 143(3) of the Act and because of those errors, the income of the assessee has escaped assessment. Hence, the said order being erroneous was also prejudicial to the interest of Revenue. Though the assessee has arguable points regarding point 'a' raised in the impugned order of the PCIT, however, the facts establish on the file that the assessee could not rebut the findings of the Ld. PCIT in respect of points 'b' and 'c' which proves that the order of the Assessing officer was erroneous and prejudicial to the interest of Revenue as the Assessing officer had failed to make any proper required enquires to frame the assessment.

6. In view of this, we do not find any reason to interfere in the order of the Ld. PCIT in setting aside the assessment order passed u/s 143(3) of the Act. However, the assessee will be at liberty to put its points of arguments / explanations regarding the issues raised by the Ld. PCIT including the issue raised vide point 'a' in the impugned order of the Ld. PCIT.

In view of this, so far as the order passed by the PCIT u/s 263 is concerned, we do not deem it fit to interfere with the same and the same is accordingly upheld.

In the result, the appeal of the assessee is hereby dismissed.

Order pronounced in the Open Court on 30.5.2019

Sd/-

(बी,आर.आर. कुमार / B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

Sd/-

(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य /Judicial Member

Dated : 30.05.2019

“आर.के.”

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

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

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar