

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"C" BENCH, MUMBAI**

**BEFORE SHRI G.S. PANNU, PRESIDENT AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1252/Mum./2022**  
**(Assessment Year : 2017-18)**

Control Print Ltd.  
C-106, Hind Saurashtra Industrial Estate  
Andheri Kurla Road, Marol Naka  
Andheri (East), Mumbai 400 059  
PAN – AAACC5378C

..... Appellant

v/s

Principal Commissioner of Income Tax  
Mumbai-1

.....Respondent

Assessee by : Shri Shailesh Shah  
Revenue by : Shri K.C. Salvamani

Date of Hearing – 07/12/2022	Date of Order – 24/01/2023
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**ORDER**

**PER BENCH**

The present appeal has been filed by the assessee challenging the impugned order dated 27/03/2022, passed under section 263 of the Income Tax Act, 1961 ("*the Act*") by the learned Principal Commissioner of Income Tax, Mumbai-1, Mumbai, [*learned PCIT*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds:-

*"1. The learned PCIT erred in passing the order under section 263(1) of the Income Tax Act, 1961 (the Act), by holding that the Assessment Order passed by the Assistant Commissioner of Income Tax 9(2)(2), Mumbai (hereinafter referred to as AO) under section 143(3) of the Act dated 06-Dec-2019 is*

*erroneous and prejudicial to the interest of the revenue. The learned PCIT failed to appreciate that the assessment order was neither erroneous nor prejudicial to the interest of the revenue and thus the order passed under section 263 is bad in law and need to be quashed.*

*2. The learned PCIT failed to appreciate that all the relevant details viz. Audit Report in Form 10CCB along with financial statements of undertaking duly signed and acknowledged by the jurisdictional office for claim of deduction under section 801E of Rs.32,02,84,616 was submitted by the Appellant in absence of availability of filing of online Form on Income Tax Portal. The learned PCIT erred in holding that AO has failed to make necessary enquiry and bring on record all facts without appreciating that the specific query was raised in the assessment proceedings on issue under consideration on claim of deduction of Rs. 32,02,84,616/- under section 801E of the Act and all relevant details in respect thereof were filed.*

*3. The learned PCIT erred in holding that the AO has not conducted any enquiry on cash deposit of Rs.6,87,500 in Specified Bank Notes (SBN) during demonetization period and disallowance is called for under section 69A of the Act without appreciating that all relevant details in respect thereof was filed. The learned PCIT failed to appreciate that there was no requirement to fill details in the Income Tax Form and details of specified bank notes were already reflected in Auditors' Report and Notes to Accounts.*

*4. The appellant craves leave to add, alter, amend and/or modify all or any of the above grounds of appeal on or before the date of hearing."*

3. The only grievance of the assessee is against the revision order passed by the learned PCIT under section 263 of the Act.

4. The brief facts of the case as emanating from the record are: The assessee is engaged in the business of manufacturing of products and providing services to the coding and marking industry. For the year under consideration, the assessee filed its return of income on 28/10/2017 declaring total income at Rs. Nil. The return of income filed by the assessee was initially processed under section 143(1) of the Act and thereafter it was selected for scrutiny. Accordingly, statutory notices under section 143(2) and section 142(1) along with the questionnaire were issued and served on the assessee. After considering the submissions filed by the assessee, the Assessing Officer

('AO') passed the assessment order dated 06/12/2019 under section 143(3) of the Act and assessed the total income of the assessee at Rs. Nil under normal provisions of the Act. Since the book profit computed under section 115JB of the Act at Rs. 34,71,90,007 was higher than the tax on the total income under normal provisions of the Act, the same was adopted for taxation purposes.

5. Subsequently, vide notice dated 12/03/2022, issued under section 263 of the Act revision proceedings were initiated in the case of the assessee on the basis that the assessee has failed to comply with the provisions of section 80IE(6) r/w section 80IA(7) of the Act and therefore the AO ought to have disallowed the assessee's claim of deduction under section 80IE of the Act. It was further alleged that the assessee has deposited cash to the tune of Rs. 6,87,500 in Specified Bank Notes ('SBN') during the demonetisation period between 09/11/2016 to 31/12/2016, however, no query in this regard was raised by the AO nor has the assessee filed any details in its return of income. Thus, vide aforesaid notice issued under section 263 of the Act it was alleged that the AO has not made proper verification of the facts and thereby failed to make a correct assessment of the total income of the year under consideration, which is prejudicial to the interest of the Revenue. In response thereto, the assessee filed detailed submissions and objected to the initiation of revision proceedings. Vide impugned order dated 27/03/2022 passed under section 263 of the Act, the learned PCIT rejected the submissions of the assessee and held that the AO has failed to conduct all necessary inquiries warranted on facts of the case, therefore, the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue. The learned PCIT also

placed reliance upon clause (a) of Explanation-2 to section 263 of the Act. Accordingly, the learned PCIT vide impugned order set aside the assessment order and directed the AO to reframe the assessment *de novo* after conducting all the necessary inquiries and verifications as warranted on the facts of the case. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ('*learned AR*') submitted that during the year, the assessee claimed deduction under section 80IE in respect of its undertaking in Assam. It was further submitted that the assessee has another undertaking in Himachal Pradesh, on which deduction under section 80IC has been claimed in the preceding years. However, during the year, the undertaking in Himachal Pradesh incurred a loss. In respect of the undertaking in Himachal Pradesh, the assessee e-filed audit report in Form No. 10CCB before the date of filing of return of income. Further, in respect of the undertaking in Assam, the audit report in Form No. 10CCB could not be filed electronically as there was no provision on the website for filing the details for deduction under section 80IE of the Act and therefore the assessee physically filed the audit report in Form No. 10CCB before the AO prior to the date of filing of return of income. Thus, it was submitted that the assessee duly fulfilled the statutory requirement for claiming the deduction under the Act. The learned AR also submitted that the audit report in Form No. 10CCB, which was e-filed by the assessee, has also been verified as per the status available on the website of the Income Tax Department. The learned AR further submitted that the AO issued various notices in respect of assessee's claim of deduction under the Act, which were duly responded to by the

assessee during the assessment proceedings. As regards the cash deposited in SBN during the demonetisation period, the learned AR submitted that the assessee made due disclosure in its income tax return as well as in the audited financial statements regarding the cash deposited in SBN during the demonetisation period. Further, the learned AR submitted that the assessee is having operations at various places in India with a turnover of Rs.147 crore and the amount of Rs.6,87,500 is the only cash deposited during the demonetisation period.

7. On the contrary, the learned Departmental Representative (*'learned DR'*) by vehemently relying upon the impugned order submitted that the assessee has not e-filed the audit report in Form No. 10CCB with the return of income before the specified date and therefore the assessee has not fulfilled the mandatory requirement for claiming the deduction under the Act. The learned DR further submitted that the AO has not made any enquiry regarding the cash deposited in SBN during the demonetisation period and therefore, the revision proceedings were rightly initiated under section 263 of the Act.

8. We have considered the rival submissions and perused the material available on record. The assessee has two manufacturing undertakings, one at District Solan, Himachal Pradesh, which is engaged in the business of manufacturing printers and parts thereof, and another undertaking at Guwahati (Assam), which is engaged in the business of manufacturing ink, make-up, solvents and consumables thereof. The assessee claimed deduction under section 80IC of the Act in respect of Himachal Pradesh undertaking from the assessment year 2008-09. Further, in respect of Assam undertaking, the

assessee claimed deduction under section 80IE of the Act from the assessment year 2016–17 onwards. From the perusal of statutory notices issued by the AO under section 143(2) and section 142(1) along with questionnaire, forming part of the paper book, we find that the AO raised queries regarding the deduction claimed by the assessee during the year under consideration, particularly the deduction claimed under section 80IE of the Act, which were duly responded by the assessee. The AO vide assessment order dated 06/12/2019 allowed the deduction claim by the assessee. Vide impugned order passed under section 263 of the Act, it was inter-alia alleged that the assessee has not complied with the provisions of section 80IE(6) r/w section 80IA(7) of the Act and therefore, the AO ought not to have allowed assessee's claim of deduction under section 80IE of Rs. 32,02,84,616. It was also alleged that the mandatory Form No. 10CCB and the profit and loss account of the undertaking, in respect of which deduction under section 80IE of the Act is claimed, has not been electronically filed by the assessee along with the return of income. It was further alleged that the assessee has filed an unsigned copy of Form No. 10CCB and profit and loss account pertaining to assessee's undertaking in Himachal Pradesh, the loss-making enterprise, along with the return of income, in respect of which the assessee claimed deduction under section 80IC of the Act in earlier years.

9. Before proceeding further, it is pertinent to note the provisions of the Act, which are relevant to the issue under consideration. Section 80IC(7) of the Act provides that the provisions, inter-alia, contained in section 80IA(7) shall be applicable to the eligible undertaking or enterprise under section 80IC

of the Act. Similarly, as per section 80IE(6) of the Act, the provisions, inter-alia, contained in section 80IA(7) shall be applicable to the eligible undertaking under section 80IE of the Act. Further, as per section 80IA(7) of the Act, as it stood during the year under consideration, the deduction shall be admissible only if the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the Explanation below section 288(2) and the assessee furnishes, along with his return of income the report of such audit in the prescribed form duly signed and verified by such accountant. As per Rule 18BBB of the Income Tax Rules, 1962, the report as required under section 80IA(7) of the Act shall be in Form No. 10CCB. Further, as per the proviso to Rule 12(2), such an audit report is required to be furnished electronically.

10. In the present case, it is undisputed that the assessee filed its return of income on 28/10/2017. As per the assessee, the audit report in Form No. 10CCB under section 80IC along with the profit and loss account in respect of the Himachal Pradesh undertaking was furnished electronically by the assessee. From the perusal of said Form No. 10CCB along with profit and loss account in respect of Himachal Pradesh undertaking, forming part of the paper book from pages no. 22 – 25, we find that same is dated 27/10/2017. Further, from the perusal of the status of the audit report under section 80IC, as available on the website of the Income Tax Department, we find that the said Form was filed originally on 27/10/2017 and the same has also been verified. Thus, once Form No. 10CCB, which was e-filed by the assessee, has been duly verified by the Revenue, the allegation that the Form No. 10CCB filed by the

assessee in respect of Himachal Pradesh undertaking is unsigned, appears to be completely without any basis.

11. It is the claim of the assessee that Form No. 10CCB in respect of section 80IC unit was filed electronically before the date of filing of return of income, however, Form No. 10CCB could not be filed electronically under section 80IE(6) of the Act as there was no provision for submitting the said Form in respect of deduction claimed under section 80IE of the Act, during the year under consideration. Accordingly, the assessee filed the audit report physically in Form No. 10CCB duly signed and verified by the Chartered Accountant along with the profit and loss account in respect of Assam undertaking before the jurisdictional AO on 27/10/2017. From the perusal of the submission dated 27/10/2017, forming part of the paper book from page no. 8-22, it is evident that it is not the case wherein accounts of the undertaking, in respect of which deduction under section 80IE of the Act was claimed, were not audited by an accountant and audit report was not prepared in Form No. 10CCB. Only due to technical impediment, the said audit report in Form No. 10CCB could not be filed electronically, which was physically filed by the assessee on 27/10/2017 before filing the return of income on 28/10/2017. As per the assessee, only from the next year Form No.10CCB under section 80IE of the Act can be furnished electronically. Nothing has been brought on record to controvert the aforesaid claim of the assessee. Therefore, merely on a technical ground, it cannot be held that the assessment order allowing the claim of deduction under section 80IE of the Act is erroneous, particularly in view of the fact that the AO had raised queries regarding the said deduction, which were duly



responded by the assessee. Thus, we find no basis in upholding the impugned order passed under section 263 of the Act on the basis of aforesaid allegations. As a result, ground No. 2 raised in assessee's appeal is allowed.

12. In the impugned order, it has also been alleged that the AO did not make any enquiry regarding the cash deposits by the assessee in SBN during the demonetisation period. In para 8 of the impugned order, it was also alleged that the assessee has not made the disclosure in its income tax return for the year under consideration regarding the cash deposit in SBN during the demonetisation period. From the perusal of relevant portions of ITR 6, filed by the assessee, for the year under consideration, on page no. 63-64 of the paper book, we find that the assessee had duly made the disclosure regarding the cash amounting to Rs.6,87,500 deposited from 09/11/2016 to 30/12/2016. Further, in annexure 7 of the auditor's report, on page 65 of the paper book, we find that requisite disclosure was made in the financial statements regarding dealings in SBN during the period from 08/11/2016 to 30/12/2016. On page 66 of the paper book, we find that the assessee has also provided the denomination of the cash deposited in SBN during the demonetisation period. It cannot be denied that the return of income along with audited financial statements was sought by the AO during the assessment proceedings and the same was also duly submitted by the assessee. Therefore, when the assessee had made all the disclosures in its income tax return as well as in its audited financials regarding the cash deposited in SBN during the demonetisation period, we do not find any merit in the allegation made in the impugned order

passed under section 263 of the Act. As a result, ground No. 3 raised in assessee's appeal is allowed.

13. Therefore, in view of the aforesaid findings, we are of the considered opinion that clauses (a) of Explanation-2 to section 263 of the Act is not applicable to the facts of the present case and thus the revision order passed by the learned PCIT under section 263 of the Act is set aside. As a result, ground No. 1 raised in assessee's appeal is allowed.

14. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 24/01/2023.

**Sd/-**  
**G.S. PANNU**  
**PRESIDENT**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 24/01/2023**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

By Order

Assistant Registrar  
ITAT, Mumbai