

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "बी", कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA**  
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष  
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 432/Kol/202`**  
**Assessment Year: 2013-14**

M/s Linde India Limited (formerly BOC India Limited)	Vs.	PCIT-2, Kolkata
(PAN: AAACB 2528 H)		
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	10.01.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.04.2024
For the Appellant/ निर्धारिती की ओर से	Shri Ketan Kr. Ved, A.R
For the Respondent/ राजस्व की ओर से	Shri Abhijit Kundu, CIT

**ORDER / आदेश**

**Per Rajesh Kumar, AM:**

This is an appeal preferred by the assessee against the order of the Ld. Principal Commissioner of Income -2, Kolkata (hereinafter referred to as the Ld. PCIT") dated 31.03.2021 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) for the AY 2013-14.

2. At the outset we note that there is a delay of 143 days in filing the appeal however the Id. Counsel for the assessee Mr. Ketan Kr. Ved pointed out that this delay

was during COVID period and therefore covered by the decision of Hon'ble Supreme Court in the case of Mst. Katiji & Ors. reported in (1987) 2 SCC 107 (SC).

3. At the time of hearing, the Ld. Counsel for the assessee pressed only ground nos. 1,2& 6 while ground nos. 3,4 & 5 were not pressed accordingly ground nos. 3,4 & 5 are dismissed as not pressed.

4. Issue raised in ground no. 1 is against the invalid exercise of jurisdiction by PCIT u/s 263 of the Act thereby consequent order framed u/s 263 of the Act dated 31.03.2021 was also invalid.

5. Facts in brief are that the assessee filed return of income on 30.11.2013 declaring loss of Rs. 104,74,85,143/- and the assessment u/s 143(3) was framed on 13.11.2017 assessing total loss at Rs. 22,49,89,667/- thereafter the assessment record was called for by the PCIT and he observed that while framing the assessment that AO has not examined the issue as mentioned in Para 2(i) to (v) and accordingly issued notice u/s 263 of the Act dated 19.1.2021 which was replied by the assessee vide written submissions dated 27.03.2021 explaining each and every point and submitting that the order passed by the AO is not erroneous and prejudice to the interest of the revenue. However the ld. PCIT after taking into consideration the reply of the assessee revised the assessment vide order dated 13.11.2017 passed u/s 263 of the Act directing the AO to frame and pass the fresh assessment order after taking into account the issues as mentioned in para 2(i) to (v) after affording a reasonable opportunity of hearing to the assessee.

6. In the set aside proceedings, the AO accepted the contentions of the assessee in respect of the issues proposed in para 2(ii) to (iv) and did not make any addition and only two issues were added namely i) service tax written off Rs. 1,82,00,000/- and provisions of warranties Rs. 9,14,900/-. Therefore these are only issues which are under challenge before us in order to test the validity of revisionary jurisdiction of the ld. PCIT.

7. The Ld. A.R vehemently submitted before us that the revisionary jurisdiction u/s 263 of the Act was invalidly exercised by the AO to set aside the assessment which was invalidly framed in accordance with the provisions of Act after taking into account the reply and submissions of the assessee along with evidences filed and therefore the order passed by the AO was neither erroneous nor prejudicial to the interest of the revenue. So far as the issue mentioned in para 2 (i) is concerned which relates to service tax written off amounting to Rs. 1,82,00,000/-, the Ld. A.R submitted that the said write off is allowable deduction and there can be no question of the findings of the AO being replaced by the view of the Ld. PCIT as view taken by the AO is a plausible view on the subject in the light of the various decisions on the subject. The Ld. A.R submitted that the AO vide notice dated 30.06.2016 issued u/s 142(1) of the Act has specifically called for the details of miscellaneous expenses includes service tax amounting to Rs. 1,82,00,000/- and the assessee has filed reply to the said notice vide written submissions dated 22.08.2016 furnishing all the details including that the service tax vide para 15 with details of miscellaneous expenses available at page no. 234 of the PB. The Ld. A.R therefore submitted that the issue has been examined by the AO and a plausible view has been taken. Similarly in respect of second issue as raised in show cause notice para 2(v) which relates to disallowance provisions for warranties while computing book profit for the purpose of section 115JB of the Act amounting to Rs. 9,14,90,000/-, it was submitted that the said issue was also examined by the AO after calling for specific details vide notice dated 30.03.2016 issued u/s 142(1) of the Act in para no. 6 and the assessee replied with the said query of the AO vide submissions dated 22.08.2016 vide para no. 7 explaining as to how the said claim is allowable besides submitting that assessee has been consistently following said practice and there is no loss of revenue to the exchequer. The Ld. A.R therefore submitted that on both the issues, the AO has taken plausible and possible view which is the correct view and the Ld. PCIT by invoking jurisdiction u/s 263 of the Act cannot substitute his own view. The Ld. A.R submitted that it is not the case of the Ld. PCIT that these issues were not examined by AO during the assessment proceedings. The Ld. A.R therefore submitted that exercise of jurisdiction

by ld. PCIT is invalid and may be quashed. In defense of arguments, the Ld. A.R relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. in [1993]203 ITR 108 (Bom). The Ld. A.R also submitted that where the PCIT has exercised the jurisdiction u/s 263 of the Act and stated that the order passed by the AO is erroneous and prejudicial to the interest of the revenue then the PCIT ought to have recorded a categorical finding and should record reasons as to how assessment order is erroneous whereas the PCIT has simply set aside the assessment that too without recording any findings to this effect and restored the matter to the file of AO to frame the assessment de novo on this issue. The Ld. A.R therefore prayed that in view of the above legal position the exercise of revisionary jurisdiction by the ld. PCIT may kindly be quashed.

8. The Ld. D.R on the other hand relied on the order of PCIT heavily. The ld. CIT(DR) submitted that the fact that the AO in the set aside proceedings also found that these two issues need to be added to the income of the assessee and consequently added to the income of the assessee. The ld CIT(DR) vehemently pleaded that there is no appeal available to the revenue against the order of the AO and only the exercise of revisionary jurisdiction is one of the remedy provided under the Act to correct the erroneous assessment order. Therefore the ld DR prayed that the appeal of the assessee may be dismissed as devoid of any merit.

9. We have heard the rival contentions and perused the material on record as placed before us. We find that the revisionary jurisdiction was exercised in respect of five items/issues as mentioned in the show notice issued u/s 263 of the Act dated 19.03.2021 however in the set aside proceedings, the AO accepted the reply of the assessee on three items/issues whereas only two items/issues were added to the income of the assessee as mentioned in para 2(i) and 2(v) of the revisionary order . We note that the first issue which relates to service tax written off by the assessee of Rs. 1,82,00,000/- and second issue pertains to the provisions for warranty of Rs. 9,14,90,000/-. According ld. PCIT, the service tax written off is not an allowable item and to that extent the order passed by the AO is erroneous and prejudicial to the

interest of the revenue as per Section 36(2) of the Act and similarly the provisions for warranty which were debited in the profit and loss account which were held to be unascertained liability by DRP and accordingly the order passed by the AO was erroneous and prejudicial as an item which is required to be added, while computing books profit u/s 115JB of the Act, has not been done by the AO. We note that during the assessment proceedings, the AO has specifically called for information after issuing notice u/s 142(1) of the Act dated 30.06.2016 and assessee specifically replied the issues raised vide written submissions dated 22.08.2016 and offered its explanation as to why these items did not warrant disallowance or addition which was accepted by the AO. In our opinion, the AO has taken a plausible view which also appears to be correct and therefore the Id. PCIT cannot invoke jurisdiction u/s 263 of the Act to substitute his view for that of the AO. The case of the assessee finds support from the decision of Hon'ble Bombay High Court in the case Gabreal India Ltd. (supra) wherein the Hon'ble High Court has held as under:

*14. We, therefore, hold that in order to exercise power under sub-section (1) of [section 263](#) of the Act there must be material before the Commissioner to consider that the order passed by the Income-tax Officer was erroneous in so far as it is prejudicial to the interests of the Revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the Income-tax Officer without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the Revenue. An order can be said to be prejudicial to the interests of the Revenue if it is not in accordance with the law in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision.....*

*In our opinion, any other view in the matter will amount to giving unbridled and arbitrary power to the revising authority to initiate proceedings for revision in every case and start re-examination and fresh enquiries in matters which have already been concluded under the law.”*

9.1. Similarly where the Id. PCIT exercises revisionary jurisdiction and revises the assessment order passed by the AO then it is incumbent upon the PCIT to record a categorical finding as to how the assessment order passed by the AO is erroneous.. But in the present case the Id. PCIT has simply exercised jurisdiction by giving directions to the AO without pointing out as to how the view taken by the AO was wrong thereby rendering the assessment passed him his as erroneous and prejudicial to the interest of the revenue. The case of assessee finds support from the decision of Delhi High Court in the case of D. G. Housing vs. ITO [2012] 343 ITR 329(Del) wherein the Hon'ble High Court has held that it is incumbent upon the PCIT to record an objective findings as to how the issues raised in the revisionary proceedings has rendered the assessment as erroneous.

9.2. In view of the above facts and legal position, we are of the considered opinion that the revisionary jurisdiction has been invalidly invoked and consequently we are inclined to quash the revisionary jurisdiction exercised by the PCIT.

10. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 22<sup>nd</sup> April, 2024

Sd/-

Sd/-

(SonjoySarma /संजय शर्मा)  
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)  
Accountant Member/लेखा सदस्य

Dated: 22<sup>nd</sup> April, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Linde India Ltd. (formerly BOC India Limited), OXYGEN HOUSE, P-43, Taratala Road, Kolkata-700088
2. Respondent – PCIT-2, Kolkata
3. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata