CIT couldn't exercise his revisionary power where AO adopted one of possible views while granting relief to assessee

Summary – The High Court of Allahabad in a recent case of Rashid Exports Industries., (the Assessee) held that where in respect of section 80HHC deduction, Assessing Officer had adopted a view which was permissible in law, Commissioner could not exercise its revisionary power even if there was loss of revenue

Facts

- The assessee was a manufacturer and exporter. It filed its return showing *nil* income claiming deduction under sections 80HHC and 80-IB. The return was processed under section 143(1).
- The Assessing Authority allowed the said deduction after due discussion and enquiry on the basis of Balance Sheet and Profit and Loss account filed by assessee during the assessment proceeding. The Assessing Authority granted deduction up to a maximum of 100 per cent of amount of profit and gain.
- The Commissioner, did not agreed with the assessment order and took view that for purpose of calculation of deduction under section 80HHC, the Assessing Officer adopted same figure of profit as adopted for purpose of section 80-IB and both the deductions were allowed without considering the provisions of section 80I-A(9) and, consequently, the Commissioner held that approach of Assessing Officer was incorrect, the deduction given was prejudicial to interest of revenue, accordingly, he cancelled the assessment order and redirect Assessing Officer to make a fresh assessment by invoking provisions of section 263.
- On second appeal, the Tribunal sets aside the order passed by the Commissioner under section 263.
- On revenue's appeal:

Held

- The assessment order can be revised under section 263 if the assessment order is based on incorrect assumption of fact or incorrect application of law or where the order was passed without application of mind. If any of these conditions exists, the Commissioner is still required to be satisfied that the order is not only erroneous but is prejudicial to the interests of revenue. Both these conditions are required to exist before exercising the powers under section 263. The Supreme Court held that even if the order is erroneous but is not prejudicial to the interests of revenue in which case recourse to section 263(1) could not be taken. Thus, even if the order is erroneous, section 263 cannot be invoked unless it is found that the order is also prejudicial to the interest of the revenue. The Supreme Court further held that the phrase "prejudicial to the interests of revenue" has to be read in conjunction with erroneous order passed by the Assessing Officer and,

thus, every loss of revenue as a consequence of an erroneous order of the Assessing Officer could not be treated as prejudicial to the interest of revenue. The Supreme Court further held that where two views are possible and the Income Tax Officer has taken one view the same cannot be treated as an erroneous order which is prejudicial to the interest of the revenue merely because the Commissioner does not agree with the order unless the view taken by the Income Tax Officer was not sustainable in law.

- The Assessing Officer has discussed in detail the deductions sought to be claimed by the assessee under sections 80HHC and 80-IB and, after considering the provisions, computed the income after granting deductions as per section 80-IA(9) on the amount of profits and gains up to the extent of 100 per cent of the amount of profits and gains. The assessment order indicates that deductions calculated was more than 100 per cent of the profits and gains but the Assessing Officer restricted the deductions only to the extent of 100 per cent of the amount of profits and gains.
- The object of amending section 80-IA by the Finance (No.2) Act, 1998, as is evident from the memorandum explaining the provisions in the Finance (No.2) Bill, 1998 ([1998] 231 ITR (St.) 252), is that it was noticed that certain assessees were claiming more than 100 per cent deduction on the profits and gains of the same undertaking, when they were entitled to deductions under more than one section under heading C of Chapter VI-A. With a view to prevent the taxpayer taking undue advantage of the existing provisions of the Act, section 80-IA was amended by the Finance (No.2) Act, 1998, so that the deductions allowed under section 80-IA and various sections under heading C of Chapter VI-A are restricted to the profits of the business of the undertaking/enterprise.
- It is not a case where the assessment order is based on incorrect assumption of fact. It is also find that it is not a case where the Assessing officer has not applied its mind to the provision of section 80-IB (13) read with section 80-IA(9). The Assessing Officer after considering the matter in detail has passed an assessment order by applying its mind. The Assessing officer had allowed the deduction under sections 80HHC and 80-IB to the extent of the amount of profits and gains as contemplated under section 80-IA(9). The question as to whether the deduction under section 80HHC was to be computed after reducing the deduction under section 80-IB from the profits and gains is a legal consideration. The Assessing Officer allowed the deduction in terms of section 80-IA(9) and, therefore, it cannot be said that the Assessing Officer had not applied its mind and had failed to make an enquiry.
- The contention that the order of the Assessing Officer was erroneous as there was incorrect application of law, namely, that the deduction under section 80HHC was computed after reducing the amount of deduction under section 80-IB from the profits and gains is a legal consideration and does not mean that there has been an incorrect application of law. The mere absence of the discussion of the provision of section 80-IB (13) read with section 80-IA(9) would not mean that the Assessing Officer had not applied its mind to these provisions or that the assessment order has been passed on incorrect application of law. From a perusal of the assessment order it is clear that the deduction has not exceeded beyond 100 per cent, as contemplated under section 80-IA(9).

Consequently, even if section 80-IA(9) has not been mentioned in the impugned order, nonetheless, the impact of this section has been given effect to in the assessment order.

- The Assessing Officer granted deduction under sections 80HHC and 80-IB by taking the same figure of profits. On the other hand, the Department's case is that the deduction under section 80HHC was required to be computed after reducing the amount of deduction under section 80-IB from profits and gains. On this score, there are a divergence of views taken by different High Courts. In the case of *Associated Capsules (P.) Ltd.* v. *Dy. CIT* [2011] 332 ITR 42/197 Taxman 84/9 taxmann.com 63 (Bom.) and *CIT* v. *Millipore India (P.) Ltd.* [2012] 341 ITR 319/207 Taxman 81 (Mag.)/20 taxmann.com 181 (Kar.), the Courts have taken the view that the same figures of profit is required to be taken for calculating the deductions under sections 80HHC and 80-IB.
- On the other hand, in the decision of *Liberty India* v. *CIT* [2009] 317 ITR 218/183 Taxman 349 (SC)*Great Eastern Exports* v. *CIT* [2011] 332 ITR 14/196 Taxman 145 (Delhi) and *Broadway Overseas Ltd.* v. *CIT* [2014] 223 Taxman 218 (Mag.)/41 taxmann.com 75 (Punj & Har.) the Courts have held that the deduction under section 80HHC is required to be computed after reducing the amount of deductions under section 80-IB from the profits and gains.
- From this, it is apparently clear that there are two views on the subject in question. The Supreme Court in the case of *Malabar Industrial Co. Ltd.* v. *CIT* [2000] 243 ITR 83/109 Taxman 66 has clearly held that where two views are possible and Income Tax Officer has taken a view with which the Commissioner does not agree it does not mean nor it can be treated that the order passed by the Assessing Officer was an erroneous order prejudicial to the interest of the revenue. Further, it was found that at the time when the assessment order was made there was no decision either by the jurisdictional High Court or by any other High Court on the subject.
- In the light of the aforesaid, there was no material to indicate that the Assessing Officer had not applied its mind to the provisions of section 80-IB(13) and section 80-IA(9) nor the Assessing Officer had passed the order without application of mind or the assessment order was based on incorrect application of law. The assessment order, on the other hand, was passed under section 143(3) by the Assessing Officer passed asset on applying its mind and after due discussion and enquiry.
- From the aforesaid discussion, it is apparent that the expression "prejudicial to the interests of revenue" appearing in section 263 has to be read in conjunction with "erroneous" and that every loss of revenue as a consequence of the assessment order could not be treated as prejudicial to the interest of the revenue. Where the Assessing Officer has adopted a view, which is permissible in law or where two views are possible and the Income Tax Officer has taken one view, the Commissioner of Income Tax could not exercise its power under section 263 to differ from the view of the Assessing Officer even if there was a loss of revenue. There is no doubt that the provision cannot be invoked on each and every type of error committed by the Assessing Officer. It is only when an order is erroneous then section 263 could be invoked.

- The Tribunal was justified in setting aside the order of the Commissioner of Income Tax passed under section 263 of the Act. The appeal fails and is dismissed. The question of law as modified above is answered in favour of the assessee and against the Department. The appeal is dismissed.