आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, "B", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव , लेखा सदस्य

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No. 438/CHD/2022**

निर्धारण वर्ष / Assessment Year : 2017-18

Virgo Aluminum Ltd., Village – Rampur, Jatta Nahan Road, Tehsil-Kalamb, Dist. Sirmour H.P.	बनाम	**The PCIT, Circle – Panchkula**
स्थायी लेखा सं./PAN NO: AABCA8062A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Manoj Kumar, CA

राजस्व की ओर से/ Revenue by : Sh. Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 17.10.2022

उदघोषणा की तारीख/Date of Pronouncement : 07.12.2022

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 21.03.2022 of the Pr. Commissioner of Income Tax, Panchkula [hereinafter referred to as 'PCIT'] agitating against the exercise of revision jurisdiction by him u/s 263of the Income Tax Act(in short 'the Act').

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the Id. Pr. CIT is wrong in passing order u/s 263 to set-aside the claim of bad debt by ignoring the fact that said claim was allowed by the Id. A.O. after making enquiries or verification as required by law and also covered by the Hon'ble SC judgment in the case of TRF Ltd. vs CIT, Ranchi, Civil appeal no. 5293 of 2003, so assessment order passed by Id. A.O. is neither erroneous nor prejudicial to the interest of revenue.*

2. *That the Id. Pr. CIT is wrong in passing order u/s 263 to set-aside the claim of deduction u/s 80IC by ignoring the fact that said deduction was allowed by the Id. A.O. after making enquiries or verification as required by law and also covered by the Hon'ble SC judgment in the case of CIT vs CM. Knitting Industries (P) Ltd.: 376 ITR 456, so assessment order passed by Id. A.O. is neither erroneous nor prejudicial to the interest of revenue.*

3. The brief facts of the case are that assessee is a Limited Company and has been engaged in the manufacturing of aluminum rolled products, such as aluminum sheets. The assessee had e-filed its return of income on 26.10.2017, declaring total income of Rs. 11,21,66,380/-. Subsequently, the return of income was revised by the assessee on 07.09.2018, declaring income of

Rs.7,97,20,580/- after claiming deduction u/s 80-IC amounting to Rs.3,24,45,802/-. The case was selected for scrutiny under CASS for the following reasons:-

"Large deductions claimed u/s 80IA/80IAB/80IAC/80IB/80IC/80IBA/ 80ID/80IE/10A/10AA in comparison to preceding year".

4. The scrutiny assessment u/s 143(3) of the IT. Act, 1961 was completed on 27.12.2019 at an income of Rs.7,99,81,360/-by making an addition of Rs.2,60,781/- on account of disallowance of VAT receivable written off.

5. Thereafter, the Ld. PCIT on scrutinizing the assessment records, observed:

"A perusal of assessment records revealed that the assessing officer had accepted the assessee's explanation regarding Large deductions claimed u/s80IA/80IAB/80IAC/80IB/80IC/80IBA/80ID/80IE/10A/10AA, in comparison to preceding year, even though the assessee had not furnished the requisite audit report in form 10CCB either at the time of filing of original ITR on 26.10.2017, or at the time of filing of revised ITR on 07.09.2018. It was further noted that the assessee had debited an amount of Rs. 1,66,70,246/- on account of amount written off in the case of one M/s Metalmine Enterprises Pvt. Ltd. The assessing officer had accepted the assessee's claim of deduction u/s 80IC without the audit report having been filed in time, and the claim of write off of Rs. 1,66,70,246/- without conducting any enquires whatsoever. The order passed u/s 143(3) of the Income Tax Act, 1961, therefore, appeared to be erroneous, and thus prejudicial to the interest to the revenue."

6. Thereafter, the Ld. PCIT show caused the assessee as to why the assessment order dated 27.12.2019 for the assessment year 2017-18 under section 143(3) of the Act should not be cancelled by invoking the provisions of section 263 of the Act. The Ld. PCIT in the impugned order has discussed the issues point wise and has also reproduced the reply to of the assessee to each of the issue, which is discussed in brief hereunder:

(i) The Ld. PCIT in respect of the issue of bad debts written off had observed that even after squaring off certain payments received from M/s Metalmine Enterprises against debit balance Rs. 1,67,99,67 in the year 2015, certain payments were made by the assessee to said party raising the debit balance to Rs. 1,66,70,246/- as on 31.03.2016 and then suddenly the said debit entry has been written off on 31.03.2017, for no apparent rhyme or reason.

In reply, the assessee submitted as under:

> *"In respect to the observation of your goodself that 3 payments were made by the assessee to the said party when the account of the party has been squared-off, it is submitted that it is not the case that after squaring-off the outstanding balance on 10.12.2015, the assessee had made 3 payments to the same party for creating debit balance of Rs. 1,66,70,246/- which is subsequently written-off in the next financial year. These three entries on dated 20.12.2015, 20.12.2015 and 14.01.2016 are debit entries due to reversal of above stated unrealized cheques and not due to payments made to party. Actually, these 3*

entries are reversal entries. It is not a case, where payments were made to the party and which were subsequently written-off being irrecoverable. Here is a case, where debit balance became outstanding due to reversal of cheques which were earlier received by the assessee company against sales. Also, the cheque numbers in the receipt entry as well as payment entry are same with each other, thus evidencing our claim that these 3 entries are not fresh payments, but reversal of entries.

In respect to the observation of our goodself that amount of Rs. 1,676,70,246/-has been written-off without any reason, it is submitted that assessee company had written-off the outstanding debit balance amounting to Rs. 1,66,70,246/- on 31.03.2017 as the assessee company could not recover the outstanding balance from the said party. The outstanding amount relates to the sale made to the party in the earlier assessment year 2014-15 and said amount was not received by the assessee company till the relevant assessment year. Thus, considering the outstanding amount of Rs. 1,66,70,246/- to be irrecoverable, assessee company had written-off the amount in thn books of account. Since the outstanding balance which has been written-off reflates to the sales made by the assessee during the preceding assessment years which were taken into account in computing the income of those preceding years by including in turnover of those preceding years, so the amount n ritten-off is in compliance with the provisions of section 36.

(ii) The Ld. PCIT noted that the assessee had not responded to the queries raised by the Assessing Officer on the issue of bad debts written off and further that the Assessing Officer had also remained aloof to the failure of the assessee to explain the given entry of write off, and did not choose to conduct any worthwhile further enquiry.

The Assessee, in this respect, replied as under:

> *"In respect to the above observation of your goodself, it is submitted that assessee had duly submitted the detailed reply on the income tax portal on dated 25.12.2019 to the show cause notice issued by the Id. Assessing Officer dated 20.12.2019. The copy of said reply filed is attached herewith as per Annexure-1. From the said reply, it is clear that assessee had filed detailed reply along with documentary evidence to substantiate the claim of amount written-off u/s 36. The assessee had also filed sale register of preceding years along with the Profit and Loss account wherein sale entries pertaining to Metalmine Enterprises Pvt. Ltd. were duly highlighted. Further, it was also stated that as per Sec 41(4), if the bad debt amount is subsequently recovered then the amount will be chargeable to income tax as the income of the previous year in which it is recovered. During the course of assessment proceedings, the Id. Assessing Officer duly examined the documents and material produced by the assessee along with the documentary evidence (ledger accounts, Debtors List, Profit & Loss account, sale register etc.) and on being satisfied about the genuineness of the transaction, accepted the claim of amount written-off of amount of Rs.1,66,70,246/-. Thus, it is the not case that Id. A. O had not conducted enquiry in respect to the written-off amount of Rs.1,66,70,246/-.Since the Id. A.O. duly ascertained the validity of the assessee's claim of write-off from the documentary evidences like ledger accounts, Profit and Loss account, sales register of preceding years, debtors list and by considering the applicable legal provisions. Hence, the assessment order is not erroneous and prejudicial to the interest of the revenue."*

(iii) The Ld. PCIT noted that there was a regular give and take between the assessee and M/s Metalmine Enterprises, and that there was a relationship of deep trust, based on which the assessee was regularly transferring such huge amounts to the given concern

on a single day. That there was thus nothing on record to establish that the given amount qualified for deduction u/s 36(1)(vii) r.w.s. 36(2) of the Act.

In reply to this point, the assessee submitted as under:

> *"In respect to the above observation of your goodself, it is submitted that the assessee has not transferred any huge amounts to the given concern on a single day. The assessee has not made any fresh payment of Rs.1,66,70,246/- to M/s Metalmine during the AY 2017-18. These amounts were brought forward balances of preceding years. It is not a case where payments are written-off, but it is a case where old outstanding balance on account of sales are written-off. So, there is no error in the Assessment order passed by the Assessing Officer which is prejudicial to the interest of the revenue.*
>
> *In regard to the observation of your goodself that 'There is thus nothing on record to establish that the given amount qualified for deduction u/s 36(1)(vii) r.w.s. 36(2) of the Act', it is submitted that during the course of assessment proceedings, the assessee company had duly uploaded detailed reply (supra) on the income tax portal on dated 25.12.2019regardirg the eligibility of claim of bad debts(Annexure-l), so this is not the case that were is nothing on record to establish that given amount qualified for deduction u/s 36(1). Further, the amount written-off of Rs. 1,66,70,246/- was duly qualified for deduction u/s 36(1)(vii) r.w.s. 36(2) of the Act. The assessee company had made the sale to the said party during the AY 2013-14 and AY 2014-15, which were duly credited in the sale account of profit & loss. Since the assessee did not recover the amount of sales amount due, so the assesse company did not make further sale transactions to the said party. Further, as the said amount was not recovered from the party, so the assessee company had written-off the amount receivable from the party in the books of account and claimed as bad debts.*
>
> *As per section 36(1)(vii) r.w.s. 36(2) of the act, there are two conditions*
> *which needs to be satisfied to claim deduction of bad debts which are as under:-*

i) The bad debt should be written-off as irrecoverable in the books of account of the assesse for the previous year in which deduction is claimed.
ii) The debt should have been taken into account in computing the income of the previous year in which deduction is claimed or any earlier previous year

So, in the case of the assessee, sales were made to the Metalmine Enterprises Pvt. Ltd. in the preceding years which were taken into account in computing the income of those preceding years by including in turnover of those preceding years. Now, when the assessee company did not get any hope to recover the amount, so due to this reason, the recoverable amount is written-off in the books of account of the assessee company during the relevant year. Since the assessee company duly included the sale to the said party in the profit and loss account in the preceding years and recoverable amount was written off during the relevant year, thus satisfying the twin conditions of section 36(1)(vii) and so, it is an allowable expenditure u/s 36(1)(vii) of the Income Tax Act,1961.

4. The Ld. PCIT further show caused the assessee to the effect that the said write off of Rs. 1,66,70,246/-has not even been reflected under the head "Bad debts" in Col 39 of the ITR-6. That the assessee had camouflaged the entry of this write-off to hood wink the authorities. That the AO failed to conduct the requisite enquiries and cross verification in respect of the given issue.

Assessee replied:

In regard to the above observation of your goodself, it is submitted that assessee company mistakenly omitted to fill the amount under bad debt column of ITR form, however, even otherwise, assessee company has given the due disclosure of the amount written-off of Rs. 1,66,70,246/- in the audited profit & loss account, so it is not the case that assessee

company has concealed/hide any information or material fact from the department. Due to disclosure of amount written-off by the assessee company, the then Id. assessing officer has raised the query to Assessee Company to substantiate the claim of amount written-off and the assessee company had duly submitted all the information along with documentary evidences (i.e. ledger accounts of parties, sale register of the preceding years, list of debtors etc.). Thus, all the facts and materials were on record with the Id. Assessing Officer. Further, regarding the allowability of claim of bad debt u/s 36, it is submitted that there are 2 conditions to be satisfied as discussed (supra) in Para No. 3 of reply, which was fulfilled by the assessee and so, claim of assessee was allowed by Id. Assessing officer. Further, ***Hon'ble Supreme Court*** *in the case of* ***T.R.F. Limited vs CIT, Ranchi, Civil Appeal No. 5293 of 2003,*** *wherein* ***it was held that it is not necessary for the assessee to establish that the debt,*** *in fact, has become irrecoverable. It is enough if the bad debt is written-off as irrecoverable in the accounts of the assessee. Copy of judgment is enclosed as per* ***Annexure-2.*** *So, considering the above facts and circumstances of the case, it is requested to your goodself to kindly accept the claim of Bad debts, as the amounts has actually been written-off in the books of accounts and amount has been included in computing the income of the preceding years.*

The Ld. PCIT, however did not get satisfied with the above replies of the assessee in respect of the queries raised by the Ld. PCIT in the show cause notice on the issue of bad debts written off. He accordingly rejected the contentions of the assessee, observing as under:

" 5. The submissions of the assessee have been carefully considered with reference to the facts of the case from the relevant records, and are discussed in the subsequent paragraphs.

5.1 It was noted that the assessee had debited an amount of Rs. 1,66,70,246/- on account of amount written off in the case of one M/s Metalmine Enterprises Pvt. Ltd. account. It was pointed out

in the notice u/s 263(1) that the assessee had not reflected the amount of Rs. 1,66,70,246/- written off in Col no. 39 of ITR-6 under the head "Bad debts". In response, the assessee has submitted that it had "*mistakenly omitted to fill the amount under bad debt column of ITR form, however, even otherwise, assessee company has given the due disclosure of the amount written-off of Rs. 1,66,70,246/- in the audited profit & loss account, so it is not the case that assessee company has concealed/hide any information or material fact from the department.....*" The said reply of the assessee, however, is devoid of any strength, as the amount of bad debts written off was large, and, therefore, its omission from the specified column of bad debts in the ITR form was obviously with a view to escape attention and consequent selection for scrutiny assessment under CASS. The assessee's argument that the amount was duly disclosed in the audited profit and loss account, in no way, condones its failure to make a true, and complete disclosure of the given amount in the IRT-6 in the column exclusively specified for this purpose. ITR-6 is a primary document which has the specific Column in which the assessee was required to make true and complete disclosure, so as to allow the Income Tax Department to make preliminary examination of various claims made by the assessee in its ITR and to identify the high risk and suspect transactions as per the risk assessment parameters laid down by the Department. Thus the assessee's failure in the regard is prima-facie with a view to game the system.

5.2 The assessee has further submitted that the 2 conditions regarding the allowability of claim to bad debts u/s 36(i)(vii) are duly satisfied by the assessee. The assessee has placed reliance on the order of Hon'ble Sup'erne Court in the case of TRF Limited vs CIT, Ranchi, Civil Appeal No. 5293 of 200 i, and has stated that it is not necessary for the assessee to establish that the bad debt, in fact, had become irrecoverable. This submission of the assessee also does not carry any weight, as the assessing officer, as an investigator, was under an obligation to examine and investigate the veracity of the assessee's claim of write off of Rs. 1,66,70,246/-. The assessing officer is not expected to accept any claim including claim of write off, made by the assessee, mutely and passively with his eyes closed. Such a passivity on the part of

the assessing officers would give rise to Jungle Raj, leaving the assessees free to book any arbitrary and unsubstantiated claims in their books of accounts. It is amply evident from the assessee's record that the assessing officer had not conducted any independent enquiry whatsoever to ascertain the genuineness of the assessee's claim of write off of "bad debts". It is noted that the assessing officer had raised a query in respect of the said write off in response to which the assessee had submitted as follows:-

> *"In regard to amount written off of Rs. 1,66,70,246/- for the party Metalmine Enterprises Pvt Ltd, it is submitted that assessee company made the sale in preceding years. But could not recover the amount from the parties and same was written off in the books of accounts and therefore, allowable as bad debts "*

5.3 In response to the said submission of the assessee, the AO had responded as follows through another show cause notice dated 20.12.2019:-

> "The reply furnished by you has been duly considered but not found satisfactorily because of the following reasons:-
>
> *.As regards amount written off of Rs. 1,66,70,246/- for the party Metalmine Enterprises Pvt Ltd, you have submitted that assessee company made the sale in preceding years. But could not recover the amount from the parties and same was written off in the books of accounts and therefore, allowable as bad debts. This plea is not acceptable because from the perusal of the ledger of the said company furnished by you, it is noticed that the said company made transaction during the F.Y. 2013-14, 2014-15, 2015-16 regularly then how it is possible the said company certainly do not made any transactions during the F.Y. 2016-17. Further, you have shown the amount of Rs.1,66,70,246/- as written off in the books of account without furnishing any reasonable reasons alongwith documentary evidence."*

5.4 The assessee has now submitted that it had responded to the said notice of the AO, through its reply uploaded on 25.12.2019. It is noted that this reply is not available on the assessment record. Without prejudice to this, however, a perusal

of the said reply shows that the assessee had not given any specific information to establish the genuineness of its claim of the given write off. It simply states that the sales were made to the Metalmine Enterprises Pvt. Ltd. in the preceding years, which were taken into account in computing the income of those preceding years, and that the give transactions were duly recorded in the sales register and in the list of debtors in the preceding years. The assessee had further submitted that Metalmine Enterprises Pvt. Ltd. had not made the payments of sales amounts due, so the assessee company had not made further sales transactions with the said party. Further, as the said amount was not recovered from the party, so the assessee company had written off the amount in its books of account

Thus the given submission of the assessee in its written communication claimed to have been uploaded on 25.12.2019 during the course of assessment proceedings, was absolutely generic. No specific reasons were divulged by the assessee for the non-recovery of the given amount from Metalmine Enterprises Pvt Ltd. The AO thus accepted the given bald claim of the assessee at it face value without batting an eyelid.

5.5 It is noted that the AO did not conduct even the basic inquiries to ascertain the identity of the said Metalmine Enterprises, its PAN, its address, its bank account, its nature of business and its ITR status. No corresponding verification or enquiries were made by the AO from the said Metalmine Enterprises Pvt Ltd in order to ascertain that the claim of bad debts made by the assessee was correct. The AO made further omissions in dealing with the given issue as follows:-

(a) Copies of accounts of M/s Metalmine Enterprises Pvt. Ltd. for the F.Y. 20014-15, 2015-16 & 2016-17 reveal the following transactions:-

Ledger Account with M/s Metalmine Enterprises Pvt Ltd (01.04.2014 to 31.03.2015):

Date	Particulars	Veh type No.	Debit	Credit.

01.04.2019	Opening balance	-	Rs. 79,66,776/-	-
26.06.2014	OBC 03654011000190	CC Receipts / RTGS	-	Rs. 23,00,000/-
01.11.2014	OBC 03654011000190	CC Receipts / Ch No. 06325	-	Rs. 56,66,776/-
12.03.2015	OBC 00384015002793	CC Payment / no.	Ch Rs. 56,66,776/-	-
	Total		Rs. 1,36,33,552/-	Rs. 79,66,776/-
	Closing balance			Rs. 56,66,776/-
			Rs. 1,36,33,552	Rs. 1,36,33,752/-

Ledger Account with M/s Metalmine Enterprises Pvt Ltd (01.04.2015 to 31.03.2016):

Date	Particulars	Vch type/No.	Debit	Credit
01.04.2015	Opening balance		Rs.56,66,776/-	
14.10.2015	Metalmine Enterprises P Ltd,. Sadar	Journal/Trf	Rs. 1,11,32,895/-	
10.11.2015	OBC 03654011000190	CCReceipt/ch no. 002315		Rs.50,00,000/-
25.11.2015	Metalmine Enterprises P Ltd-Delhi	Joumal/Trfdelhi		Rs. 1,29,425/-
02.12.2015	OBC 03654011000190	CC Receipt/ch no. 002316		Rs.60,03,470/-

10.12.2015	OBC 03654011000190	CC Receipt/ch no.005261		Rs.56,66,776/-
20.12.2015	OBC 03654011000190	CC Payment/ch no.002315	Rs.50,00,000/-	
	OBC 03654011000190	CC Payment/ch no. 002316	Rs.60,03,470/-	
14.01.2016	OBC 03654011000190	CC Payment/ch.no. 005261	Rs.56,66,776/-	
	Total		Rs.3,34,69,917/-	Rs.1,67,99,671/-
	Closing Balance			Rs.1,66,70,246/-
			Rs.3,34,69,917/-	Rs.3,34,69,917/-

Ledger Account with M/s Metalmine Enterprises Pvt Ltd (01.04.2016 to 31.03.2017):

Date	Particulars	Vch type/No.	Debit	Credit
01.04.2016	Opening balance		Rs. 1,66,70,246/-	
31.03.2017	Amount Written Off	Journal/Amount written off		Rs. 1,66,70,246/-
			Rs. 1,66, .'0,246/-	Rs. 1,66,70,246/-

(b) It is obvious from the chronology of the transactions tabulated above that there was a live relationship between the assessee and M/s Metalmine Enterprises, as the assessee has shown a transfer entry of Rs. 1,11,32,895/- even on 14.10.2015 to the assessee despite the fact that the assessee now claims that the cheque of Rs. 56,66,776/- issued by Metalmine to the assessee was dishonored on 12.03.2015. It is because of this debit entry of Rs. 1,11,32,895/- that the assessee raised the so-called outstanding debt of Metalmine Enterprises from Rs. 56,66,776/- to Rs. 1,66,70,246/-. Still further, the assessee has also credited an amount of Rs. 1,29,425/- in the account of Metalmine on 25.11.2015. The AO, however, did not take any note of these transactions. Even during the present submissions, the assessee has not been able to explain the nature of this dr. entry of Rs.

1,11,32,895/- and credit entry of Rs. 1,29,425/- even though this issue was specifically raised in the notice u/s 263(1) supra

(d) The AO completely failed to raise any query if the assessee had any evidence to establish that it had made diligent efforts to recover the outstanding payments from Metalmine Enterprises Pvt Ltd, or had taken any legal recourse before writing off such a huge amount suddenly and so quickly. The assessee has not been able to submit the said details even during the course of proceedings u/s 263. Nor has the assessee been able to furnish any evidence to show if any efforts were made by the assessee to recover the said outstanding amount from Metalmine. A noting to this effect has been duly made in the noting sheet during the course of proceedings u/s 263 of the Act.

5.6 It is clear from the discussion above that there is nothing on record to establish that any worthwhile independent enquiries were conducted by the AO in respect of the given claim of Rs. 1,66,70,246/- for deduction u/s 36(1)(vii) r.w.s. 36(2) of the Act. It was incumbent upon the AO to conduct the requisite enquiries to ascertain the genuineness of the assessee's claim of the said write off. Thus the AO prima-facie failed to conduct even the basic inquiries and cross verification in respect of the given issue, what to talk of conducting any worthwhile enquiries.

6. Hon'ble Delhi High Court in Gee Vee E iterprises vs. Additional Commissioner of Income Tax, [1975] 39ITR 375 (Delhi), has observed as under:

> "*The reason is obvious. The position and function of the Income-tax officer is very different from that of a civil court. The statements made in a pleading proved by the minimum amount of evidence may be accepted by a civil court in the absence of any rebuttal. The civil court is neutral. It simply gives decision on the basis of the pleading and evidence which comes before it. The Income-tax Officer is not only an adjudicator but also an investigator. He cannot remain passive in the face of a return which is apparently in order but calls for further inquiry. It is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an*

> *inquiry. The meaning to be given to the word "erroneous" in section 263 emerges out of this context. It is because it is incumbent on the Income-tax Officer to further investigate the facts stated in the return when circumstances would make such an inquiry prudent that the word "erroneous" in section 263 includes the failure to make such an inquiry. The order becomes erroneous because such an inquiry has not been made and not because there is anything wrong with the order if all the facts stated therein are assumed to be correct."*

Honble Delhi High Court in Income Tax Officer versus DG Housing Projects Limited(2012) 343 ITR 329 (Delhi) has observed:

> *"The Assessing Officer is both an investigator and an adjudicator. If the Assessing Officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the Assessing Officer fails to conduct the said investigation, he commits an error and the word "erroneous" includes failure to make the enquiry. In such cases, the order becomes erroneous enquiry or verification has not been made and not because a wrong order has been passed on merits."*

The Hon'ble Delhi High court in Nagesh Knitwear Pvt. Ltd. (2012) 345 ITR 135 has held as under:-

> *"The Assessing officer is both an investigator and an adjudicator, if the assessing officer as an adjudicator decides a question or aspect and makes a wrong assessment which is unsustainable in law, it can be corrected by the Commissioner in exercise of revisionary power. As an investigator, it is incumbent upon the Assessing Officer to investigate the facts required to be examined and verified to compute the taxable income. If the assessing officer fails to conduct the said investigation, he commits an error and the word "erroneous" includes failure to make the inquiry. In such cases, the order becomes erroneous because inquiry or / verification has not been made and not because a wrong order has been passed on merits."*

7. The second issue raised in the notice u/s 263(1) of the Act was regarding the allowance of deduction u/s 80IC(2)(a)(ii) of the Act, for which, the the Ld. PCIT show caused the assesse as under:

> ***"4. It is further noted that the assessee has claimed deduction u/s 80IC(2)(a)(ii) of the Act amounting to Rs.3,24,45,802/- for the first time for the year under consideration in the Revised return of income, which was filed on 07.09.2018. The requisite Audit Report in Form 10CCB was, however, filed on 11.09.2018. Thus, the audit report in Form 10CCB was neither furnished by the assessee at the time of filing of original ITR on 26.10.2017, nor at the time of filing of revised ITRon 07.09.2018 "***

Assessee's remarks:

> *"In respect to the observation of your goodself vide Para-4 of the notice, it is submitted that for the relevant assessment year, due date of filing the revised return of income was 31.03.2019. So, the revised return filed on 07.09.2018 was much earlier than the due date. Within 4 days of filing the revised ITR, the assessee company also filed audit report in Form 10CCB on 11.09.2018. So, the ITR as well as audit report, both were filed before the expiry of the due date for furnishing revised ITR. The intention of legislature is to*

file ITR and Audit report both before the due date. It does not matter whether the audit report is filed earlier than ITR or ITR is filed earlier than audit report. If both ITR and Audit import are filed before the due date, then it is a sufficient compliance to treat that both ITR and Audit Report are filed within the permissible time limit as prescribed by law.

The objective of law is to submit both ITR / Audit report on or before the due date. In the present case, it does not seem the intention of law that for claiming deduction u/s 80IC, ITR was required to be filed on 11.09.2018 (i.e. ITR & Audit report both on same date) and if ITR is filed in advance i.e. on 07.09.2018, then the assessee company is not eligible for deduction u/s 80IC.

Thus, deduction cannot be denied to the assessee on the ground that audit report was neither furnished along with original return nor at the time of revised return. Because, in the present case, ITR as well as Audit Report both are filed well in advance before the permissible time limit prescribed by law for filing of revised ITR. If both are filed within in time, then it does not matter if one of them is filed in advance vis-a-vis the other.

6. Observations of PCIT in the show cause notice:

"4.1 Since the assessee had not furnished the audit report in Form 10CCB alongwith the ITR, the claim of deduction u/s 80IC of the Act is not allowable in this case. However, the deduction of Rs.3,24,45,802/- as claimed by the assessee u/s 80IC of the act has been allowed by the AO, without paying adequate attention to the facts and relevant legal provisions. Thus the excess deduction of Rs.3,24,45,802/- has been wrongly allowed by the AO to the assessee. During the course of assessment proceedings, the assessee had placed reliance on the decision of Hon'ble Supreme Court in the case of "Commissioner of Income Tax Vs. G.M Knitting Industries (P) Ltd". The AO accepted the said contention of the assessee without examining it at length. The case law cited by the assessee pertains to the claim of additional depreciation and late submission of Form 3AA, and therefore, does not apply to the facts of the case of the assessee, in view of the specific provisions of section 80-IC(7) r.w. section 80-IA(7) of the Act."

Assessee's remarks:

"In regard to the observation of your goodself that claim of deduction u/s 80IC is not allowable to the assessee as the assessee has not submitted the audit report along with the return of income, it is submitted that filing of the audit report in Form-10CCB along with the return of income is not mandatory. Even if the audit report is filed in requisite form before finalisation of the

assessment proceedings, it would be in the compliance of the provisions of the Section 80-IC. Moreover, in the present case, the audit report has been filed within the permissible time limit as prescribed by the law.

Further, regarding the non- application of judgment of the Hon'ble Supreme Court in the case of "Commissioner of income Tax Vs G.M. Knitting Industries (P) Ltd." it is submitted that in the said case law, two issues are decided in favour of assessee which are as under.-

1. Allowability of additional depreciation if form 3AA was not filed along with the return of income but same was filed during the assessment proceedings before final order of assessment was made.

1. Allowability of deduction u/s 80-IB if the Form 10CCB has not been field along with the return of income but before the final order of assessment was made.

Since both legal issues(i.e. along with the return of income) were identical, so Hon'ble SC dismissed the appeal of Revenue by one finding and passed a consolidated order ***CIT vs G.M. Knitting Industries (P) Ltd. & others vide Civil appeal No.*** *10782 of 2013 &* ***4048 of 2014.*** *The Civil Appeal No. 4048 of 2014 (CIT*

Chennai vs M/s Aks Alloys (P) Ltd.) was tagged with the Civil Appeal No. 10782 of 2013 (CIT Maharashtra vs M/s G.M. Knitting Industries Pvt Ltd).Copy of SC judgment along with screen shot downloaded from the Hon'ble SC website is attached herewith as per ***Annexure-3 & 4*** *respectively. Further, copy of order of Hon'ble Madras High Court CIT Chennai vs M/s Aks Alloys (P Ltd is attached herewith as per Annexure-5,wherein issue was regarding the filing of audit report along with return of income for claim of deduction u/s 80IB.*

Thus, it is clear from the above that Id. Assessing officer had rightly placed the reliance on the aforesaid Hon'ble Supreme Court judgment as the judgment of Hon'ble Supreme Court is squarely apply to the facts of the case of the assessee.

- *Further, it is submitted that since the audit report was filed much before the expiry of due date of revised ITR, so at the time of the processing of the revised return, the audit report in Form 10CCB was available with the Id. A.O. and was part of the record. It is further submitted that the assessment was completed after taking into consideration this audit report.*

In view of the above facts and circumstances of the case and

respectfully following the judgment of Hon'ble Courts, the requirement of the filing of the audit report in Form 10CCB along with the return of the income is not mandatory in the strict sense of the term, but is only directory. ***Moreover, in the present case, Audit report is filed before due date of ITR*** *i.e. much before the completion of assessment. Thus, it is requested to your goodself to kindly allow the deduction to the assessee u/s 80IC.*

It is further submitted that in respect to the observation of your goodself that the Id. assessing officer has allowed the deduction u/s 80-IC to the assessee without paying adequate attention to the facts and relevant legal provisions, it is submitted that during the assessment proceedings, the assessing officer duly verified the claim of deduction u/s 80-IC as claimed by the assessee company by calling for necessary documents and information. The Id. Assessing Officer had issued questionnaire dated 25.09.2019 for the justification of the claim of deduction u/s 80IC. In response to her questionnaire dated 25.09.2019, the assessee company duly filed Audited Balance Sheet, P&L a/c, tax audit report, nature of business activities undertaken, details of bank accounts, copy of Form-10CCB which gives the complete information to substantiate the claim of deduction of assessee vide its reply dated 1^.11.2019

before the Id. Assessing officer. The Id. A.O had duly examined the documents and other supporting materials produced and filed by the assessee and only after examination of supporting documents as well as submission filed by the assessee, claim of deduction u/s 801C was al owed. Thus, it is a not a case that Id. AO had allowed the deduction u/s 80IC without verifying or paying adequate attention to the facts and relevant legal provisions, as the same were duly verified by the then Id. Assessing officer. Hence, the assessment order is neither erroneous nor prejudicial to the interest of the revenue.

Thus, keeping in view the above facts and circumstances of the case, it is requested to your goodself to kindly accept the assessment order passed by the Id. Assessing Officer, as the same was passed after making proper enquiries and verification, thus the said order is not erroneous and prejudicial to the interests of the revenue."

8. The Ld. PCIT, however did not get satisfied with the above reply of the assesse and observed as under:

" The submissions of assessee have been carefully considered with reference to the facts of the case and the relevant legal provisions. It is

noted that the assessee has claimed deduction u/s 80IC(2)(a)(ii) of the Act amounting to Rs. 3,24,45,802/- for the first time for the year under consideration in the ***Revised*** *return of income, which was filed on 07.09.2018. The requisite Audit Report in Form 10CCB was, however, filed on* ***11.09.2018****. Thus, the audit report in Form 10CCB was neither furnished by the. assessee at the time of filing of original ITR on 26.10.2017, nor at the time of filing of revised ITR on 07.09.2018. As per the provisions of section 80IC(7) r.w.s. 80IA(7)of the Act, for claiming the deduction* ***u/s 80IC of the Act, filing of audit report in Form 10CCB is mandatory along with the return of income****. Relevant sections in this regard are reproduced hereunder:*

> ***"80-1 A. (7) The deduction*** *under sub-section (1) from profits and gains derived from an undertaking* ***shall not be admiss****ible unless 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 sub-section (2) of section 288, and the assessee furnishes,* ***along with his return of income****, the report of such audit in the prescribed form82 duly signed and verified by such accountant. (Emphasis supplied)*

80-IC. (7) *The provisions contained in sub-section (5) and sub-sections (7) to (12) of section-80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section."*

9. The assessee has placed reliance on the consolidated order of the Hon'able Supreme Court in the case of CIT vs G.M. Knitting Industries (P) Ltd. & others vide Civil appeal no. 10782 of 2013 & 4048 of 2014 in the case of CIT Chennai vs M/s Aks Alloys (P) Ltd., wherein deduction u/s 80IB was inter alia held to be allowable, if Form 10CCB was filed before the assessment order.

The said contention of the assessee, however, is not found acceptable, as the said judgments pertain to an era of manual filing of returns and other documents. It is pertinent to mention that a proviso was added with effect from 01-04-2013 to Sub Rule (2) of Rule 12 of Income Tax Rules which provides that the audit report required to be furnished by an assessee as specified for the purposes of the section 80IC shall be furnished "electronically". Besides, the assessee is required to file its return of income electronically under digital signatures, as per Sub Rule (3) of Rule 12 of the Income Tax Rules. As already mentioned above, section 80IC(7) read with section 80IA(7) clearly provides that the

deduction under sub section (1) ***shall not be admissible*** *unless the assessee furnishes,* ***along with his return of income****, the audit report in the prescribed form duly signed and verified by an accountant.*

9.1 It has been held by the Hon'ble ITAT, Delhi Bench in the case of Pardeep Kumar Batra vs DCIT,CPC, New Delhi in ITA 6384/del/2019 in the case relating to AY 2017-18 through order dated 23.10.2022 that ***"……..after introduction of the electronic filing of the return of income as well as all other documents, there is no debate available that even if the audit report is filed before the assessments is made, same is acceptable and the deduction cannot be denied to the assessee. When selection of the cases for further scrutiny, processing of the return of income, claim of the refunds of the assessee are all determined based on the return filed by the assessee and when the provisions of the law and the relevant rules strictly provides that all necessary documents must be filed and approved along with the return of income or prior to that, subsequent filing of any document cannot be considered for processing of the return and intimation u/s 143 (IA) of the act. The several judgements relied upon by the***

assessee do not pertain to the era of the electronic filing of the return/documents and therefore same does not apply to the facts of the present case.

In view of the above facts, we do not find any infirmity either in the procedure or in passing of intimation u/s 143(IA) of the act as well as in denying deduction u/s 80 IB of the act to the assessee for non filing of the audit report in electronic manner in time (on or before the due date of filing of the return of income) as prescribed Under income tax rules and having the mandate of the provisions of Section 80 IB (11B) (iv). Accordingly, we dismiss all the grounds of appeal of assessee.

10. The said order has clearly been passed by the Hon'ble ITAT, New Delhi after duly considering the judgment of the Hon'able Supreme Court relied upon by the assessee supra. Given the fact that the Income Tax law and procedure have transitioned to the electronic platform in a radical manner, the assessee cannot justify its dereliction and default on the strength of the facts of the case which pertain to an altogether different time when all the processes were manual, and one could justify the time lag between

the submission of various documents at the assessee's end.

10.1 Further, it will not be out of place to mention here that with effect from the assessment year 2021-22, the provisions under the Income Tax Act for filing the audit reports for claiming any deduction u/s 80IC have been further amended, and the tax payers are now required to file the audit report ***one month prior to the due date f****or filing the return of income. If assessee's arguments that "if the audit report is file in requisite form before finalization the assessment proceedings, it would be in the compliance of the provisions of the section 80IC" that ".....the intention of legislature is to file ITR and Audit report both before the due date. It does not matter whether the audit report is filed earlier than ITR or ITR is filed earlier than audit report...." were to be accepted, it would completely undermine the sanctity of law, leaving the Income Tax department at the mercy of the assessees, with the assessees arbitrary choosing the dates of filing the requisite audit report as per their own convenience and sweet will. Therefore, the assessee's distorted interpretation of law and arguments are not found acceptable in this regard.*

10.2 It is, therefore, prima-facie evident that deduction of Rs.

3,24,45,802/- as claimed by the assessee u/s 80IC of the Act has been allowed by the AO, without paying adequate attention to the facts and relevant legal provisions. Thus the excess deduction of Rs. 3,24,45,802/- has been wrongly allowed by the AO to the assessee."

6. The Ld. PCIT, accordingly, held that the order passed by the assessing officer was prima-facie erroneous in so far as it was prejudicial to the interests of the revenue, as the order had been passed by the assessing Officer without paying attention to the relevant provisions of law and without making enquiries or verification which should have been made in respect of the issues discussed above. She accordingly, set aside the assessment order to the limited extent of the issues discussed above with the direction to the Assessing Officer to make requisite inquiries and proper verification with regard to the issues mentioned above and to make the assessment de-novo after due consideration of the facts and law in this regard.

7. Being aggrieved by the above order of the Ld. PCIT, the assesse has come in appeal before us. We have heard the rival contentions and gone through the record.

We find that the Ld. PCIT was not justified in setting aside the assessment order in this case in exercise of revision jurisdiction u/s 263 of the Act. The twin conditions required for exercise of jurisdiction u/s 263 of the Act i.e. that the order of the AO must be erroneous and prejudicial to the interest of revenue, have not been satisfied in this case.

8. So far as the issue relating to bad debts written off is concerned, the ld. Pr. CIT had raised a query as to the squaring off of the outstanding balance and thereafter making payments to M/s. Metalmine Enterprises Pvt. Ltd., to which the assessee duly explained that the aforesaid entries were not on account of payment made to the said enterprise after squaring off of the accounts, rather, the same were reversal entries. The ld. Counsel for the assessee has invited our attention to the chart reproduced by the ld. Pr. CIT in the impugned order to show that the credit entries were made of Rs.50,00,000/- received vide cheques no. 002315 dt. 10/11/2015, Rs.60,03,470/- received vide cheques no. 002316 dt. 02/12/2015 and of Rs.56,66,776/- received vide cheques no. 005261 dt. 10/12/2015. However, these receipts were debited due to dishonor of the aforesaid cheques and the credit entries

were reversed on 20/12/2015 and 14/01/2016 respectively. Even the cheque numbers against which entries have been made have also been mentioned. Therefore, there remains no doubt that the aforesaid entries were reversal entries on account of dishonor of cheques that has been duly explained before the ld. Pr. CIT.

9. The observation of the ld. Pr. CIT that cheque of Rs.56,66,776/- issued by M/s. Metalmine Enterprise Pvt. Ltd., to the assessee was dishonored on12/03/2015 and the assessee still further credited an amount of Rs.1,29,425/- in the account of M/s. Metalmine Enterprise Pvt. Ltd., on 25/11/2015 seemed to be factually incorrect. A perusal of the ledger account as reproduced in the order of the ld. Pr. CIT, itself shows that the credit entry of the amount of Rs.56,66,776/- is dated 10/12/2015, received vide cheque no. 005261, which is after the journal transfer entry dated 25/11/2015 of Rs.1,29,425/-. However, the said cheque was dishonoured, for which reversal entry for the said amount is dated 14/01/2016 and not 12/03/2015.

The assessee has duly explained about the credit and debit entries in his reply and we do not find any discrepancy in the same. It has been duly explained by the assessee that the amount

of Rs.1,66,70,246/- was written off on 31/03/2017 as the assessee company could not recover the outstanding balance from the said party. The fact that the cheques issued by the said party got dishonoured, itself, proves the contention of the assessee that he could not recover the outstanding amount from the said party.

9.1. So far as the contention of the ld. Pr. CIT that the assessing officer had not made adequate enquiries is concerned, the assessee has duly explained in his reply that the Assessing Officer duly examined and verified about the aforesaid issue. Our attention has been invited to page 104 of the paper book, which is a copy of the show cause notice dt. 20/12/2019, issued by the Assessing Officer, whereby, the assessing officer has duly enquired from the assessee about the bad debts written off including the amount of Rs.1,66,70,246/-. Whereupon, the assessee furnished a detailed reply to the Assessing Officer, copy of which had been uploaded on the portal of the income tax department and is also placed at page no. 34 of the paper book, whereby, the assessee *interalia* has duly explained that the aforesaid debt had become bad and since the assessee was not able to recover the same from the concerned party, the same was written off in the accounts of the assessee.

9.2. We further note that on the one hand, the ld. Pr. CIT has noted that the Assessing Officer had not made proper enquiries relating to identity of the concerned M/s. Metalmine Enterprise Pvt. Ltd., but at the same time the, ld. Pr. CIT in its question no. 3 of the show cause notice, herself, has observed that it was obvious from the given transactions that there was a regular give-and-take between the assessee and M/s. Metalmine Enterprise Pvt. Ltd., and that there was a relationship of deep trust based on which the assessee was regularly transferring such huge amounts to the concern. The aforesaid observations of the ld. Pr. CIT are self-contradictory. It is undisputed that there was a regular business transactions of the assessee with the said concern and the amount outstanding was on account of trade receivables and that there were regular business transactions, even in earlier years, between the parties. It was duly explained before the ld. Pr. CIT that the assessee had not made any fresh payment of Rs.1,66,70,246/- to M/s. Metalmine Enterprise Pvt. Ltd. during the Assessment Year 2017-18 and that these amounts were brought forward balances of the preceding years. It was also explained that these were the old outstanding balances on account of sales which were written off.

9.3. So far as the observation of the ld. Pr. CIT that the assessee had not even reflected under the head "bad debts" in the relevant column of ITR is concerned, we find that the assessee had duly replied to the ld. Pr. CIT, that though it was mistakenly omitted, however, the assessee company had given the due disclosure of the amount written off in the audited profit and loss account. Moreover, the issue has not only been brought to the notice of the assessing officer, but the same has also been examined and verified by the assessing officer and under the circumstances there remains no prejudice to the revenue of not reflecting of the aforesaid amount of bad debt under the relevant column of the online ITR form.

10. The issue is otherwise squarely covered by the decision of the Hon'ble Supreme Court in the case of *TRF Ltd. vs CIT (supra)* wherein, the Hon'ble Supreme Court has held that it is not necessary for the assessee to establish that the debt, income, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. Moreover, in this case, as observed above, the dishonor of cheques and thereby reversal entries, itself, show that the said debt had become bad. In

this case the assessing officer had duly made enquiries and verification and showcaused the assessee in this aspect and the assessing officer has allowed the claim after being satisfied with the explanations offered by the assessee.

11. So far as the issue relating to the claim of deduction u/s 80IC of the Act is concerned, the only contention raised by the ld. Pr. CIT is that the assessee had not uploaded the audit report in Form 10CCB along with the return of income. The ld. Pr. CIT in this respect has placed reliance on the relevant provisions of Section 80IA(7) r.w.s. 80IC(7) of the Act, which require the assessee to furnish the audit report along with his return of income to claim deduction u/s 80IA or 80IC of the Act, as the case may be.

11.1. We find that the ld. Pr. CIT had misconceived herself about the relevant provisions of the Act. In this case, the revised return of income was filed by the assessee on 07/09/2018 and the requisite audit report in Form 10CCB was filed on 11/09/2018. However, pertinent fact is that the due date of filing of the return was 31/03/2019. It shows that the assessee not only filed the revised return which was also within the due date but also uploaded the audit report within four days of filing of the revised

ITR i.e., on 11/09/2018 itself, much before the due date for filing of the same. So not only the return of income but also the audit report was filed much prior to the expiry of due date of furnishing the return. The intention of the legislature, that the audit report should also be filed along with the return of income, cannot be strictly construed to say that even if due to certain reasons the audit report is filed/uploaded a few days after the uploading of the return of income, but much prior to the last date of filing of the return of income, then under such circumstances, the audit report has to be ignored, rather, the intention of the legislature, in this respect is that the return of income as well as the audit report should be filed before the due date meant for filing of the same.

11.2. Nowadays, we come across many cases, wherein, because of certain technical glitches or non-work or slow working of Internet or due to high traffic on the website of the Department, certain technical errors creep in because of which, even the ITRs could not be uploaded on the given date. Under the circumstances, due consideration is given to such difficulties, as the system of online assessment, is itself, in developing stage. In this case, the assessee has uploaded the return of income and audit report much prior

from the last date of filing of the same and both the documents were available with the Assessing Officer not only at the time of scrutiny assessment u/s 143(3) of the Act, but also at the time of processing of the return u/s 143(1) of the Act. Even the Hon'ble Apex Court in the case of *CIT vs. G.M.Knitting Industries (P) Ltd. & Others* and in the case of *M/s Aks Alloys (P) Ltd. (supra),* vide a consolidated order has held that even though, necessary certificate in Form 10CCB along with the return of income has not been filed, but, the same was filed before the final order of assessment, the assessee, even in such circumstances, was entitled for claim of deduction u/s 80IB of the Act. The facts of the assessee's case are on much better footing. The assessee has duly filed the audit report before the due date of filing of the return of income which was very much part of the return of income as on the due date of filing of the return of income. Therefore, the contention of the ld. Pr.CIT that the audit report must have been filed along with the return of income is mis-conceived and unjustified.

11.3. So far as the reliance placed by the ld. Pr. CIT on the decision of the Co-ordinate Bench of the ITAT Delhi in the case of *Pardeep Kumar Batra vs DCIT,CPC, New Delhi (supra)* is concerned, we find

that the ld. Pr. CIT, herself, has noted that the Tribunal denied deduction to the assessee for non-filing of the audit report in electronic manner **"in time" (on or before the due date of filing of the return of income),** whereas, in the instant case, since the assessee has filed the audit report on or before the due date of filing of the return, the aforesaid decision of the Co-ordinate Bench of ITAT Delhi, can be applied in favour of the assessee only. Even otherwise, it has been held that time and again that the Income Tax Authorities must charge the legitimate taxes from the tax payers. If the assessee is entitled to certain deductions under the provisions of the Income Tax Act, the same should not be disallowed, merely because of any *bonafide* mistake or error on the part of the tax payer, rather, the Income Tax Authorities should assist the concerned assessees in filing their correct return of income. This is not the case of the Department that the assessee was not entitled to the deduction claimed u/s 80IC of the Act. We find that the assessee having answered and explained to each of the query of the ld. Pr. CIT in detail, the ld. Pr. CIT mistook herself to hold that the order of the Assessing Officer was erroneous. Even as held by the Hon'ble Supreme Court in the case

of *NTPC vs. CIT (1998) 97 Taxman 358 (SC)*, that even an issue relating to a legal claim which arises from the facts can be entertained at appellate stage also, even though the same could not be raised before the lower authorities.

12. Even otherwise, the ld. Pr. CIT in this case has proceeded to substitute her own view with the views of the Assessing Officer whereas, the view adopted by the Assessing Officer was a legally possible view, in the light of the decisions of the Hon'ble Supreme Court on both the issues and hence the order of the Assessing Officer cannot be considered under these circumstances, to be erroneous.

13. At this stage, the ld. D/R has relied upon the recent judgment of the Hon'ble Supreme Court in the case of *PCIT vs. Wipro Ltd.* reported in *[2022] 140 taxmann.com 223 (SC)*. The facts in that case were that the assessee was a 100 per cent export oriented unit and filed its original return u/s 139(1) of the Act declaring loss and claiming exemption u/s 10B of the Act. However, later on the assessee filed a declaration before the Assessing Officer, prior to completion of the assessment proceedings, stating that it did not want to avail the benefit u/s 10B(8). The assessee thereafter filed

the revised return, wherein, instead of claiming exemption u/s 10B, the assessee claimed carry forward of loss. It is under such circumstances that the Hon'ble Supreme Court held that the assessee can file a revised return in a case where there is omission or wrong statement but a revised return of income u/s 139(5) cannot be filed to withdraw the claim of exemption and subsequently to claim carry forward or set off of any loss and that the revised return filed by the assessee u/s 139(5) of the Act can only substitute its original return u/s 139(1) of the Act and cannot transform it into a return u/s 139(3) of the Act in order to avail the benefit of carry forward or set off of any loss u/s 80 of the Act.

13.1. We find that the Hon'ble Apex Court considered the decision in the case of *CIT* v. *G.M. Knitting Industries (P.) Ltd.(supra)* and held that the revised return can be filed in a case where there remains some omission or wrong statement. The ratio laid down by the Hon'ble Supreme Court in the case of *PCIT vs. Wipro Ltd. (supra)* is of no help to the revenue. Even otherwise the ld. Pr. CIT has not found any error in the order of the Assessing Officer in this respect. The ld. D/R cannot put additional plea or ground to improvise the impugned order of the ld. Pr. CIT.

14. In view of this, the action of the ld. Pr. CIT in holding the assessment order is erroneous and thereby setting aside the order for *de-novo* assessment cannot be held to be justified. Hence the order passed u/s 263 of the Act is quashed.

15. In the result, appeal of the assessee stands allowed.

Order pronounced on 07.12.2022

Sd/-	Sd/-
(VIKRAM SINGH YADAV)	**(SANJAY GARG)**
Accountant Member	**Judicial Member**

Dated : 07.12.2022
"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar