IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRIPRADIP KUMAR CHOUBEY, JM

ITA No.212/KOL/2022
(Assessment Year: 2016-17)

M/S. INTERNATIONAL SEAPORTS (HALDIA) PVT. LTD. C/O S.N.GHOSH& ASSOCIATES, ADVOCATES SEBEN BROTHERS LODGE, P.O. BUROSHIBTALA, P.S. CHINSURAH, HOOGHLY-712105, WEST BENGAL **(Appellant)**	**Vs.**	**PCIT-2** AAYAKAR BHAWAN, 7TH FLOOR, P-7, CHOWRINGHEE SQAURE, KOLKATA - 700069 KOLKATA-700069, WEST BENGAL **(Respondent)**

PAN NO. AAACI9468D

Assessee by	:	Shri Somnath Ghosh, AR
Revenue by	:	Shri Sanjit Kumar Das, DR

Date of hearing:	10.06.2026
Date of pronouncement:	16.06.2026

O R D E R

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Pr. Commissioner of Income Tax, Kolkata-2(hereinafter referred to as the "Ld. CIT(A)"] dated 31.03.2021 for the AY 2016-17.

2. At the outset, we note that the appeal of the assessee is barred by limitation by 334 days. At the time of hearing the counsel of the assessee explained the reasons for delay in filing the appeal. On the other hand , the Ld. D.R strongly

objected the condoning of the delay. After hearing the rival contentions and perusing the materials available on record, we find that the delay is for bonafide and genuine reasons and hence, we condone the delay and adjudicate the appeal in the following paras.

3. The only issue raised in the various grounds of appeal is against the order of ld. Pr. Commissioner of Income Tax (in short PCIT), invoking the revisionary jurisdiction u/s 263 of the Act, thereby cancelling the assessment framed by the ld. AO u/s 143(3) of the Act, on the ground of being erroneous and prejudicial to the interest of the Revenue.

4. The facts in brief are that the assessee filed the return of income filed for the impugned assessment year on 06.10.2010, declaring total income of ₹73,50,108/-. The case of the assessee was selected for scrutiny and accordingly, the assessment u/s 143(3) of the Act was passed on 12.11.2018, assessing the total income at ₹82,36,328/-.

5. Thereafter, the ld. PCIT upon perusal of the assessment record noted that the TDS claimed by the assessee as appearing in form 26As was accepted by the ld. AO while framing the assessment u/s 143(3) of the Act dated 12.11.2018 however the assessee has shown the gross income of ₹ 73,65,07,503/- as against the actual gross receipts as appearing in form 26AS at ₹ 77,47,16,524/-. According to the ld. PCIT the same has resulted in the under assessment of income to the tune of ₹3,82,09,021/- including excess carry forward of MAT credit of ₹60,1,393/-. The ld. PCIT held that the order passed by the ld. AO u/s 143(3) of

the Act dated 12.11.2018, is erroneous and prejudicial to the interest of the Revenue. The ld. PCIT accordingly issued notice u/s 263 of the Act giving show cause notice to the assessee. The assessee replied to the show cause notice dated 18.03.2021. The ld. PCIT finally revised the assessment framed by the ld. AO by directing the ld. AO to frame the assessment in terms of the issues raised in the order passed u/s 263 of the Act after affording reasonable opportunity of hearing to the assessee.

6. The ld. AR vehemently submitted before us that the assessee has been carrying on the business of building, maintaining and operating(BOT) Berth No.4A at Haldia Dock, Kolkata Port Trust. The Haldia Dock Complex Kolkata(Port Trust) invited a tender with condition of BOT basis for a period of 30 years which was awarded to the assessee. Accordingly, a deed of license dated 14.05.2022, was executed according to which the assessee was provided with the job of building the facilities at Berth No.4A of Haldia Dock Complex, which is utilized to handle the imported coal for Steel Authority of India. The assessee filed the return of income on 06.10.2016, declaring total income of ₹73,50,108/- for the instant year after claiming deduction u/s 80IA of the Act of ₹10,71,13,091/-. The case of the assessee was selected for scrutiny and assessment was framed accordingly. The ld. AR submitted that the ld. AO issued notice u/s 142(1) of the Act calling upon the assessee to reconcile the total revenue receipt, copy of which is available at page no.18 to 19, in which vide Para no.10 and 11, the ld. AO asked for the party wise details along with copy of ledger of remittances made by

the assessee during the year 2016-17 and also the details of transactions along with TDs. The ld. AO called for the details and explanation of mismatch between the income / receipt credited in the Profit and Loss account . The assessee replied the said notice submitting all the details. The ld. AR also submitted that the case of the assessee was selected for scrutiny for which one of the reasons was whether sales turnover/ receipts have been correctly offered tax and copy of the said notice u/s 143(2) of the Act is available at page no.140. The ld. AR also submitted that it is undisputed that assessee is entitled to deduction u/s 80IA of the Act in respect of its income. The ld. AR therefore submitted that invoking revisionary jurisdiction by the ld. AO an order passed u/s 263 of the Act is invalid and nullity in the eyes of law as same has been invoked/ passed without there being a valid jurisdiction. In defense of his argument the ld. AR relied on the decision of Malabar Industrial Co. Ltd. [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC)[10-02-2000].

7. The ld. AR further submitted that once the assessee has replied/ filed evidences in response to notice issued u/s 142(1) of the Act, then it is presumed that the ld. AO has examined the issue and done proper enquiry. In defense of his argument the ld. AR relied on the decision of Hon'ble Apex Court in the case of Principal Commissioner of Income-tax-1 vs. V-Con Integrated Solutions (P.) Ltd. [2025] 173 taxmann.com 774 (SC)/[2025] 304 Taxman 598 (SC)/[2025] 476 ITR 526 (SC)[04-04-2025]dated 04.04.2025. The ld. AR therefore, prayed that the order passed u/s 263 of the Act

may kindly be quashed by allowing the appeal of the assessee.

8. The ld. DR on the other hand relied heavily on the orders of the ld. PCIT by submitting that no prejudice is going to be caused to the assessee with the invoking of jurisdiction u/s 263 of the Act. The ld. DR submitted that ld. PCIT has rightly invoked the jurisdiction u/s 263 of the Act when the ld. PCIT found that there is a mismatch of gross receipts as per books of account vis-à-vis the form 26AS whereas full TDS has been claimed as appearing in form 26AS by the assessee. Consequently the PCIT held that this has rendered the assessment as erroneous and prejudicial to the interest of the Revenue.

9. After hearing the rival contentions and perusing the materials available on record, we find that the undisputedly the facts are that the assessee is carrying on the business of operating the Haldia Port ,Berth 4A on BOT basis income wherefrom is exempt u/s 80IA of the Act. This is also undisputed that if any disallowance is made then a deduction u/s 80IA of the Act would increase correspondingly. Therefore, there is no impact on the taxable income of the assessee. In our view for the exercise of jurisdiction u/s 263 of the Act, twin condition have to be satisfied; that the assessment framed by the ld. AO has to be erroneous in so far as prejudicial to the interest of the Revenue. The satisfaction of twin condition is mandatory for invoking the jurisdiction u/s 263 of the Act. Even if one of the two conditions is satisfied, even then the jurisdiction u/s 263 of the Act is not available to the ld. Pr. Commissioner of

Income Tax. In our opinion, the order passed by the ld. AO is neither erroneous nor prejudicial to the interest of the Revenue. We note that there is no discrepancy in the gross receipt as the ld. AO has examined the re-conciliation of gross receipt during the course of assessment proceedings. Moreover, if any difference is there that is neutal and has no effect on the income of the assessee as the same would be neutralized by the increase in amouns of deduction u/s 80IA of the Act. Therefore, there is no detriment caused to the Revenue. Hence, the order passed by the ld. AO u/s 143(3) of the Act is neither erroneous nor prejudicial to the interest of the Revenue. The case of the assessee is also covered by the decision of Malabar Industrial Co. Ltd. vs. Commissioner of Income-tax [2000] 109 Taxman 66 (SC)/[2000] 243 ITR 83 (SC)/[2000] 159 CTR 1 (SC)[10-02-2000], wherein it has been held that the twin conditions are to be satisfied before invoking the jurisdiction u/s 263 of the Act by ld. Pr. Commissioner of Income Tax. Similarly, further we note that the case of the assessee was specifically selected for scrutiny in which one of the reasons was whether sales turnover/ receipts has correctly been offered to tax. Copy of notice u/s 143(2) of the Act is available in the paper book at page no.20. We further note that the ld. AO issued notice u/s 142(1) of the Act dated 12.04.2018, in which vide Para no.10 and 11 the ld. AO specifically asked the assessee to file the details in respect of its receipts which were duly placed before the ld. AO by the assessee along with the evidences. Therefore, it has to be presumed that the ld. AO has examined the issue before passing the order. The assessee can only comply the direction of the AO to furnish the details and evidences and it is not in the hand of the assessee to ask the AO to pass the order mentioning all the details in the assessment order. The case of the assessee is supported by the decision of the Hon'ble Apex court in the case of Principal Commissioner of Income-tax-1 vs. V-Con Integrated Solutions (P.) Ltd. [2025] 173 taxmann.com 774 (SC)/[2025] 304 Taxman 598 (SC)/[2025] 476 ITR 526 (SC)[04-04-2025], wherein the Hon'ble Supreme Court has even held that assessee does not have a controll over the pen of the ld. AO and once the ld. AO carries out the investigation but does not impact any addition it can be taken that he accepts the pleas and stands of the assessee. The Hon'ble Supreme Court held that it would be wrong to say that Revenue is remedyless. Power u/s 263 of the Act can be exercised by the Commissioner of Income Tax, but by going into the merits and making addition and not by way of reording that there is a failure to investigate. The Hon'ble Supreme Court held that there is distinction between failure to investigate and a wrong decision/ conclusion. A wrong decision/ conclusion can be corrected by the Commissioner of Income Tax with a decision on merit and by making of addition of disallowance. The Hon'ble Court held that there may be cases where the Assessing Officer undertakes a superficial and random investigation that may justify a remit, albeit the Commissioner of Income Tax must record the abject failure and lapse on the part of the Assessing Officer to establish both the error and the prejudice caused to the Revenue. In our considered opinion the assessment framed by the AO is neither erroneous nor prejudicial and therefore the jurisdiction u/s 263 is wrongly invoked by the Pr. Commissioner of Income Tax. Considering the facts of the case in the light of the aforesaid decisions, we are inclined to held that the revisionary order passed u/s 263 of the Act is invalid and is accordingly, quashed.

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

Order pronounced on 16.06.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 16.06.2026
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Asst. Registrar
Income Tax Appellate Tribunal,
Kolkata