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The CBDT cannot impose any additional condition while notifying an industrial park under Section 80IA of the Act. A revisionary order passed by the CIT under Section 263 to redo the assessment *de nova* is quashed both on the basis of merit and jurisdiction

Background

Recently, the Hyderabad Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of VITP Private Limited[1] (the taxpayer), held that the Ministry of Commerce and Industry is the competent authority for granting an approval to the industrial park in terms of sub-rule (2) of Rule 18C of the Income-tax Rules, 1962 (Rules) and they alone have the power to verify whether conditions of the Industrial Park Scheme[2] (Scheme) have been violated or not, and if it is found so, only they can withdraw the benefit under Section 80IA(4)(iii) of the Income-tax Act, 1961 (the Act). Therefore, the power to impose any conditions is vested with the Department of Industrial Policy and Promotion (DIPP) and once an approval is granted by the DIPP, the Central Board of Direct Taxes (CBDT) is duty bound to notify the industrial park for benefit under Section 80IA(4)(iii) of the Act without laying down any fresh/additional condition.

Further, the Tribunal held that once the Assessing Officer (AO) has conducted an enquiry on a particular issue and has taken a possible view after proper application of mind, then even if it is not discussed elaborately in the assessment order, the same does not tantamount to improper examination by the AO. Hence, the assessment order cannot be said to be erroneous and prejudicial to the interests of the revenue and would also not stand the test of legal scrutiny.

Facts of the case

- The taxpayer is a company engaged in the business of providing infrastructure facilities, which inter alia includes developing, operating and maintenance of the industrial park. During the assessment year 2009-10, the taxpayer had claimed a deduction under Section 80IA(4)(iii) of the Act while arriving at the total taxable income. The AO after verification of all the details provided by the taxpayer and carrying out a thorough enquiry, allowed the taxpayer's claim of deduction under Section 80IA(4)(iii) of the Act.

- Subsequently, the assessment records of the taxpayer were examined by the Commissioner of Income Tax (CIT) in the exercise of the powers conferred under Section 263 of the Act. The CIT was of the opinion that the AO while allowing the deduction under Section 80IA(4)(iii) of the Act, failed to verify whether the taxpayer has complied with the condition regarding 'no single unit occupying more than 50 per cent of the allocable industrial area', as laid down in the notification[3] issued by the CBDT. Thereafter, the CIT proceeded to issue a show cause notice to the taxpayer requiring him to show cause as to why the assessment order passed by the AO shall not be revised/set aside in view of the fact that the same is erroneous and prejudicial to the interests of the revenue.

[1] VITP Pvt. Ltd., Hyderabad v. DCIT (ITA No. 729/Hyd/2015)
[2] Industrial Park Scheme, 2002
[3] Notification No. 244/07 dated 28 September 2007

- In response to the show cause notice, the taxpayer submitted that as per the scheme formulated by the central government, approval for an industrial park needs to be obtained from the Ministry of Commerce and Industry through the DIPP, either under an automatic or non-automatic route. The conditions stated under both the routes are different. The taxpayer had sought approval under the non-automatic route. The additional condition imposed by the CBDT stating that no single unit shall occupy more than 50 per cent of the allocable industrial park is applicable to approvals granted under the automatic route. To support this argument, the taxpayer even placed reliance on the decision of the coordinate bench in the case of L&T Infocity[4].

- However, the CIT did not find merit in the arguments of the taxpayer and continued to hold that one of the units of the taxpayer occupies more than 50 per cent of the allocable industrial area and hence it tantamount to violation of the condition imposed by the CBDT. The CIT held that the action of the AO in allowing the claim of deduction under Section 80IA(4)(iii) of the Act was without requisite verification and therefore it cannot constitute formation of a valid opinion and accordingly the CIT set aside the assessment order with a direction to redo the assessment de novo as per law.

- Aggrieved by the order of the CIT and challenging the assumption of the jurisdiction under Section 263 of the Act, the taxpayer preferred an appeal before the Tribunal.

Tribunal's ruling

- The Tribunal made a comparative analysis of the conditions mentioned in an automatic and non-automatic approval route and held that the conditions imposed therein are independent and different. Clause (f) of the automatic approval route *inter alia* stipulates that no single unit shall occupy more than 50 per cent of the allocable industrial area of an industrial park. Such a condition being absent in non-automatic approval route, shall not be applicable to an industrial park approved under the non-automatic route.

- Further, Rule 18C prescribes the conditions for claiming deduction under Section 80IA(4)(iii) of the Act. As per sub-rule (2) of Rule 18C, the undertaking shall have to be duly approved by the Ministry of Commerce and Industry of the central government under the scheme for the industrial park. On reading of sub-rule (4) of Rule 18C, it is seen that on approval by the central government, the CBDT is only required to notify the industrial park for benefit under Section 80IA(4)(iii) of the Act. As seen in the present case, the DIPP granted an approval to the industrial park, under the non-automatic route, for availing the benefit of deduction under Section 80I(4)(iii) of the Act and the DIPP having not imposed any such additional condition, the CBDT being merely a notifying authority has no power to lay any such additional condition. Reliance in this context can be placed on various judicial pronouncements[5].

- The next limb of argument was in relation to an assumption of jurisdiction under Section 263 of the Act by the CIT. In this regard, the Tribunal observed that, the question whether the AO has conducted a detailed enquiry or not in relation to the taxpayer's claim of deduction under Section 80IA(4)(iii) of the Act can be seen from the material on record. Further, the CIT has failed to appreciate that the taxpayer's submission against the letter issued by the AO clearly bears testimony to this fact.

- Though the CIT accepted that the AO did make an enquiry with regard to the taxpayer's claim of deduction under Section 80IA(4)(iii) of the Act and that the taxpayer also explained its stand before the AO; he nevertheless contradicted himself by stating that the AO did not conduct proper examination and verification, in specific, as to whether the taxpayer has complied with the condition imposed in para 4 of CBDT's notification (supra).

- The Tribunal held that such a conclusion drawn by the CIT is not only contrary to the material on record but, also does not stand the test of legal scrutiny.

- Further, once the AO has conducted an enquiry on a particular issue and has taken a certain decision after proper application of mind; and if such view taken by the AO is one of the possible views, then, even if it is not discussed elaborately in the assessment order, it cannot be said that the assessment order passed is erroneous and prejudicial to the interests of revenue.

  In view of above, the Tribunal quashed the order of the CIT both on merits and jurisdiction and allowed the taxpayer's appeal.

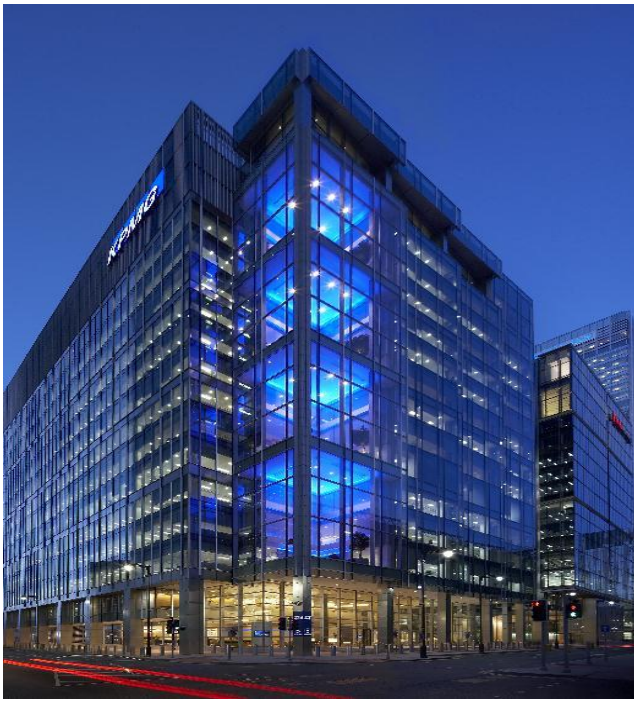
[4] L&T Infocity v. CIT [ITA No. 1515/Hyd/2011, 1516/Hyd/2011, 50/Hyd/2014, 51/Hyd/2014, 256/Hyd/2014 and 289/Hyd/2014]

[5] Creative Infocity Ltd. v. Under Secretary [2012] 19 taxmann.com 270 (Guj); CIT v. Ackruti City Ltd. (ITA No. 71 of 2012)(Bom); ACIT v. Annapurna Builders, Hyd (ITA No. 1177/Hyd/2011) and L7T Infocity (supra)

Our comments

The principle of law as laid down in various judicial precedents that once the AO has conducted detailed enquiries and upon satisfaction with the explanations given therein, has allowed the claim; then the order cannot be held to be erroneous, simply because the AO in his order does not carry out/write an elaborate discussion about the same.

Yet again, the Tribunal has held that once the central government approves the industrial park under the scheme, a notification from the CBDT is a mere formality.



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