

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

(through web-based video conferencing platform)

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

ITA No. 100/IND/2020

निर्धारण वर्ष/ Assessment Year : 2015-16

M/s. Star Delta Transformers Ltd, 92A, Industrial Area, Govindpura, Bhopal-462023 PAN : AACCS 0399 D	Vs	Pr. Commissioner of Income-tax-1, Bhopal
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Re pondent)

ITA No. 105/IND/2020

निर्धारण वर्ष/ Assessment Year : 2015-16

M/s. Bansal Pathways Pvt. Ltd., 3 rd Floor, Tawa Complex, Bittan Market, E-5 Arera Colony, Bhopal-462016 PAN : AAECB 7980 M	Vs	Pr. Commissioner of Income-tax-1, Bhopal
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Anil Kumar Khabya, AR
Revenue by :	Shri S.S. Matri, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03/08/2021

घोषणा की तारीख /Date of Pronouncement: 17 /08/2021

आदेश/O R D E R

PER RAJPAL YADAV, VICE PRESIDENT :

The present two appeals are directed at the instance of separate assesseees against the orders of the learned Pr. Commissioner of Income-tax-1, Bhopal dated 27.12.2019 in the case of M/s. Bansal Pathways Pvt Ltd and dated 15.01.2020 in the case of M/s. Star Delta Transformers Ltd., passed for Assessment Year 2015-16 (for both assesseees), under Section 263 of the Income-tax Act, 1961.

2. Since common issues are involved in both these appeals; therefore, we have heard them together and deem it appropriate to dispose of by this common order.

3. First we take up ITA No.105/Ind/2020 in the case of M/s. Bansal Pathways Pvt. Ltd. The brief facts of the case are that the assessee has filed its return of income on 25.09.2015, declaring total income at Rs.8,810/-. An assessment order was passed under Section 143(3) of the Act on 18.12.2017, accepting the returned income. The learned Commissioner perused the assessment order as well as records and found that the assessee did not file audit report in Form No.10CCB alongwith return because 3CA report was signed and verified by the accountant on 25.09.2015. The learned Commissioner further observed that as per provisions of Section 80-IA(7) r.w.s. 44AB of the Act, the audit report in Form No.10CCB from the Chartered Accountant was required to be signed and verified on or before the due date of filing of the return, i.e. on or before 25th September 2015, for claiming deduction under Section 80-IA(4) of the Act.

4. Now we take up the facts from the case of M/s. Star Delta Transformers Ltd. (ITA No.100/Ind/2020). In this case, the assessee has filed its return of income on 26.09.2015 declaring total income at Rs.2,05,50,430/-. An assessment order was framed under Section 143(3) of the Act on 08.11.2017 determining the taxable income of the assessee at Rs.2,18,87,400/-. In this case also the assessee had claimed deduction under Section 80-IA of the Act and the learned Commissioner, after perusal of the records, formed an opinion that audit report in Form No.10CCB was not filed alongwith the return, i.e. within the due date of filing of the return. Therefore, in the opinion of the learned Commissioner, the assessment orders in both the cases were erroneous and cause prejudice to the interest

of the revenue. He accordingly issued showcase notice under Section 263 of the Income-tax Act. Both the assesseees have apprised learned Commissioner that the filing of the report alongwith return or due date of filing of the return is a directory condition. If the audit report is being filed during the assessment proceedings or even at appellate stage, then it will be construed as sufficient compliance. It was further stated that both the assesseees have filed the report during the assessment proceedings and after perusal of these documents, learned Assessing Officer has granted the deduction to both the assesseees; so, however the learned Commissioner, without making any analysis of the submissions, just set aside the assessment order in both the cases and directed the Assessing Officer to make *de novo* assessments.

5. With the assistance of learned representatives, we have gone through the record carefully. There is no dispute with regard to the proposition that From No.10CCB is required to be filed by an assessee for claiming deduction under Section 80-IA(4) of the Act. The dispute is that whether such report is mandatorily required to be filed alongwith return or it is directory condition which can be fulfilled during the assessment proceedings. The assessee, in the case of M/s. Bansal Pathways Pvt. Ltd., filed its written submission before the learned Commissioner wherein it relied upon large number of decisions in which it has been propounded that filing of the audit report is a directory condition and it can be filed during the assessment proceedings. The written submission filed by the assessee before the learned Commissioner reads as under:-

"Re: Proceeding u/s 263- Ass.Yr. 2015-16- Your notice dt.2-12-2019

May it please your honour:-

1. *At the outset it is denied that the A.O. has erred in allowing claim of deduction u/s 80IA(4) in the original assessment . The assessee has filed*

audit report in Form 10CCB during the course of proceeding of assessment before passing of order of assessment. The requirement of filing of audit report in Form 10CCB at the time of tiling of return is only a directory condition and not mandatory condition. Now in the catena of decisions of Apex Court as well as various High Courts and jurisdictional Tribunal it has been held that deduction u/s 80IA(4) and other similar deductions cannot be denied if the audit report has been filed during the course of assessment proceeding. Going one step forward, it has been held that the audit report can be filed even at appellate stage as the appeal proceeding is continuation of assessment proceeding. Reliance is placed on the following decisions:-

- (i) CIT Vs. M/s Fortuna Foundation Engineers & Consultant Pvt. Ltd (SC) ITA 73 of 2010
- (ii) CIT vs. L.M. Singhvi, 289 ITR 425 (Raj)
- (iii) CIT Vs. Kamani Realtors (P) Ltd TC(A) No. 730 of 2014 dt. 22-12-2014
- (iv) M/s Lancer Food Products Delhi Vs. ITO (1TAT New Delhi) ITA 4133/Del/2016
- (v) M/s M.P. Rajya van Vikas Nigam Ltd Vs. DCIT 60 1TD 39(Indore)

The order of assessment passed by the A.O. cannot be considered as erroneous in so far as it is prejudicial to the interest of revenue in view of above judicial pronouncements. The deduction has been allowed by the A.O. after properly examining facts of the case. To reach to a finding that the order passed by the Assessing Officer is erroneous and prejudicial to the interests of revenue within the meaning of section 263 of the Act twin conditions need to be satisfied for invoking such a power u/s 263, which are: (a) the order of the Assessing Officer sought to be revised is erroneous; and (b) it is prejudicial to the interests of the revenue. The provisions of section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer. The order of the Assessing Officer cannot be termed prejudicial when the A.O. has passed order taking into account correct interpretation of law.

In view of above, kindly drop the proceedings u/s 263."

6. On due consideration of the above facts and circumstances of the case, we are of the view that the learned Assessing Officer has not committed any error in granting the deduction to both the assesseees. The assesseees have duly complied with the conditions as contemplated in

Section 80-IA(7) of the Act, i.e. to file the audit report in Form No.10CCB. These reports have been filed during the assessment proceedings and the Assessing Officer has the benefit of going through these documents; therefore, the assessment orders cannot be branded as erroneous. The learned Commissioner has not justified in taking action against both the assesseees. We, therefore, quash the impugned orders passed under Section 263 of the Act in the respective case of each assessee and allow both the appeals of the assesseees.

7. In the result, both the appeals of the assesseees are allowed.

Order pronounced in the Court on _17th August 2021 at Ahmedabad.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Ahmedabad, Dated 17 /08/2021

Handwritten signature

आदेश की प्रतिलिपि अग्रेषित/Co y of he Order forwarded to :

1. अपीलार्थी / The Appellan
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,अधिकरण अपीलीय आयकर ,राजोक्ट/DR,ITAT, Indore,
6. गार्ड फाईल /Guard file.

Sd/-

(RAJPAL YADAV)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Indore