**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

INCOME TAX APPEAL NO.06 OF 2019
(The Pr.Commissioner of Income Tax-2 Vs. M/s.Eureka Medicare Pvt. Ltd)
AND
INCOME TAX APPEAL NO.37 OF 2019
(The Pr.Commissioner of Income Tax-2 Vs. M/s.Eureka Medicare Pvt. Ltd)

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri Anand Parchure, Advocate for appellant in both appeals.
Shri K.P.Dewani, Advocate for respondent in both appeals.

CORAM :- A.S.CHANDURKAR AND N.B.SURYAWANSHI, JJ.
DATED :- JANUARY 15, 2021.

Both these appeals are being decided by this common order.

2. For the assessment year 2012-13 the Assessing Officer allowed the deduction claimed by the assessee under Section 80 IB (11-C) of the Income Tax Act, 1961 (for short, 'the said Act'). The Principal Commissioner of Income Tax however invoked the jurisdiction under Section 263 (1) of the said Act and after holding that such deduction had been granted by the Assessing Officer without making proper enquiry or verification, set aside the same and directed the Assessing Officer to pass a fresh assessment order after verifying the admissibility of the claim of deduction. In the appeal filed by the assessee challenging that order, the Income Tax Appellate Tribunal has allowed the same by quashing the order passed by the Principal Commissioner of Income Tax after recording a finding that the Assessment Officer after verifying all records had permitted such deduction.

3. The assessee is a company which provides medical facilities to patients. For the assessment year 2012-13 it showed income from interest of Rs.5,99,000/-, income from rent at Rs.2,04,000/- and referral income of RS.1,00,58,000/-. Further income of Rs.2,78,000/- from running nursing college was also received. Exemption was claimed under Section 80 IB(11-

C) of the said Act.

4. The Assessing Officer scrutinized the claim and thereafter the assessee was called upon to furnish various documents. Similarly detailed questionnaire and summons under Section 131 of the said Act was also issued to the assessee. After verifying the documents in question the Assessing Officer was pleased to permit deduction as allowable under Section 80 IB (11-C) of the said Act. The Principal Commissioner of Income Tax after finding that necessary verification was not done, set aside order passed by the Assessing Officer under Section 143(3) of the said Act holding it to be erroneous insofar as it was prejudicial to the interests of the revenue. He also observed that in absence of all necessary details the deduction as claimed was not allowable. The assessment order was set aside and the Assessing Officer was directed to pass a fresh assessment order. Thereafter the Income Tax Appellate Tribunal found that necessary enquiry as regards the nature of expenditure incurred by the assessee had been made by the Income Tax Officer and detailed explanation was also furnished by the assessee. All this material was on record and merely because according to the Principal Commissioner of the Income Tax the order was erroneous, there was no reason to invoke jurisdiction under Section 263(1) of the said Act. On that count the order passed under Section 263 of the said Act came to be set aside.

5. Shri Anand Parchure, learned counsel for the appellant submitted that the Principal Commissioner of Income Tax was justified in invoking jurisdiction under Section 263 of the said Act as he found that the exemption granted by the Assessing Officer was without verifying relevant material entitling such exemption and therefore the assessment order was erroneous as well as prejudicial to the interests of the revenue. There was no reason for the Tribunal to set aside the order passed by the Principal Commissioner of Income Tax and moreover no prejudice was caused to the assessee in view of the fact that the proceedings had been remanded to enable the Assessing Officer to re-examine the record and pass a fresh order. He further submitted that mere fact that in the earlier assessment order such

similar deduction had been granted cannot be said to be a reason for not invoking jurisdiction under Section 263 of the said Act in the backdrop of the fact that no proper enquiry had been made by the Assessing Officer. He therefore submitted that the impugned order passed by the Tribunal holding exercise of jurisdiction by the Principal Commissioner of Income Tax under Section 263 of the said Act to be bad in law gave rise to a substantial question of law.

6. Shri K. P. Dewani, learned counsel for the respondent submitted that the Assessing Officer after making all necessary enquiry and verification had found that the exemption as claimed by the assessee was liable to be granted under Section 80 IB (11-C) of the said Act. He submitted that while doing so summons under Section 131 of the said Act was issued by the Assessing Officer and the questionnaire submitted to the assessee was duly answered. On such satisfaction being arrived at the exemption came to be granted. There was no basis for the Principal Commissioner of Income Tax to conclude that the exemption had been granted without proper verification or enquiry. He specifically referred to Question no.7 of the said questionnaire which sought production of details of investment made and deduction claimed under Chapter VI A of the said Act. Relying upon the decisions in Income Tax Appeal No.32 of 2003 (The Commissioner of Income Tax Vs. Dinshaw Frozen Food Ltd., Nagpur) and Income Tax Appeal No.39/2004 (Commissioner of Income Tax-I Vs. M/s. Dinshaw Dairy Foods Ltd.) he submitted that in assessment year 2011-12 similar exemption had been claimed and granted under Section 80 IB (11- C) of the said Act. The present assessment order which was for assessment year 2012-13 was not the initial assessment order. Hence there was no reason for the Principal Commissioner of Income Tax to invoke jurisdiction under Section 263 of the said Act. The Tribunal having rightly appreciated this aspect was justified in setting aside the order passed by the Principal Commissioner of Income Tax and therefore the impugned order did not give rise to any substantial question of law.

7. We have heard the learned counsel for the parties at length. It may be noted that the learned counsel for the parties were called upon to produce before us the questionnaire and summons under Section 131 of the said Act by the Assessing Officer to consider whether the observation made in the order passed by the Tribunal that proper verification and enquiry was made by the Assessing Officer before granting such exemption was correct. The learned counsel for the parties placed such documents on record and we have perused the same. It is found that the Assessment Officer did make necessary enquiry by issuing questionnaire to the assessee for the assessment year 2012-13 seeking proof of deduction along with the details of deduction as well as exemption claimed by the Assessee. Similar notice under Section 142(1) of the said Act was also replied to by the assessee and it is in that backdrop that the Assessment Officer was pleased to allow the deduction under Section 80 IB (11-C) of the said Act. The learned Members of the Tribunal thus found that the reason for invoking jurisdiction by the Principal Commissioner of Income Tax under Section 263 of the said Act had no foundation. Further if certain assessment order was made by the Income Tax Officer the same could not be branded as erroneous by the Principal Commissioner of Income Tax merely because another view was possible. The order of the Income Tax Officer was required to be shown to have been made without any enquiry and not accordance with law. These aspects were missing in the said assessment order. We find that this observation of the Tribunal is correct considering the nature of verification and enquiry made by the Assessment Officer.

8. It is also pertinent to note that in the earlier assessment year 2011-12 similar deduction was claimed by the assessee under Section 80 IB (11-C) of the said Act and it was granted by the Assessing Officer. In the decisions relied upon by the learned counsel for the respondent this position has been considered and it was observed that similar deduction having been allowed in the earlier year could not have been denied in the subsequent assessment years. Thus after perusing the material placed on record including the questionnaire, summons under Section 131 of the said Act and notice under

Section 142(1) of the said Act, we are satisfied that the Tribunal did not commit any error in holding that such enquiry was made by the Assessing Officer and hence there was no reason for the Principal Commissioner of Income Tax to invoke jurisdiction under Section 263 of the said Act.

Thus in our view Income Tax Appeal No.6/2019 relating to assessment year 2012-13 and Income Tax Appeal No.37/2019 relating to assessment year 2013-14 do not give rise to any substantial question of law as sought to be urged by the learned counsel for the appellant. Consequently, the appeals stand dismissed leaving the parties to bear their own costs.

JUDGE **JUDGE**

Andurkar..