

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI WASEEM AHMED, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 2534/AHD/2016
(Assessment Year: 2009-10)**

The DCIT, Circle-1(1)(1), Vadodara	V/S	Gujarat State Fertilizers Chemicals Ltd. P.O. Fertilizer Nagar Dist- Vadodara-391750
(Appellant)		(Respondent)

PAN: AAACG7996C

**Appellant by : Shri T. Sankar, Sr. D.R.
Respondent by : Shri Sanjay R. Shah**

(आदेश)/ORDER

Date of hearing : 11 -05-2018

Date of Pronouncement : 23 -05-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Revenue is directed against the order of the Ld. CIT(A)-1, Vadodara dated 29.07.2016 pertaining to A.Y. 2009-10.

2. Brief facts of the case are that the order u/s 143(3) of the Act was passed in this case on 30.12.2011 determining the total income at Rs. 9,63,46,05,466/-. Subsequently, this assessment order was set aside by the CIT-I, Baroda vide order passed u/s. 263 of the Act on 11.03.2014. The assessment had been set aside on the issues relating to allowance of depreciation of wind mills and obsolete spares and other items written off. The order u/s 143(3) rws 263 of the Act was passed on 20.03.2015 determining the total income at Rs. 96,4,27,53,229/-. This included addition of Rs. 7,22,82,760/- on account of additional depreciation and Rs. 92,66,211/- on account of write off of spares and appeal has been filed against the above said order.
3. During the course of the appellate proceedings and before Id. CIT(A), appellant submitted that the order passed by the CIT-I, Baroda u/s 263 of the Act has been set aside by the ITAT Ahmedabad Bench vide order dated 31.03.2016 passed in ITA No, 1402/Ahd/2014. A copy of this order was furnished which shows that the ITAT has set aside the order of CIT-I, Baroda and has restored the order of the AO. Consequently, the assessment order passed in consequence to such order u/s 263 also does not survive. Hence, the assessment order passed u/s 143(3) rws 263 of the Act was annulled.
4. But Department preferred appeal before us by showing that the order of the ITAT bearing order No. 1402/Ahd/2015 dtd 31.03.2016 on order passed u/s 263 of the IT. Act has not been received in this office, the same remains to be decided on merits. In order to keep the matter alive, a second appeal is filed against the order of Id. CIT(A), wherein the order u/s 143(3) rws 263 of the Act dtd. 20.03.2015 has been annulled.

5. Ld. A.R. has also submitted copy of ITAT order in ITA No. 1402/Ahd/2014 in which assessee's appeal has been allowed. Now nothing is remained in this matter and this appeal is dismissed as infructuous.
6. In the result, appeal filed by the Department is dismissed.

Order pronounced in Open Court on 23 - 05- 2018

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 23 /05/2018

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad