

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.2170/Ahd/2017
(Assessment Year 2009-10)

The ACIT,
Circle – 2(1)(2),
Ahmedabad.

Vs. Mundra International Container
Terminal Pvt. Ltd.,
New Mundra Port, Navinal
Island, Post Box No.8, Mundra
Kutch.

[PAN No. AADCA 0917 C]

(Appellant)

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(Respondent)

Appellant by : Shri Santosh Karnani, Sr. D.R.
Respondent by : Shri S. N. Soparkar & Ms.
Urvashi Sodhan, A.R.

Date of Hearing 13.02.2019
Date of Pronouncement 14.02.2019

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the revenue is against the order dated 03.07.2017 passed by the Commissioner of Income Tax (Appeals) – 2, Ahmedabad under section 143(3) r.w.s. 263 of the Income Tax Act, 1961 (in short ‘the Act’) arising out of the order dated 13.12.2016 passed by the Dy. Commissioner of Income Tax, Circle – 2(1)(2), Ahmedabad for the Assessment.

2. The brief facts leading to this case is this that the return of income for A.Y. 2009-10 was filed by the assessee on 17.09.2009 declaring loss of (-) Rs.14,82,20,958/- was completed Under Section 143(3) r.w.s. 144C of the Income Tax Act (the Act) on 23.05.2013 determining the total loss of (-) Rs.13,99,64,931/- which was set aside by the Principal Commissioner of Income Tax-2, Ahmedabad u/s 263 of the Act on 21.03.2016 with the direction upon the Learned AO to reframe the assessment with regard to the wrong allowance of depreciation on the “Infrastructure Usage Facility”. Consequently, the order dated 13.12.2016 was passed by the Learned DCIT, Circle – 2(1)(2), Ahmedabad with certain additions which in appeal was deleted by the Learned CIT(A)-2, Ahmedabad. Hence, the instant appeal before us.

3. Simultaneously, the order passed u/s 263 dated 21.03.2016 by the Principal Commissioner of Income Tax-2, Ahmedabad was challenged before the Hon’ble ITAT. The appeal preferred by the assessee in respect of the order u/s 263 passed by the PCIT was disposed of in favour of the assessee by the Learned Tribunal by and under order dated 23.01.2017 in ITA No.1253/Ahd/2016 for A.Y. 2009-10.

4. In that view of the matter, the Learned Advocate appearing for the assessee at the time of hearing of the matter submitted before us that since the very basis of this order impugned before us being the order u/s 263 dated 21.03.2016 was dismissed by the Co-ordinate Bench of this Hon’ble Tribunal, the order impugned before us dated 03.07.2017 become infructuous and thus

- 3 -

the same is liable to be dismissed as infructuous. The DR conceded such factual aspect of the matter.

5. Having regard to the facts and circumstances of the case, we find that the order impugned is infructuous and thus the same is thus dismissed as infructuous.

6. In the result, revenue's appeal is dismissed as infructuous.

This Order pronounced in Open Court on	14/02/2019
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated /02/2019
Priti Yadav, Sr.PS

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad