

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI , MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.785/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2008-09

Gujarat State Electricity Corp. Ltd. Vidyut Bhavan Race Course Circle. Baroda PAN No.AAACG6864F	Vs	DCIT, Circle 1(1)(1) Baroda
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Revenue)
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Appellant by :	Shri Manish J. Shah, AR
Revenue by :	Shri O.P. Sharma, CIT-DR

सुनवाई की तारीख/Date of Hearing : 24/02/2020

घोषणा की तारीख /Date of Pronouncement: 25 /02/2020

आदेश/ORDER

PER SHRI MANISH BORAD, A.M:

This is an appeal filed by the assessee against the order of CIT(A)-1, Vadodara dated 30.01.2018 pertaining to assessment year 2008-09. The assessee has raised following grounds of appeal:

1. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming that the assessment order dated 07.03.2014 passed under section 143(3) r.w.s 147 of the Income Tax Act, 1961 is erroneous and prejudicial to the interest of revenue and thereby erred in confirming the application of provision of section 263 of the I.T. Act.

2. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts has confirmed

the addition of Rs.16,87,67,000/- made to the book profit under section 115JB of the I.T. Act treating the provision for loss on dispute accounted under the head administrative and other expenses as unascertained liability.

The Ld. Commissioner (Appeals) ought to have appreciated that such expenditure being a business expenditure is allowable either in the year in which provisions was made viz. during the year or in the year in which the provision was reversed viz. in the subsequent year.

3. The appellant craves leave to add to, alter, delete or modify any of the grounds of appeal either before or at the time of hearing of this appeal.

2. At the outset, Ld. counsel for the assessee submitted that the impugned order of the Ld. AO u/s 143(3) r.w.s. 263 r.w.s 153(3) of the Act, 1961 dated 02.12.2016 has become *null and void* since the action of the Pr. CIT of framing of order u/s 263 of the Act stands quashed by the Coordinate Bench vide ITANo.468/Ahd/2016 dated 13.03.2019.

3. Per contra Ld. Departmental Representative (DR) could not controvert the contention made by the Ld. counsel for the assessee.

4. We have heard the rival contentions and perused the record placed before us. The impugned order of Ld. CIT(A) has been framed against the order of Ld. AO

made u/s 143(3) r.w.s. 263 r.w.s 153(3) of the Act, 1961 dated 02.12.2016. The impugned order of the Ld. AO was framed in pursuance to the order u/s 263 of the Act passed by Pr. CIT on 11.01.2016 directing the assessing officer to frame assessment order afresh as per the directions given in the order u/s 263 of the Act. However, the order u/s 263 of the Act dated 11.01.2016 stands quashed by Coordinate Bench, vide ITANo.468/Ahd/2016 dated 13.03.2019 wherein the Tribunal observed held as under:

10. We have duly considered the rival contentions and gone through the record carefully. Admittedly, the assessment completed u/s.143(3) on 30/12/2010 was not reopened for escapement of any amount from computation of book profit. For this purpose, we have specifically perused the reasons. Thus, the issue with respect to computation of book profit u/s.115JB of the Act attained finality when Assessing Officer has given effect to the order of the CIT(A) dated 06/08/2012 as well as the assessment order dated 30/12/2010. The Ld.Commissioner took cognizance on the reassessment order which has nothing to do with computation of book profit. The Hon'ble Supreme Court has considered this aspect in the judgement referred by the ld.counsel for the assessee. The following observation of the Hon'ble Apex Court will make the issue clear:

“13. *It may be of some interest to notice that a similar contention raised at the instance of an assessee was rejected by a 3-Judge Bench of this Court in CIT vs. Shri Arbuda Mills Ltd. (1998) 147 CTR (SC) 474 : (1998) 231 ITR 50 (SC). This Court took note of the amendment made in s. 263 of the Act by the Finance Act, 1989 with*

retrospective effect from 1st June, 1988, inserting Expln. (c) to sub-s. (1) of s. 263 of the Act stating :

"The consequence of the said amendment made with retrospective effect is that the powers under s. 263 of the CIT shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in an appeal. Accordingly, even in respect of the aforesaid three items, the powers of the CIT under s. 263 shall extend and shall be deemed always to have extended to them because the same had not been considered and decided in the appeal filed by the assessee. This is sufficient to answer the question which has been referred."

We, therefore, are clearly of the opinion that in a case of this nature, the doctrine of merger will have no application.

14. *The Madras High Court in A.K. Thanga Pillai (supra), in our opinion, has rightly considered the matter albeit under s. 17 of the WT Act, 1957 which is in pari materia with the provisions of the Act. Relying on Sun Engineering Works (P) Ltd. (supra), it was Held :*

"Under s. 17 of the WT Act, 1957, even as it is under s. 147 of the IT Act, proceedings for reassessment can be initiated when what is assessable to tax has escaped assessment for any assessment year. The power to deal with underassessment and the scope of reassessment proceedings as explained by the Supreme Court in the case of CIT vs. Sun Engineering Works (P) Ltd. (1992) 107 CTR (SC) 209 : (1992) 198 ITR 297 (SC), is in relation to that which has escaped assessment, and does not extend to reopening the entire assessment for the purpose of redoing the same de novo. An assessee cannot agitate in any such reassessment proceedings matters forming part of the original assessment which are not required to be dealt with for the purpose of levying tax on that which had escaped tax earlier. Cases of underassessment are also treated as instances of escaped assessment.

The order of reassessment is one which deals with the assessment already made in respect of items which are not required to be reopened, as also matters which are required to be dealt with in order to bring what had escaped in the earlier order of assessment, to assessment. An assessee who has failed to file an appeal against the original order of assessment cannot utilise the reassessment proceedings as an occasion for seeking revision or review of what had been assessed earlier. He may only question the extent of the reassessment insofar as the escaped assessment is concerned. The Revenue is similarly bound."

The same principle was reiterated by a Division Bench of the Calcutta High Court in CIT vs. Kanubhai Engineers (P) Ltd. (2000) 158 CTR (Cal) 219 : (2000) 241 ITR 665 (Cal).

15. *We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the CIT exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-s. (2) of s. 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the CIT beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity.*

16. *The Tribunal and the High Court, therefore, in our opinion were correct in passing the impugned judgment. The appeal, therefore, being devoid of any merit is dismissed with costs. Counsel's fee assessed at Rs. 25,000."*

11. Respectfully following the judgement of Hon'ble Supreme Court, we are of the view that the Commissioner has taken cognizance u/s.263 of the Act after expiry of

limitation and his order is not sustainable in the eye of law. Hence, we quash the impugned order.

5. We, therefore, in these given facts and circumstances of the case, where in the very basis of the assessment order u/s 143(3) r.w.s. 263 r.w.s 153(3) of the Act, 1961 dated 11.01.2016 stands quashed itself renders the directions given in the order u/s 263 as null and void and therefore, since the order u/s 143(3) r.w.s. 263 r.w.s 153(3) of the Act, 1961 is null and void, all proceedings carried out thereafter becomes void. Therefore, ground no.1 of the assessee's appeal stands allowed. Ground No.2 raised on merits thus rendered infructuous. Ground No.3 is general in nature which needs no adjudication.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 25 .02.2020.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 25 /02/2020

Patel, PS

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)- XV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,
ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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