

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ‘ A ‘ Bench, Hyderabad**

**Before Shri R.K. Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

ITA No.392/Hyd/2020		
Assessment Year: 2014-15		
IJM (INDIA) INFRASTRUCTURE LIMITED, Hyderabad. PAN : AAAC17067A.	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri A.V. Raghuram.
Revenue by:		Shri Solge Jost Kottaram
Date of hearing:		04.08.2022
Date of pronouncement:		10.08.2022

**ORDER**

**Per Laliet Kumar, J.M.**

The appeal of the assessee for A.Y. 2014-15 arises from the order of Principal Commissioner of Income Tax / Commissioner of Income Tax – 2, Hyderabad dated 18.05.2020 involving proceedings under section 263 of Income Tax Act, 1961 (in short, “the Act”) raising the following grounds :

*“1. In the facts and in the circumstances of the case, the Learned Principal Commissioner of Income Tax-2, Hyderabad, erred in invoking the provisions of Section 263 of the Act and passing the Order thereby holding that, Order passed by the Learned Assessing Officer U/s 143(3) of the Act is erroneous and prejudicial to the interest of the Revenue, which is illegal, bad in law and devoid of any merit.*

*2. In the facts and in the circumstances of the case, the Learned Principal Commissioner of Income Tax-2, Hyderabad, has not verified the basic facts submitted by the Appellant with regard to VAT and expenditure disallowed U/s 43B. With regard to VAT, the accounting treatment followed by the Appellant was explained in detail. Without considering the basic facts relating to VAT, the order passed by the Principal Commissioner of Income Tax-2, Hyderabad, deserves to be quashed.*

*3. In the facts and in the circumstances of the case, the order passed by the Learned Principal Commissioner of Income Tax-2, Hyderabad, with regard to the disallowance of expenditure under the heads of EPF/ESI Rs.8,11,748, Capital Expenditure of Rs.44,65,175, Provision of Gratuity of Rs.12,69,155 and Statutory remittances of Rs.3,51,15,408 deserves to be quashed as it seeks to substitute the view of the Principal Commissioner of Income Tax, in place of the views of the Assessing officer.*

*4. For these and other grounds that may be adduced at the time of hearing, the order of the learned Principal Commissioner of Income Tax 2, Hyderabad, may be quashed and appeal may be allowed.”*

2. The brief facts of the case are that assessee filed its return of income for A.Y. 2014-15 on 28.11.2014 admitting total loss of Rs.1,17,54,97,108/-. Subsequently, filed a revised return declaring loss of Rs.1,17,50,43,145/-. Assessment was completed u/s 143(3) of the Act on 29.12.2017 declaring loss of Rs.109,37,89,855/-. On verification of the assessment records, on perusal of audit report, certain errors were found i.e., an amount of Rs.13,93,16,762/- collected towards VAT was not credited to P & L account and at Note No.2020, assessee company

reduced the VAT of Rs.13,93,16,762/- resulting in excess computation of loss to the tune of Rs.13.93 crore and etc. As the assessment order was erroneous and prejudicial to the interests of Revenue, notice u/s 263 of the Act dt.12.02.2020 was issued to the assessee. In response to the said notice, counsel for the assessee filed written submissions dt.20.02.2020. Finally, by virtue of powers vested u/s 263, Id.PCIT set aside the order of AO with a direction to pass assessment order afresh in accordance with law after taking into account two issues i.e., Taxability of Rs.13.93 crore being VAT amount reduced from turnover in Profit and Loss account and also the taxability of Rs.4,17,15,486/- under Sec.43B of the Act.

3. Feeling aggrieved with the order of Id.PCIT, assessee is now in appeal before us.

4. At the outset, the Id.AR for the assessee has submitted that the Id.PCIT has sent back two issues for verification, namely, ground no. 2. However, in respect of ground no.3, it pertains to EPF/ESI. It was submitted by the Id.AR that the Assessing Officer has allowed the deduction for EPF/ESI in the original assessment. Our attention was drawn to Q.16 on page 12 of the Paper Book which is to the following effect :

**“16. Please explain why payment of PF and Superannuation Fund after due date should not be added to income.”**

5. It was submitted that the assessee has deposited contribution under ESI/EPF before the due date as per page 87 of the paper book. Based on the above said, it was submitted that the action on the part of Id.PCIT was incorrect as the issue in consideration is prior to the amendment w.e.f. 01.04.2021. He relied upon the decision of this Tribunal dt.29.06.2022 in the case of Gati Kintetsu Express (P) Ltd, Hyderabad Vs. ACIT in ITA No.127/Hyd/2022.

6. On the other hand, the Id.DR has relied upon the order passed by the Id.PCIT. He submitted that the assessee should not have any grievance for the first issue, therefore, no interference is called for from this Tribunal. However, with respect to the 2<sup>nd</sup> issue, he submitted that the same be decided in accordance with the law.

7. Heard the rival submissions and perused the material available on record.

7.1. The Id.PCIT with respect to ground No.2 decided in para No.6 whereby the direction was issued to the Assessing Officer to verify the taxability of Rs.13,93,16,762/- being the VAT amount reduced from the turnover in Profit and Loss account.

Since the issue has been remanded back to the file of Assessing Officer and the ld.AR and ld.DR both agreed that no interference is required in the order passed by the ld.PCIT, therefore, we do not find any reason to interfere with the order passed by the ld.PCIT. Hence, the ground No.2 of the assessee's appeal is dismissed.

8. With respect to ground No.3, in the present case, the assessee had deposited the amount prior to the due date for filing the return of income as it is clear from pages 7 and 8 of the paper book. Therefore, no disallowance can be made u/s 43B of the Act. For the above said purpose, we rely upon the decision of the Coordinate Bench of this Tribunal in the case of Gati Kintetsu Express (P) Ltd, Hyderabad Vs. ACIT (supra). As per the above said decision, it is abundantly clear that no disallowance can be made u/s 43B of the Act if the assessee deposits the contribution before the filing of return of income. Therefore, there would not be any purpose in sending this issue back to the file of Assessing Officer even for verification. We may point out that the ld.PCIT has failed to consider that the order passed by the Assessing Officer is not erroneous but may be prejudicial to the interests of revenue and therefore, the twin conditions are not satisfied. Further, the Tribunal had been consistently allowing the deduction, on account of late deposit of ESI/EPF contribution. In view of the above, the order of ld.PCIT is partly modified with respect to ground No.3. Accordingly, the order of ld.PCIT is modified and the direction issued by ld.PCIT is only restricted to

ground No.2, namely, taxability of Rs.13,93,16,762/- being VAT amount reduced from Profit and Loss account etc. Thus, the appeal of the assessee is partly allowed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 10<sup>th</sup> August, 2022.

<b>Sd/-</b> <b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 10<sup>th</sup> August, 2022.

**TYNN/sps**

Copy to:

S.No	Addresses
1	IJM (INDIA) INFRASTRUCTURE LIMITED, H.No.1-89/1, 3 <sup>rd</sup> and 4 <sup>th</sup> Floor, Plot Nos.42 & 43, Kavuri Hills, Phase – I, Madhapur, Hyderabad – 500081.
2	The DCIT, Circle 2(1), Hyderabad.
3	Principal Commissioner of Income Tax / CIT – 2, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*