

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT**  
*[ Conducted through E-Court at Ahmedabad ]*

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

1. आयकर अपील सं./ITA No.76/RJT/2019
  2. आयकर अपील सं./ITA No.80/RJT/2019
- (निर्धारण वर्ष/Assessment Year : 2014-15)

1.Shri Bhagwanjibhai Vallabhbai Desai Jashvantgadhpura At: Chital, Amreli PAN: AAXPD 9975G	<b>बनाम/</b> Vs.	1 & 2. The Principal Commissioner of Income Tax-3 Rajkot
2.Shri Hasmukhhai Vashrambhai Desai New Lati Bazar At Jashwantgad, Chital,Amreli PAN: ANIPD 5340D		
(अपीलार्थी/ <b>Appellants</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellants by</b> :	Shri D.M. Rindani, AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b> :	Shri Anshu Prakash, CIT-DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	22/08/2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	02/09/2022

आदेश / O R D E R

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER:**

These two appeals are filed by the respective-assessees against the separate orders dated 30/03/2019 & 31/03/2019 passed by the Principal Commissioner of Income Tax-3, Rajkot [Pr.CIT in short] u/s.263 of the Income Tax Act, 1961(hereinafter referred to as "the Act") for Assessment Year (AY) 2014-15.

2. The assessee in ITA No.76/Rjt/2019 has raised the following grounds of appeal:-

- 1. The learned Principal Commissioner of Income-tax-3, Rajkot erred in assuming jurisdiction u/s.263 of the Act, particularly in the light of reasons stated by him in the show cause notice and in the order passed u/s.263 of the Act and hence the impugned order is bad in law.*
- 2. The learned Principal Commissioner of Income-tax-3, Rajkot erred in setting aside the assessment order framed u/s.143(3) of the Act by holding that there is incorrect application of law to the facts available on record.*
- 3. The learned Principal Commissioner of income-tax-3, Rajkot failed to appreciate that provisions of section 14A were not attracted on the facts of the case.*

3. Since both appeals are on identical issue, we are taking facts of ITA No.76/Rjt/2019. The assessee filed return of income on 13/03/2015 declaring the total income of Rs.2,93,177/- for the year under consideration and the same was processed u/s.143(1) of the Act. Thereafter, case was selected for scrutiny under CASS and statutory notice u/s.143(2) of the Act was issued on 29/08/2015 which was duly served upon the assessee. Thereafter, a detailed questionnaire was issued vide letter dated 31/12/2015 asking assessee to furnish certain details in relation to the year under scrutiny. In response to the above notice and questionnaire, the assessee submitted the details from time to time with whom the case was discussed. The reply and explanation filed, discussed and considered for assessment. The Assessing Officer passed assessment order on 23/08/2016.

4. The Pr.CIT issued show-cause notice u/s.263 of the Act dated 30/01/2019 for proposing to revise the assessment order as the Assessing Officer made assessment without making requisite enquiry and in total oblivion of provisions of section 14A of the Income Tax Act, 1961. The

Pr.CIT passed order u/s.263 of the Act dated 30/03/2019 thereby setting aside the assessment order and directed the Assessing Officer to revise the income keeping in view the discussions held in the said order.

5. Being aggrieved by the order under section 263 of the Act passed by the Pr.CIT, the assessee is in appeal before us.

6. The Ld.AR submitted that during assessment proceedings vide letter dated 16/05/2016, the Assessing Officer specifically asked the assessee to furnish ledger account of interest income and interest expense and requested to explain and calculate disallowance of interest expense in view of section 14A of the Act. The Ld.AR submitted that vide letter dated 04/07/2016, the assessee has replied the said query and given full detail related to expenses including copy of ledger account of interest income and interest expense. Thus, the Ld.AR submitted that the Pr.CIT has taken a second opinion and reviewed the assessment order by directing the Assessing Officer to revise the assessment order on the very same issue which was thoroughly enquired by the AO at the time of assessment proceedings.

7. The Ld.DR, on the other hand, relied upon the order u/s.263 of the Act.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer has pointedly asked the queries related to applicability of section 14A of the Act pertaining to interest income and interest expense and the exempt income ratio in consonance with section 14A of the Act. The assessee has given a satisfactory reply along with the documents which clearly establish that there was mixed fund which has interest income as well as exempt income.

Therefore, the Assessing Officer has rightly passed the assessment order after taking into account all these details. The invocation of section 263 of the Act will not come in the picture when the thorough enquiry was done by the Assessing Officer and, thus, there is no prejudicial to the interests of the revenue and the order passed by the Assessing Officer is not erroneous. Thus, Pr.CIT has taken the second opinion and has reviewed the assessment order which is not permissible under section 263 of the Act. The revisionary power does not enlarge the scope of Pr.CIT to take a different view when the same material was produced before the Assessing Officer during the assessment proceedings u/s.143(1) of the Act. Thus, the ITA No.76/Rjt/2019 filed by the assessee is allowed.

9. Since ITA No.80/Rjt/2019 is on identical issue and challenging order u/s.263 of the Act only, the findings given by us hereinabove are applicable in present case. Thus, ITA No.80/Rjt/2019 is allowed.

10. In the result, both the appeals filed by the assesseees are allowed.

<b>This Order pronounced in Open Court on</b>	<b>02/09/2022</b>
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Sd/-  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated 02/09/2022

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad