

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" B" BENCH, AHMEDABAD**

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

आयकरअपीलसं./ITA No. 50/AHD/2021  
निर्धारणवर्ष/Asstt. Year: 2016-2017

Rasna Private Limited, Atlanta Tower, Opp. Sears Tower, Panchvati, GulabTekra, Ahmedabad-380015.  <b>PAN: AAACW4408M</b>	Vs.	The Pr.C.I.T.-3, Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri P.F. Jain, A.R
Revenue by :	Shri Prathvi Raj Meena, CIT. D.R

सुनवाईकीतारीख/**Date of Hearing** : **01/12/2022**  
घोषणाकीतारीख/**Date of Pronouncement**: **21/12/2022**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax, Ahmedabad, dated 30/03/2021 arising in the matter of revision order passed under s.263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The solitary issue raised by the assessee is that the Ld. P.C.I.T, erred in holding the assessment framed u/s 143(3) of the Act, vide order dated 24/12/2018 as erroneous in so far prejudicial to the interest of Revenue.

3. The facts in brief are that the assessee in the present case is a private limited company and filed its return of income dated 15/10/2016, declaring income of Rs.10,24,06,890/- only. The assessee in the year under consideration has earned exempted income amounting to Rs.4,72,69,055/- against which the assessee has made disallowance at Rs.9,22,641/- suo-motto in pursuance to the provision to the provision of section 14A of the Act. However, the AO during the assessment proceeding worked out the disallowance under the provisions of section 14A r.w. Rule 8D at Rs.63,39,616.00 only. Thus, the AO in the assessment proceedings made the disallowance of the balance amount of Rs.54,16,974.00 (Rs. 63,39,616.00 – amount already disallowed Rs. 9,22,642) only. As per the Ld.P.C.I.T, the AO has calculated the average value of investment at Rs.73,32,28,583/- whereas the correct average value of investment stands at Rs.131,72,91,000/- only. Thus, there was short disallowance by the AO for Rs.33,92,318.00 under the provisions of section 14A r.w.r. 8D of Income Tax Rules. It is because, the actual amount of disallowance to be worked out under Rule 8D of Income-tax Rules comes out at Rs.97,31,934.00 only. Therefore, there was short disallowance made by the AO for Rs.33,92,318.00 only.

4. Based on the above, the Ld.P.C.I.T concluded that there is an error in the order of the assessment framed u/s 143(3) of the Act, which is causing prejudicial to the interest of Revenue. Thus, the Ld.P.C.I.T held the assessment order as erroneous in so far prejudicial to the interest of Revenue and direct the AO to make fresh assessment after giving opportunity to the assessee and as per the provision of section 14A r.w. Rule 8D of Income-tax Rules.

5. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 66 and raised various contention that there is no error in the order of the assessment. It was also contended by the Ld.AR that the assessee against the assessment order with respect to the issue of disallowance u/s 14A r.w. Rule 8D has agitated before the Ld.CIT(A) and therefore, on the same issue the Ld.P.C.I.T cannot held the order of the assessment as erroneous in so far prejudicial to the interest of Revenue.

7. On the other hand, the Ld.DR vehemently supported the order of the authorities below.

8. We have heard the rival contention of both the parties and perused the materials available on record. From the preceding discussion, we note that there is no mismatch of the facts that there was a disallowance made by the AO under the provision of section 14A r.w. Rule 8D of Income-tax Rules. Against the order the assessee has also preferred appeal before the Ld.CIT(A). This fact can be established from the submission of the assessee before the Ld.P.C.I.T which is reproduced as under:

*The assessee has therefore stated that as the assessment for AY 2016-17 is before CIT(A) and the issue of 14A is also disputed and the assessing officer as made the disallowance after considering the contentions of the assessee, the order cannot be termed as erroneous and prejudicial to the interest of revenue, warranting invocation of proceedings u/s.263.*

8.1 The above contention of the assessee has nowhere been disputed by the Ld.PCIT. Likewise, the other of the Id. PCIT in the context of the dispute raised by the assessee also read as under:

*The assessee has contended that the issue u/s.14A is a disputed issue and the assessee's appeals are pending before the CIT(A) and the Hon'ble ITAT, Ahmedabad for the previous and succeeding years and particularly for the year consideration before the CIT(A) and one of the grounds includes dispute against disallowance u/s.14A of the Act, the order cannot be termed as erroneous and prejudicial to the interest of the revenue, warranting invocation of proceedings u.s,263.*

8.2 In view of the above, we note that the issue has been agitated by the assessee with respect to the disallowance under the provision of section 14A r.w Rule 8D of Income-tax Rules before the Ld.CIT(A). Accordingly, we are of the view that the matter which is pending before the Ld.CIT(A), cannot be made subject matter of revision under the provisions of section 263 of the Act. In holding so we draw support and guidance from the judgment of Hon'ble Allahabad High Court in case of CIT vs. Vam Resorts & Hotels (P.) Ltd. reported in 111 taxmann.com 62 where it was held as under:

*25. As, Clause (c) of Explanation 1 to Section263 of the Act provides that when an appeal is pending before the Commissioner, the exercise of jurisdiction under Section263 of the Act by CIT is barred. Thus, in the present case, the CIT wrongly exercised jurisdiction under Section263 of the Act by remanding back the matter to assessing authority on 25.3.2013, while the appeal was decided by CIT (A) on 5.6.2013. Thus, the order passed by the ITAT does not suffer from any irregularity and needs no interference.*

8.3 From the above principles laid down by the Hon'ble High Court, we hold that the matters which are pending before the Ld.CIT(A) for the purpose of adjudication cannot be disputed under the proceedings u/s 263 of the Act. Accordingly, we set aside the order of the Ld.PCIT and quashed the same. Hence, the ground of appeal of the assessee is allowed.

9. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 21/12/2022 at Ahmedabad.**

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

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**(True Copy)**

Ahmedabad; Dated 21/12/2022

Manish