

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.07/Rjt/2021
(Assessment Year: 2015-16)

Gujarat Salt Works Kalpesh S. Doshi, & Co., Chartered Accountants, 411, Cosmo Complex Near Mahila College Circle, Kalawad Road, Rajkot-360001 [PAN No.AADFC9477G]	Vs.	Principal Commissioner of Income Tax-1, Rajkot
(Appellant)	..	(Respondent)

Appellant by :	Shri Kalpesh Doshi, A.R.
Respondent by:	Shri Shramdeep Sinha, CIT DR

Date of Hearing	06.06.2023
Date of Pronouncement	16.06.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax, (in short "Ld. Pr.CIT"), Rajkot-1 in Order No. ITBA/REV/F/REV5/2020-21/1029508513(1) vide order dated 06.01.2021 passed for Assessment Year 2015-16.

2. The assessee has taken the following grounds of appeals:-

"1. That, the Learned Principal CIT has wrongly held that the order passed u/s 143(3) is erroneous and prejudicial to the interest of the Revenue and wrongly passed order u/s 263 of the I.T. Act.

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2. *The Learned Principal CIT has grossly erred in law and on facts in not appreciating that in order to invoke section 263, two conditions must be fulfilled viz. that the impugned assessment order must be erroneous and the error must be prejudicial to the interest of the revenue. In the present case ld.AO has passed the assessment order u/s 143(3) after making various enquiries from appellant, calling for various details and the appellant has duly submitted the said details, therefore there was no error in the impugned assessment order so as to justify action u/s 263 of the Act. Under the circumstances, the very assumption of power u/s 263 of the I.T. Act is unjustified and bad-in-law and therefore order u/s 263 of the Act deserved to be quashed.*

3. *That, the learned Principal CIT has wrongly applied the Explanation 2 to Section 263(1) of the I.T. Act for the year under consideration.*

4. *That, the Learned Principal CIT has wrongly disallowed the interest expenditure on advances to associate or sister concern and failed to consider the principal of commercial expediency and the financial position of the assessee as the assessee is also having various non-interest bearing fund.”*

3. The brief facts of the case are that in the original assessment proceedings, the return of income filed by the assessee declaring total income of ₹ 37,150/- was accepted by the Ld. Assessing Officer, and no additions were made. Subsequently, Principal CIT initiated 263 proceedings and held that during the impugned assessment year, the assessee firm's capital is of ₹ 94,95,580/-, however, loans were given amounting to ₹ 3,04,52,464/-. Hence,

it is clear that the loans given by the assessee were out of interest-bearing funds received by the assessee as secured loans amounting to ₹ 10,62,95,051/- and unsecured loans of Rs. 1,90,000/-, on which interest expenses of ₹ 46,51,450/- had been incurred by the assessee firm, while the assessee had not charged interest on loan amounting to ₹ 3,04,52,464/- given to sister concerns. Further, on verification of balance sheet, it was found that assessee had only interest bearing funds. Hence, proportionate disallowance out of interest expense was required to be made by the AO, and hence the assessment order passed by AO is erroneous and prejudicial to the interests of the Revenue.

4. The assessee is in appeal before us against the aforesaid order passed by Principal CIT u/s 263 of the Act. Before us, the counsel for the assessee submitted that the original assessment was initiated on “Limited scrutiny basis” and therefore this issue cannot be covered under scope of 263 proceedings. The second argument of the counsel for the assessee before us was that this issue has been examined in detail during the course of assessment proceedings and the assessee had specifically replied to the same. He drew our attention to pages 32 and 34 of the paper book i.e. notice issued by the AO under section 142(1) of the Act and assessee’s response to the said notice. The counsel for the assessee submitted that by reply dated 10-11-2017, the assessee had duly explained the commercial expediency for giving such interest free advance to its sister concerns. The third argument of the counsel for the assessee was that it is a well-settled principle of law that if the AO in the original proceedings takes a considered and plausible legal view, the same cannot be revised by taking recourse to 263 proceedings. The counsel for the assessee placed reliance on several judicial precedents in support of the above contention. The fourth argument of the counsel for the assessee before us was

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that payments made to associated enterprises is a tax neutral exercise, and therefore, no disallowance of proportionate interest can be made in the hands of the assessee.

5. In response, the DR submitted that a perusal of the 263 order clearly shows that the case of the assessee under “limited scrutiny” assessment was opened to examine specifically-“high interest expenditure” incurred by the assessee during the impugned assessment. Therefore, it cannot be said in the instant set of facts that proportionate disallowance of interest expenditure was beyond the scope of the original assessment proceedings or 263 proceedings. Secondly, the DR submitted that Ld. PCIT has specifically observed in the instant facts that the assessee has not been able to establish or give anything in support of the fact that there was any commercial expediency involved in advancing interest-free loans to its sister concerns. In support, DR drew our attention to page 7, paragraph 4 and page 9, paragraph 6 of order passed by Principal CIT, wherein he has specifically dealt with the fact that the assessee has not been able to substantiate commercial expediency in the instant facts.

6. We have heard the rival contentions and perused the material on record. We are of the considered view that in the instant facts there have been some evident omissions on part of the assessing officer at the time passing of the original assessment order. It is seen from the records produced before us that assessee has advanced the said loans to related parties to fulfil their financial needs and said loans are utilised for payment of debts pertaining to business of the associated enterprises. Even on perusal of the reply filed by the assessee before the assessing officer during the course of assessment proceedings, there seems to be no commercial justification for advancing interest-free funds to its sister concerns. While on one hand, the assessee has taken interest bearing

loans and at the same time it has advanced such loans to its sister concerns for no justifiable commercial expediency. Another point for consideration is that the assessee filed submission dated 10-11-2017 giving the reasons for advancing interest-free loan to its sister concerns and the assessing officer passed the assessment order on the very same day i.e. 10-11-2017, with no additions in the hands of the assessee. Therefore, there is seemingly non-application/ analysis of facts in detail while passing the assessment order. Another notable point for consideration is that the Principal CIT has also observed that the associated party to whom the assessee advanced interest-free loans have also been found to have utilised its own funds in further advancing interest-free funds to other sister concerns. However, the Ld. Assessing Officer has not considered this aspect at the time of passing of assessment order. Therefore, we are of the considered view that the AO has not analysed the facts of the case in detail while passing the assessment order. Thirdly, we also observe that Principal CIT has also held that on analysis of rate comparison chart furnished by the assessee, there are certain glaring discrepancies and it can be seen that the rates which have been quoted by a third party for purchase of salt is lower than the rates quoted by the sister concerns of the assessee. Therefore, even from a perusal of the rate charts submitted by the assessee, there seems to be no viable commercial expediency in the assessee giving interest-free loans to its sister concerns. Finally, regarding the argument of the counsel for the assessee that granting of such interest free loans to the sister concerns is a tax neutral exercise, we are in agreement with the observations made by Principal CIT that the scope of 263 proceedings is limited to analysing whether the order passed by the assessing officer is erroneous and prejudicial to the interests of the revenue and this logic / argument given by the counsel for the assessee is irrelevant so far as 263 proceedings are concerned.

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Accordingly, in view of the above observations, we are of the considered view that the Principal CIT has not erred in facts and in law in holding that the order passed by the assessing officer is erroneous and prejudicial to the interests of Revenue.

7. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on	16/06/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 16/06/2023

TANMAY, Sr. PS

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

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot