

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.430/Kol/2023
Assessment Year: 2017-18**

Indianoil Petronas Pvt. Ltd., Unit I and II Acropolis, 1858/1, Rajdanga Main Road South, Kolkata-700107. (PAN: AAACI 5573 R)	Vs.	Principal Commissioner of Income Tax, Kolkata-2, Kolkata.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri N. S. Saini, Advocate & Shri Sonu Kumar
Agarwal, FCA

Respondent by : Shri Subhrajyoti Bhattacharjee, CIT, DR

Date of Hearing : 15.06.2023

Date of Pronouncement : 23.06.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This captioned appeal filed by the assessee is against the revision order u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), of Ld. Pr.CIT(A)-2, Kolkata vide Order No. ITBA/REV/F/REV5/2022-23/1051794470(1) dated 31.03.2023 against assessment order of National e-Assessment Centre, Delhi u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act, dated 30.03.2021 for AY 2017-18.

2. Grounds raised by the assessee in the present appeal are as under:

“1. That on the facts and in the circumstances of the case and law, the order passed by the Ld. Pr. CIT under section 263 of the Income-tax Act, 1961 (‘IT Act’) is illegal, invalid and not sustainable in law.

2. That on the facts and in the circumstances of the case and law, the Ld. Pr. CIT grossly erred in passing the order under section 263 even though the assessment order under section 143(3) dated 03.03.2021 passed by the

Assessing Officer (AO) was neither erroneous nor prejudicial to the interest of the Revenue.

3. For that on the facts and in the circumstances of the case and law, the Principal CIT without considering the elaborate submissions with evidence of the assessee filed during the hearing u/s 263 on the allowability of depreciation on Equipment Under Lease Finance was not justified in setting aside the assessment order on the issue and restoring it to the file of the Assessing Officer for fresh adjudication.

4. For that on the fact and in the circumstances of the case and law, when the Assessing Officer examined the allowability of depreciation on Equipment Under Finance Lease and allowed the same in the assessment which in the opinion of the PCIT is erroneous, then he was not justified in restoring the issue to the assessing Officer for a fresh adjudication without himself conducting a further enquiry to verify and find out whether the order passed is erroneous or not.

5. For that on the facts and in the circumstances of the case, the order of the Pr. CIT passed u/s 263 be quashed since the assessment order u/s 143(3) dated 03.03.2021 was neither erroneous nor prejudicial to the interest of the revenue.”

3. From the above grounds it is noted that assessee has primarily challenging the assumption of jurisdiction by the Ld. Pr. CIT, Kolkata for invoking the revisionary proceeding u/s. 263 of the Act and passing the impugned thereon.

4. Brief facts of the case are that assessee is engaged in the business of processing and blending of LPG gas. Assessee manufactures blended LPG out of butane and propane. Assessee was formed as a joint venture between Indian Oil Corporation Ltd., a Public Sector Undertaking of the Government of India and Petroliam Nasional Berhad (Petronas), Government Undertaking of Malaysia.

4.1. Assessee filed its return of income on 30.11.2017 reporting total income of Rs.321,35,87,220/- which was revised on 23.10.2018 with total income of Rs.318,26,09,220/-. After making certain disallowance, total income of the assessee was assessed at Rs.319,30,69,220/- u/s. 143(3) read with sections 143(3A)

and 143(3B) of the Act vide order dated 03.03.2021 by National e-Assessment Centre (NeAC).

4.2. Subsequently, Ld. Pr. CIT called for and examined the assessment records and observed that assessee had claimed a sum of Rs.3,09,78,000/- as “any other amount allowable as a deduction” in column no. 33 of Schedule BP – computation of income from business or profession in its revised return of income. Ld. Pr. CIT observed that the said amount is included under the head “Other Financial Liabilities” in the Balance Sheet, details of which have been provided in Note No. 15. According to the Ld. Pr. CIT, Ld. AO has completely ignored the fact that the same was not passed through the P&L Account and, therefore, any amount which has not been passed through the P&L Account and is an item of Balance sheet, cannot be allowed as a deduction from taxable income of the assessee. Therefore, the said amount was required to be included in the taxable income. According to Ld. Pr. CIT, Ld. AO while passing the assessment order, omitted to do so, which has resulted in under-assessment of income to the tune of Rs.3,09,78,000/-, thus, making the assessment order erroneous insofar as it is prejudicial to the interest of revenue.

4.3. Ld. Pr. CIT thus, issued a show cause notice u/s. 263 of the Act dated 15.03.2023 invoking the revisionary proceeding. Assessee made a detailed submission in response to the show cause notice, explaining its claim which did not find favour with the Ld. Pr. CIT who concluded the revisionary proceeding and set aside the assessment order to the file of AO for fresh adjudication. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, Ld. Counsel for the assessee has placed on record a paper book containing 174 pages. According to the Ld. Counsel, assessee had entered into an arrangement with a company called Ennore Tank Terminal Private Limited (ETTPL) for the FY 2012-13 to construct two insulated pipelines to handle the products. Under the agreement, specific pipelines are constructed that are used exclusively to handle the products of the assessee only. The ownership of the pipeline is with ETTPL. Assessee has voluntarily offered to be a committed user of the said facility for a fixed tenure unequivocally waiving any right of termination of the agreement during the fixed tenure. The period of agreement is for 24 years with a minimum guaranteed locking period upto 31.03.2036 commencing from the date of the agreement.

5.1. Ld. Counsel explained that assessee has created an asset at fair value in the year of the lease i.e. FY 2012-13 at Rs.73.80 Crores based on a valuation report obtained from a Chartered Accountant. The said asset has a life of 24 years and, therefore, the cost of the asset is recouped by charging an equal amount of Rs.3.09 Crores to the P&L Account as depreciation in accordance with the Accounting Standard (IND AS) issued by the Institute of Chartered Accountants of India (ICAI). However, while computing the income as per the Act, in the computation of income, depreciation charged as per the Companies Act is added back amounting to Rs.35,56,62,000/- which includes depreciation of Rs.3.09 Crores also charged on the leasehold asset. In the computation of total income, the depreciation as per Income-

tax Rules has been claimed as a deduction amounting to Rs.65,65,15,754/- and the depreciation on the leasehold asset has been claimed as separate deduction under the title "Throughput Charges".

5.2. Ld. Counsel referred to the audited financial statement of the assessee as well as the computation of total income to corroborate the submissions made. In the statement of Profit and Loss, it is pointed that depreciation and amortization expenses are charged which are –

(a) Tangible Assets	-	Rs.3,517.30 lacs
(b) Intangible Assets	-	Rs.39.32 lacs

In this respect, the notes to the financial statement vide note no. 29, ld. Counsel pointed to the chart containing details of various assets and demonstrated how the amount of 3.09 Crores which is charged for the leasehold equipments forms part of the depreciation chart in the statement of Profit & Loss. According to him, Rs. 3.09 Crores formed part of the total charge of depreciation on tangible assets of Rs.3517.30 lacs. In addition to this, vide Note No. 4, there is a depreciation of Rs.39.32 lacs on intangible assets. After referring to these details from the audited financial statements, which are prepared in compliance with the provisions of Companies Act Ind AS issued by ICAI. Ld. Counsel referred to the computation of total income to demonstrate the treatment of depreciation as per Companies Act and under the Act as well as amortization of lease charges depicted as "Throughput Charges". The said computation of total income as reproduced for ease of reference:

Computation of Total Income and Tax liability

Particulars		Amount (Rs)	Amount (Rs)
(I)	Profits and Gains from Business or Profession		
	Net Profit before tax as per Profit and Loss A/c		3,48,14,19,000
Add:	<u>Expenses or Losses disallowable/ considered separately</u>		
a)	Depreciation as per Companies Act, 1956	35,56,62,000	
b)	Disallowance u/s 40(a)(ia) - 30% of amount on which tax not deducted	59,040	
c)	Donations debited to the Profit & Loss A/c	1,50,000	
d)	Entry Tax - u/s 43B - not paid before return filing due date	1,02,87,260	
e)	Loss on sale of Assets, written off	3,74,000	
f)	Interest on late payment of TDS	98,672	
g)	Corporate Social Responsibility	3,25,13,000	
			39,91,43,972
			3,88,05,62,972
Less:	<u>Deductions and/or allowances</u>		
a)	Depreciation as per Income-tax Act, 1961 [Refer Tax Audit Report]	65,65,15,754	
b)	Throughput Charges	3,09,78,000	68,74,93,754
	Profits & Gains from business or profession		3,19,30,69,218
	Gross Total Income		3,19,30,69,218
Less:	<u>Deductions under Chapter VI-A</u> - u/s 80G [As per Annexure 1]		1,04,60,000
	Taxable Income		3,18,26,09,218
	Total Income (Rounded off)..... c/f		3,18,26,09,220
	Tax on total income (@ 30% + 12% S.C. + 3% E.C) (A)		1,10,14,37,399
	Book profit as per Sec. 115]B of the Act		3,48,14,19,000
	Tax on Book Profit (@ 18.5% + 12% S.C. + 3% E.C) (B)		74,29,90,517
	Tax on total income, being higher of (A) and (B)		1,10,14,37,399
Less:	<u>Tax Deducted at Source</u>		10,93,53,245
	Balance Tax Payable/(Refundable)		99,20,84,154
Less:	<u>Advance Tax paid on</u>		
	- Paid on 14.06.2016	10,00,00,000	
	- Paid on 14.09.2016	23,00,00,000	
	- Paid on 14.12.2016	30,00,00,000	
	- Paid on 14.03.2017	39,00,00,000	1,02,00,00,000
			(2,79,15,846)
Add:	Interest u/s 234C		83,79,408
	Balance Tax Payable / (Refundable)		-1,95,36,438

5.3. Ld. Counsel thus, asserted that the observation of Ld. Pr. CIT that the amount of Rs. 3.09 Crores has not been debited in the P&L Account is not correct which is verifiable from the audited financial statements and its treatment in the computation of total income, returned by the assessee. Ld. Counsel stated that different nomenclature used by the

assessee in its accounting and in computation of total income should not lead to arrive at the adverse conclusion drawn by the Ld. Pr. CIT that the assessment order is erroneous insofar as prejudicial to the interest of revenue. According to him, what is essential is to determine if the assessee is entitled to a particular deduction or not will depend upon the provisions of the Act. Existence or absence of entries in the books of account will not be decisive or conclusive for the same as held by the Hon'ble Supreme Court in the case of Kedarnath Jute Manufacturing Co. Ltd. (1971) 82 ITR 313 (SC).

5.4. Ld. Counsel also referred to a fact that two notices were issued u/s. 263 invoking the revisionary proceedings for two assessment years viz., AY 2017-18 which is before the Tribunal in appeal and for AY 2018-19 for which date of notice is 14.03.2023. The issues raised by the Ld. Pr. CIT in both the show cause notices are identical including the amount of claim of deduction of Rs.3.09 Crores towards lease. Both the notices have been issued by the same Officer (i) for AY 2018-19 on 14.03.2023 and (ii) for AY 2017-18 dated 15.03.2023. Ld. Counsel submitted that the revisionary proceeding for AY 2018-19 on the same issue has been dropped by the Ld. Pr. CIT. Also, in the revisionary order in the impugned year, nothing has been pointed as to how the order is erroneous leading to prejudice to the interest of the revenue except for setting aside the assessment and directing the AO to verify the claim from its books of account and reframe the assessment afresh after providing opportunity to the assessee.

5.5. Ld. Counsel thus, asserted that there is no application consideration for which he placed reliance on the decision of Hon'ble High Court of Delhi in the case of ITO Vs. D. G. Housing projects ltd. 343 ITR 329. He thus asserted that the impugned order be quashed.


6. Per contra, Ld. CIT, DR placed reliance on the order of Ld. Pr. CIT and submitted that assessee has claimed the expenses in its revised return which was not claimed in its original return as well as in the preceding years. He further submitted that no prejudice is caused to the assessee if the issue raised in the revisionary order is examined by the Ld. AO to arrive at fresh conclusion.

7. We have heard the rival contentions and perused the material available on record. We have also gone through the material placed before us. We note that the issue before us is in respect of treatment of lease charges for the gas pipe lines in the books of account by complying with the provisions of Companies Act and the Accounting Standard vis-à-vis the allowability of the same in computing the income from profits and gains from business or profession under the provisions of the Act. The sole premise on which the revisionary proceedings were invoked is that the amount of Rs. 3.09 Crores has not been passed through the P&L Account and is an item of Balance sheet, therefore, it is not an allowable deduction from the taxable income of the assessee. The Ld. Counsel has taken us through the audited financial statement which includes statement of P&L and demonstrated charging of depreciation and amortization,

both on tangible assets and intangible assets which includes equipment under lease. Further, the charge of depreciation and amortization which has been adjusted while computing the income under the head "Profits and Gains of business or profession" in accordance with the provisions of the Act has also been substantiated by the Ld. Counsel.

7.1. The relevant disclosures made by the assessee in its audited financial statements are reproduced as under:

17

 **INDIANOIL PETRONAS
PRIVATE LIMITED**

ACCOUNTS

Statement of Profit and Loss
for the year ended March 31, 2017
(Rs. in Lakhs)

Particulars	Notes	For the year ended March 31, 2017	For the year ended March 31, 2016
I - REVENUE			
Revenue From Operations	21	1,18,176.46	99,252.95
Other Income	22	2,229.51	2,657.17
Total Revenue (I)		1,20,399.97	1,01,910.12
II EXPENSES			
Cost of Material Consumed	23	52,392.08	27,059.56
Purchases of Stock in trade	24	4,233.08	16,822.34
Changes in inventories of stock-in-trade	25	(0.39)	19.97
Excise duty on sale of goods	26	5,131.40	2,917.77
Employee Benefits Expense	27	1,224.16	1,072.95
Finance Costs	28	2,385.75	3,140.40
Depreciation and amortization expense	29		
a) Tangible Assets		3,517.80	3,275.37
b) Intangible Assets		39.82	38.02
Other Expenses	30	16,672.08	14,451.09
Total expenses (II)		85,585.78	68,697.47
III Profit before tax (I-II)		34,814.19	33,212.65
IV Tax expense:			
(1) Current Tax	20	1,045.80	1,008.82
(2) Deferred Tax		154.35	243.42
V Profit for the period (III-IV)		22,614.04	21,960.41
VI Other Comprehensive Income			
A Items that will not be reclassified to profit or loss			
Re-measurement gains (losses) on defined benefit plans		(2.80)	(0.59)
Income tax effect		0.97	0.20
VII Total Comprehensive Income for the period (V + VI) (Comprising Profit (Loss) and Other Comprehensive Income for the period)		22,612.21	21,960.02
VIII Earnings per equity share:			
(1) Basic	31	6.44	8.19
(2) Diluted		6.44	8.19

The accompanying notes are an integral part of the financial statements.

In terms of our report attached For and on behalf of the Board Of Directors
For Deloitte Haskins & Sells LLP
Chartered Accountants

Abhijit Bandyopadhyay Partner
Y.K. Gupta Chairman
Sandeep Kumar Gupta Director
Suparna Chakraborty Company Secretary

V. Satish Kumar Chief Executive Officer
Haza Rizal Bin Borhan Financial Controller

Place : Kolkata
Date : May 05, 2017

Notes to the financial statements

Particulars	(Rs. In Lakhs)											Total					
	Freehold Land	Leasehold Land	Buildings	Roads	Plant and Equipment	Equipment Under Finance Lease	Electrical Installation	Furnitures and Fixtures	Vehicles	Office Equipment	Computers & Networking		Capital work in progress				
Cost																	
As at April 01, 2015	4,266.26	675.55	8513.26	1714.17	38,309.74	6,556.93	4,600.25	86.48	0.07	284.89	6.12	5,330.90	70,344.72				
Additions			1776.41	14.44	590.26		101.69	85.11		105.97	16.94	5,988.16	8,678.98				
Transfer												1,177.94	1,177.94				
Disposals					6.92					2.00			8.82				
As at March 31, 2016	4,266.26	675.55	10,289.67	1,728.61	38,893.18	6,556.93	4,701.94	171.59	0.07	388.96	23.06	10,141.12	77,838.94				
Additions		148.95	835.62	480.36	13,497.37		861.64	5.60		51.24	8.89	552.63	16,442.30				
Transfer												10,208.95	10,208.95				
Disposals					4.15			0.22		0.25	0.20		4.82				
As at March 31, 2017	4,266.26	824.50	11,125.29	2,208.97	52,386.40	6,556.93	5,563.58	176.97	0.07	439.95	31.75	484.80	84,065.47				
Depreciation																	
As at April 01, 2015																	
Charge for the year		8.95	350.78	202.06	1,817.52	309.78	649.90	15.57	0.01	117.33	3.47		3,275.37				
Deductions					0.06								0.06				
As at March 31, 2016		8.95	350.78	202.06	1,817.46	309.78	649.90	15.57	0.01	117.33	3.47		3,275.31				
Charge for life year		9.14	419.23	226.06	1,751.23	309.78	660.44	19.75	0.01	115.15	6.51		3,517.30				
Deductions					0.34			0.11		0.17			0.62				
As at March 31, 2017		18.09	770.01	428.12	3,368.35	619.56	1,310.34	35.21	0.02	232.31	9.98		6,791.99				
Net block																	
As at March 31, 2017	4,266.26	806.41	10,355.28	1,780.85	49,018.05	5,937.37	4,253.24	141.76	0.05	207.64	21.77	484.80	77,273.48				
As at March 31, 2016	4,266.26	666.60	9,938.69	1,526.55	37,275.72	6,247.15	4,052.04	156.02	0.06	271.63	19.59	10,141.12	74,561.63				

Notes to the financial statements**4. Intangible Assets**

(Rs. In Lakhs)

Particulars	As at March 31, 2017	As at March 31, 2016	As at April 01, 2015
Carrying amounts of :			
Computer software	35.27	73.32	111.34
Total	35.27	73.32	111.34

(Rs. In Lakhs)

Particulars	Computer Software	Total
Gross block		
As at April 01, 2015	111.34	111.34
Additions	-	-
Disposals	-	-
As at March 31, 2016	111.34	111.34
Additions	1.27	1.27
Disposals	-	-
As at March 31, 2017	112.61	112.61
Amortization		
As at April 01, 2015	-	-
Charge for the year	38.02	38.02
Disposals	-	-
As at March 31, 2016	38.02	38.02
Charge for the year	39.32	39.32
Deductions	-	-
As at March 31, 2017	77.34	77.34
Net block		
As at March 31, 2017	35.27	35.27
As at March 31, 2016	73.32	73.32

7.2. From the verification of the above disclosure and computation, we find that the very premise assumed by Ld. Pr. CIT does not hold good and thus, when the foundation itself collapses the super-structure falls. We find that in the present facts and circumstances, the legal maxim '*sublato fundamento cadit opus*' is applicable, meaning thereby - '*a foundation being removed, the superstructure falls*'. Once the basis of a proceeding is

gone, the action taken thereon would fall to the ground. Thus, in the absence of such foundation, exercise of a suo motu power is impermissible. It should not be presumed that initiation of power under suo motu revision is merely an administrative act. It is an act of a quasi-judicial authority and based on formation of an opinion with regard to existence of adequate material to satisfy that the decision taken by the Assessing Officer is erroneous as well as prejudicial to the interests of the revenue. Considering the facts on record and the material corroborating the submissions made, we unhesitatingly hold that the impugned order is not sustainable as there is no prejudice caused to the revenue as well as it is not being erroneous in terms of provisions of sec. 263 of the Act. Accordingly, grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 23rd June, 2023.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 23rd June, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT,
 4. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata