

**आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणेमें।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**PUNE BENCHES "C" :: PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**  
**AND**  
**DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकर अपील सं. / ITA No.814/PUN/2022**  
**निर्धारण वर्ष / Assessment Years : 2017-18**

Carraro India Private Limited, B 2/2, MIDC, Ranjangaon Karegaon, Pune – 412220.  PAN: AAACC 5292 M	V s	The Principal Commissioner Income Tax-1, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Nikhil Mutha – AR
Revenue by	Shri Ganesh Bare - CIT
Date of hearing	26/06/2023
Date of pronouncement	25/07/2023

**आदेश/ ORDER**

**PER DR. DIPAK P. RIPOTE, AM:**

This appeal filed by Assessee is directed against the order of Id.Principal Commissioner of Income Tax, Pune-1 dated 15.09.2022 for A.Y. 2017-18 under section 263 of the Income Tax Act, 1961. The Assessee has raised the following grounds of appeal:

***“APPEAL AGAINST ORDER PASSED BY PR. CIT U/S 263  
OF THE ACT AY 2017-18***

*On the facts and circumstances of the case and in law the Pr. CIT:*

***On validity of initiation of revision proceedings***

1. *Erred in initiating the revision proceedings under section 263 of the Act, without appreciating that section 263 cannot be invoked unless the conjunctive conditions that assessment order passed is erroneous in law as well as prejudicial to the interests of the revenue, are satisfied;*
2. *Erred in passing order under section 263 of the Act, by setting aside with a direction to AO to re-examine the Appellant's claim of deduction in respect of Royalty expenses of Rs.16,69,36,844 and Legal and Professional Fees of Rs.17,18,57,600;*
3. *Erred in holding that the Ld. AO ought to have made the disallowance taking cognizance of litigation in the past, without appreciating the fact that the Hon'ble ITAT had already settled issue of allowability of these expenses in favour of the Appellant;*
4. *Erred in initiating revisionary proceedings on the ground that there was no discussion in the assessment order with respect to the aforesaid expenses without appreciating the fact that elaborate submissions were made during the course of assessment proceedings on the specific query raised by the Ld. AO and that after due application of mind the same has been allowed by the Ld. AO;*
5. *Erred in holding that the Ld. AO ought to have made the disallowance taking cognizance of litigation in the past, without appreciating the fact that the Hon'ble ITAT has already decided this issue of allowability of these expenses in favour of the Appellant and, therefore, the Ld. AO had not committed any error so as to call for Pr. CIT's jurisdiction u/s 263 of the act.*

6. *Erred in exceeding jurisdiction under Section 263 of the Act by alleging that Hon'ble ITAT in preceding year did not examine applicability of CBDT Circular No. 21 of 9 July, 1969 thereby challenging decision-making process of Hon'ble ITAT in preceding years.*

*The Appellant craves leave to add, alter, modify delete all or any of the grounds of appeal on or before hearing."*

**Brief Facts of the case :**

2. The ld.Pr.CIT has invoked jurisdiction under section 263 of the Income Tax Act, 1961 on the ground that the Assessing Officer(AO) has erred in not verifying the legal and professional fees paid of Rs.17,18,57,600/-. The Ld. Pr.CIT has opined that the Assessing Officer has also failed to verify assessee's claim of royalty expenses of Rs.16,69,36,844/-. The ld.Pr.CIT has observed that assessment order dated 22.04.2021 passed under section 143(3) r.w.s 144C was erroneous and prejudicial to the interest of the Revenue.

**Submission of ld.AR :**

3. The ld.Authorised Representative filed paper book containing 672 pages. At the outset, the ld.AR argued that ld.Pr.CIT has erred in invoking provisions of section 263 of the

Act. The ld.AR read out para 9.5 of the order under section 263 and submitted that both these issues have been decided by ITAT in assessee's own case for A.Y. 2010-11 and 2011-12 in favour of the assessee. The ld.AR took us through the ITAT orders for A.Y. 2010-11 and 2011-12 in assessee's own case in ITA No.823/PUN/2016, 835/PUN/2016, 1261/PUN/2018 and 1309/PUN/2018. The ld.AR pleaded that since these issues have already been decided in favour of the assessee by the Hon'ble ITAT, the assessment order is not erroneous and prejudicial to the interest of the Revenue, therefore, order section 263 is bad in law. The ld.AR further pleaded that all the details regarding both these issues were submitted during the assessment proceedings and during the proceedings before Transfer Pricing Officer(TPO). The ld.AR took us through the notice under section 142(1) issued by the TPO and submission of the assessee regarding the same which is at page no.121 to 324 of the paper book to demonstrate that all the details related to these issues have already been filed. The AO and TPO had applied their mind and then passed the assessment order. Hence, the order u/s 263 is bad in law. The ld.AR relied on various case laws.

**Submission of ld.DR :**

4. The ld.DR relied on the orders of the ld.Pr.CIT.

**Findings and Analysis :**

5. We have heard both the parties and perused the records. The ld.Pr.CIT in the order under section 263 of the Act has categorically mentioned with reference to Royalty Expenses of Rs.16,69,36,844/- that the Hon'ble ITAT has decided the issue in favour of the assessee in A.Y.2004-05 to AY 2011-12 and the Revenue has filed an appeal before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court for A.Y.2004-05 has dismissed the appeal of the revenue on the ground of Low Tax effect. Similarly, the ld.Pr.CIT has categorically mentioned in the order under section 263 that Tribunal has decided the issue of payment of Legal professional fees in favour of the assessee for A.Y. 2010-11 and 2011-12. The Department has filed an appeal before the Hon'ble High Court.

6. Thus, it is an admitted fact that both the issues have been decided by the ITAT in favour of assessee for A.Y. 2010-11, ITA No.1261/Pun/2018, 1309/PUN/2018 and AY 2011-12 ,ITA 823/PUN/2016,835/PUN/2016.

6.1 To invoke the provisions of section 263 of the Act, there are two primary conditions i.e.

- i) Order should be prejudicial to the interest of the revenue
- ii) Order should be erroneous.

7. In this case, since the impugned issues have been decided in favour of the assessee by ITAT for AY 2009-10, A.Y.2010-11 & A.Y.2011-12, as on the date it is a settled issue in favour of the assessee. In these facts and circumstances of the case, the order of the AO for A.Y.2017-18 is not erroneous and prejudicial to the interest of the Revenue.

8. Before we discuss the case further, we will like to mention the relevant case laws on this issue.

8.1 The Hon'ble Supreme Court in the case of CIT Vs. Amitabh Bachchan, 38 4ITR 200(SC) observed as under :

*“21. There can be no doubt that so long as the view taken by the Assessing Officer is a possible view the same ought not to be interfered with by the Commissioner under Section 263 of the Act merely on the ground that there is another possible view of the matter. Permitting exercise of revisional power in a situation where two views are possible would really amount to conferring some*

*kind of an appellate power in the revisional authority. This is a course of action that must be desisted from.”*

8.2 The Hon’ble Jurisdictional High Court in the case of CIT v/s Mepeco Industries Ltd. 294 ITR 121 (Madras) held as under :

*Quote, “8. Therefore, on the facts of the case, when two views are possible and it is not the case of the Revenue that the view taken by the Assessing Officer is not permissible in law, the CIT is not justified in invoking the jurisdiction under section 263 of the Act.”*

*Unquote.*

8.3 The Hon’ble Bombay High Court in the case of CIT Vs. Future Corporate Resources Ltd in IT Appeal No.1275 of 2017 vide order dated September 29, 2021 held as under :

*Quote ,“ 7. In the order of PCIT it is stated "in paragraph 4.3 of the assessment order, the Assessing Officer has recorded that from the details submitted by the assessee and the explanation given by him, it was observed that assessee had regular business connection with the company in which investment had been made and also there was business income to the assessee from the same. Therefore, interest expense debited by the assessee has not been considered for the calculation of disallowance under section 14A because the same has been incurred for the purpose of business." The PCIT therefore agrees that the Assessing Officer has recorded from the details submitted by respondent and the explanation given by respondent that the assessee had regular business connection with the company in which investment has been made and also there was a business income to the assessee from the same. He notes that the Assessing Officer, therefore did not consider the*

*calculation of disallowance under section 14A the interest expense debited by the assessee because the same has been incurred for the purpose of business. The PCIT though was unhappy with the view of the Assessing Officer, the PCIT himself does not say why it should have been considered for the calculation of disallowance under section 14A. Even if one assumes that he has, after reading of the order expressed his views, but still the position is two views therefore were possible. Therefore, if one of the two possible views was taken by the Assessing Officer, the PCIT could not have exercised his powers under section 263 of the Act. 8.” Unquote .*

8.4 Thus, the principal of the law emanating from the above decision of the Hon’ble Supreme Court, the Hon’ble Bombay High Court is that when two views are legally possible and AO adopts one view the Assessment Order cannot be said to be erroneous for the Id.Pr.CIT to invoke jurisdiction u/s 263. In this case the AO has taken one of the possible Legal View. Hence, the Assessment Order is not erroneous and prejudicial to the interest of the revenue.

9. In this case, the Id.Pr.CIT though has discussed in the order u/s.263 of the Act, the Order of the ITAT for earlier years in the case of the assessee on the impugned issues, erred in taking a divergent view. The Id.Pr.CIT is a quasi- judicial authority, and hence the Id.Pr.CIT is duty bound to follow the Judicial

Precedence. Merely, because the Department has filed an appeal before the Hon'ble High Court does not give an authority to the Id.Pr.CIT to take a divergent view. In this context observation of Hon'ble Supreme Court in the case of Union Of India And Others Vs Kamlakshi Finance Corporation order dated 24<sup>th</sup> September, 1991 AIR 1992 SC 71, are reproduced here as under :

*Quote, "It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws. "Unquote*

10. Therefore, in the facts and circumstances of the case, for all the reasons discussed in earlier paragraphs, we are of the opinion that the order u/s 263 is not sustainable in law, hence it is set aside. Accordingly, grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open Court on 25<sup>th</sup> July, 2023.

Sd/-  
(S.S.GODARA)  
JUDICIAL MEMBER

Sd/-  
(DR. DIPAK P. RIPOTE)  
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> July, 2023/ SGR\*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,  
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.