

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
ITA No. 387/SRT/2023 (AY: 2018-19)  
(Hearing in Virtual Court)

Vapi Green Enviro Limited, 135, 1 <sup>st</sup> Floor, Via House, G.I.D.C. Char Rasta, Vapi, Gujarat, India-396195. <b>PAN: AAACV 8289 P</b>	Vs.	Pr.C.I.T., Valsad. 301, 3 <sup>rd</sup> Floor, Palak Arcade, Shanti Nagar, Tithal Road, Valsad-396001.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Assessee by	Ms. Arti N. Shah, C.A.
Department by	Shri Ashish Pophare, CIT-DR
Date of Institution of Appeal	31/05/2023
Date of hearing	19/09/2023
Date of pronouncement	21/09/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned Principal Commissioner of Income Tax, Valsad [in short the Id. Pr.CIT] dated 31/03/2023 passed under Section 263 of the Income Tax Act, 1961 (in short, the Act) for the Assessment Year (AY) 2018-19. The assessee has raised following grounds of appeal:

- “1. *The Ld. Commissioner of Income Tax (Exemption), Valsad, has grossly erred in law as well as on facts and circumstances of the case by passing order dated 31.03.2023 u/s. 263 considering that the order passed by National e-Assessment Centre, Delhi, u/s. 143(3) is erroneous and prejudicial to the interest of the revenue.*
2. *The Ld. Commissioner of Income Tax (Exemption), has further erred in law and on facts, in as much as, while passing order u/s.263 of the I.T. Act, 1961 on 31.03.2023 without considering the fact that the said assessment order has been subject matter of appeal before CIT(A),*

*which has already been decided in favour of the Appellant by order dated 20.01.2023, and therefore, matters raised for revision order u/s.263 have been duly considered and decided in appeal thereby rendering the order u/s.263 as illegal and bad at law.*

3. *The Ld. Commissioner of Income Tax (Exemption) has also erred in law and on the facts of the case, by holding that the Ld. Assessing Officer ought to have disallowed deductions for the expenditures of—
  - (i) Rs.40,93,611/- being payment of interest on delayed payment to GIDC,
  - (ii) Rs. 1,28,32,068/- being provision for bad and doubtful debts and
  - (iii) Rs. 10,410/- being interest on TDS.*
4. *The Ld. Commissioner of Income Tax (Exemption) has erred in overlooking the fact that, the Appellant has claimed gross income of Rs.52,71,01,098/- as exempt on applicability of mutuality principles and the Appellant has not claimed any expenditure as they are related to exempt income.*
5. *The Ld. Commissioner of Income Tax (Exemption) has erred in law and on the facts of the case, by concluding that the Appellant has failed to disclose income in respect of grant of Rs. 1,22,37,948/- though in fact, the Appellant has clearly shown that the same represents the amount of deferred grant transferred to Profit and Loss Account to meet depreciation on assets acquired out of grants received from Government of India in earlier years prior to the amendment of section 2(24) by inserting clause (xviii) w.e.f. 01.04.2016 and duly covered by exclusion provided thereunder.*
6. *The Ld. Commissioner of Income Tax (Exemption) has erred in law and on the facts of the case, by holding that the Appellant has failed to disclose income by way of effluent charges received from the non-members amounting to Rs.26,63,574/- though in fact, the Appellant has duly shown net income of Rs.7,31,205/- from the non- members after deducting expenses of Rs. 19,32,370/- related to gross receipt from non-members of Rs.26,63,574/-.*
7. *The Ld. Commissioner of Income Tax (Exemption) has erred in law and on the facts of the case, by not appreciating the fact that income assessed by the Ld. Assessing Officer already includes amount of Rs.56,18,31,639/- which includes Rs.52,71,01,098/- gross income (without allowing deduction for any expenses).*
8. *The appellant reserves the right to add, alter, amend and/or withdraw any of the above Grounds of Appeal.”*

2. Perusal of record show that the Id. Pr.CIT passed the impugned order on 31/03/2023, however, the present appeal is filed on 31/05/2023, thus, the Registry of this Tribunal has worked out a delay of 'one day' in filing appeal before the Tribunal. The learned Authorised Representative (Id. AR) of the assessee submits that there is no intentional nor deliberate delay in filing appeal before the Tribunal. The assessee has made payment of appeal fees of Rs. 500/- on 27/05/2023. The complete set of appeal alongwith required orders of lower authorities were sent from his office on 29/05/2023 through speed post to the registry of this Bench. The Id. AR of the assessee submits that due to delay in transit of postal article, the delay is of one day occurred. The Id. AR of the assessee seek permission to make oral request for condoning such delay.
3. On the other hand, the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue after hearing the submission of Id. AR of the assessee submits that the Bench may take appropriate decision on the basis of material available on record.
4. Considering the submissions of both the parties, it seems that there is no intentional or deliberate delay of one day in filing present appeal. Considering the oral application of Id. AR of the assessee particularly keeping in view the fact that the assessee has taken all step for filing appeal in time and the delay occurred seems to be not intentional or

deliberate, moreover delay is only of one day, therefore, the delay is condoned. Now advertng to the merit of the case.

5. Brief facts of the case are that the assessee is a Private Limited Company, engaged in treatment and disposal of industrial waste in Vapi Gujarat. The assessee filed its return of income for A.Y. 2018-19 on 10/10/2018 declaring income of Rs. 3,47,07,098/- under the regular provisions and took profit of Rs. 3,07,12,494/- under Section 115JB of the Act. The case of assessee was selected for complete scrutiny under e-assessment scheme with regard to 'refund claim' and 'ICDS compliance and adjustment'. The Assessing Officer while passing the assessment order under section 143(3) on 03/03/2021 made addition of Rs. 9.09 crores on account of denial of concept of mutuality. The Assessing Officer also made disallowance of depreciation of Rs. 4.19 crores. The assessee filed appeal before the Id. CIT(A) against such disallowance and succeeded. The revenue filed further appeal before the Tribunal vide ITA No. 153/Srt/2023, which was dismissed. Subsequently, the assessment order was revised by the Id. Pr.CIT, Valsad exercising his jurisdiction under Section 263 of the Act vide order dated 31.03.2023.

6. Before passing the order under Section 263, the Id. Pr.CIT issued show cause notice under Section 263 of the Act on 10/03/2023. In the show cause notice, the Id. Pr.CIT referred that on verification of record of this case, he found that the provisions for bad and doubtful debts amounting

to Rs. 1.28 crore have been debited in Profit & Loss Account, however, the same has not been added back, even though, it is not allowable expenditure. The Id. Pr.CIT further noted that the interest on TDS amounting to Rs. 10,410/- has been claimed, however, being not allowable expenditure, the same has not been added back by the assessee and assessee failed to add back to the total income. Again interest amounting to Rs. 40,93,611/- was paid to Gujarat Industrial Development Centre (GIDC) and debited to Profit & Loss Account as penal interest, which is not allowable as per Section 37 of the Act. Thus, the Id. Pr.CIT issued show cause notice on three issues as recorded above. The assessee was asked to furnish explanation within ten days from the receipt of said notice.

7. The assessee filed its reply on 19/03/2023. The entire reply of assessee is extracted by Id. Pr.CIT in his order. The assessee besides explaining the entire facts of the case, made specific submission that the receipt of assessee consist of effluent treatment charges received from its members of Rs. 51.47 crores, amount of deferred grant transferred to meet depreciation on assets acquired out of grants received from Government of India of Rs. 1.22 crore, and amount of profit on sale of assets of Rs. 99,007/-, were considered as relating to mutual activities. Such receipt are excluded from the definition of income chargeable to tax under Section 4 of the Act. The assessee also explained that the bank interest

on balance of deposit with Dakshin Gujarat Vij Company Ltd. of Rs. 3.39 crores and effluent treatment charges received from non-members were offered for taxation. The assessee submitted that the treatment charges collected from members are in the nature of receipt by mutual association from its members. There is no element of trade but an idea of rendering mutual help. The receipt, thus comes in their hand is not a profit. The main text of mutuality is a complete identity of contributors with receipts. The assessee explained the general principle of mutuality and relied on a number of decisions of superior courts. The assessee specifically relied on the decision of Hon'ble Bombay High Court in the case of CIT Vs Common Effluent Treatment Plant (Thane-Belapur) Association (2010) 328 ITR 362 (Bom) and submitted that the ratio of said decision is directly applicable as facts of their case being identical. The assessee further submitted that in case of assessee, a common order was passed by Tribunal on 20/04/2012 for A.Y. 2002-03, 2006-07 to 2008-09 by accepting the fact that the assessee is working on the concept of mutuality. Further similar order was passed for A.Y. 2009-10 on 22/08/2016 by the Tribunal. And again for A.Y. 2010-11, 2011-12, 2013-14 and 2014-15. By referring such decision as well as orders of Id. CIT(A) for various other years from A.Y. 2010-11 to 2016-17, the assessee submitted that in all cases, their appeals were decided in their favour holding that principle of mutuality is applicable in case of assessee by holding that the treatment charges

received from its member as well as income directly, related to mutual activities are not taxable.

8. The assessee in para 14 of their reply submitted that initially, intimation under Section 143(1) was received by assessee on 25/02/2020 from DCIT(CPC), Bangalore determining total income of Rs. 56.18 crores by raising demand of Rs. 16.41 crores. The assessee noticed major discrepancies that income of Rs. 52,71,24,541/- (Rs. 52,71,01,098 + 23,443 with regard to ESI contribution paid after due date as per audit report) was considered as taxable business income out of which Rs. 52,71,01,098/- was considered by assessee relating to mutual activities and not covered by definition of income. The assessee filed appeal before CIT(A) against such adjustment of income relating to mutual activities and such adjustment was deleted. The assessee further stated that in the meantime, the case was selected for scrutiny and assessment was completed under Section 143(3) by making addition on account of mutuality of Rs. 9.09 Crore and disallowing depreciation of Rs. 4.19 Crore. The assessee again filed appeal before the Id. CIT(A) and the additions were deleted by holding that effluent treatment charges collected from the members are in the nature of receipt of mutual association and the addition of Rs. 9.09 crores as business profit and disallowance of depreciation of Rs. 4.19 Crore was also deleted being consequential.

9. The assessee further explained that the assessee declared returned income of Rs. 3.47 crores and the assessee has not claimed any deduction in respect of expenses debited to Profit & Loss Account and as such shown gross income without any deduction therefrom. The income of Rs. 52.71 crores were claimed as exempt on principle of mutuality and also gross income without claiming any deduction or any expenditure. The assessee specifically stated that the assessee has not debited any deduction in respect of all three counts/ issues which has been identified by the Id. Pr.CIT in his show cause notice i.e. doubtful debts of Rs. 1.28 crore, TDS of Rs. 10,410/- and interest paid to GIDC of Rs. 40,93,611/- from their Profit & Loss Account. Once, no deduction is claimed in respect of any expenditure, question of disallowance thereof does not arise. The Tribunal in assessee's own case as well as by the Id. CIT(A), wherever and whenever in any year, such disallowances were made by the Assessing Officer in the assessment order, in all such years, the appellate authorities have held that when no claim of deduction of expenditure out of income has been made in view of exemption of income due to applicability of mutuality principle, no disallowance of any expenditure is sustainable. The assessment for the impugned assessment year-2018-19 has been a subject matter of appeal in intimation under Section 143(1) as well as scrutiny assessment under Section 143(3) of the Act which has been decided by the Id. CIT(A), holding that when no deduction is

claimed, question of making any disallowance does not arise at all. The assessee submitted that the issue regarding disallowance of expenditure cannot be a subject matter of revision in view of provisions contained in clause (c) to Explanation-1 of sub-section (1) of Section 263 of the Act, as the same was directly or indirectly was a part of issue in appeal before CIT(A).

10. The reply of assessee was not accepted by the Id. Pr.CIT. The Id. Pr.CIT held that the Assessing Officer has disallowed the concept of mutuality as claimed by assessee, therefore, he was duty bound to disallow certain expenditure which are not allowable and such expenditure as interest on TDS, provision for bad debt and delayed payment made to GIDC, if found proper. The Assessing Officer failed to do so, rendering the assessment order as erroneous as well as prejudicial to the interests of revenue. The Id. Pr.CIT further held that the assessee failed to filed income properly, if for the sake of brevity, if the concept of mutuality is accepted even then income has not been shown properly and that the assessee has failed to show the charges received from non-members and grant received. The income of Rs. 7,31,204/- chargeable under the head Profit & Loss has been shown without two items as income. The income is defined under Section 2(24) of the Act and Finance Act, 2015, new sub-clause (xviii) was inserted w.e.f. 01/04/2016 applicable from A.Y. 2016-17 and as per amendment, assistance of any sort whatever name called by Central

Government or State Government shall be considered as income of assessee, except where assistance is taken into account for determination of actual cost of asset in accordance with provisions of Explanation-10 to Section 43(1) of the Act. There is no distinction between any kind of assistance to consider the same as income of assessee. Any sort of subsidy received by assessee from the specified person irrespective of its nature as capital revenue shall be taxable as income of assessee unless falls in exclusion category. On the basis of such observation, the Id. Pr.CIT held that the Assessing Officer cannot remain passive in the face of a return which is apparently in order but calls further enquiry. It was his duty to ascertain truth of the facts stated in the return, when the circumstances of the case are such as to provoke an enquiry. Failure on part of Assessing Officer making enquiry made the order erroneous by accepting it as correct. The Id. Pr.CIT set aside the assessment order with the direction to frame the assessment de novo after making proper enquiries in time and as per provisions of law after giving reasonable opportunity of hearing to assessee. Aggrieved by the order of Id. Pr.CIT, the assessee has filed present appeal before this Tribunal.

11. We have heard the submissions of Id. AR of the assessee and the Id. CIT-DR for the revenue and have gone through the orders of the lower authorities carefully. The Id. AR of the assessee submits that the initially, the return of income was processed under Section 143(1) and the

Assessing Officer/CPC made adjustment by disallowing the benefit of principle of mutuality. The assessee filed appeal before CIT(A) against adjustment made by CPC. The Id CIT(A) allowed full relief to the assessee. Again, the case was selected for scrutiny and the assessment was completed under Section 143(3) on 03/03/2021 by disallowing benefit of mutuality by making addition of Rs. 9.09 crores and depreciation of Rs. 4.19 crores. Aggrieved by such additions, the assessee filed appeal before the Id. CIT(A) wherein the contention of assessee was accepted and the assessee was allowed benefit of concept of mutuality thereby deleting both the additions/disallowances. The revenue filed appeal before the Tribunal. The appeal of revenue was dismissed vide order dated 31/05/2023 in ITA No. 153/Srt/2023.

12. The Id. AR of the assessee submits that the issue identified by the Id. Pr.CIT was directly or indirectly was the subject matter of disallowance, either by CPC or by Assessing Officer in scrutiny assessment and the stand of assessee, in claiming mutuality was ultimately accepted by Id. CIT(A), thus, the Id. Pr.CIT was excluded from making revision for revising the order on the issue which was directly or directly the subject matter of appeal as per clause (c) of Explanation-1 of sub-section (1) of Section 263 of the Act. The Id. AR of the assessee further submits that the assessee filed a very detailed and exhaustive written submission running into 14-15 pages. The Id. Pr.CIT has not considered the various

contention raised by assessee. The Id. AR of the assessee submits that the order passed by the Assessing Officer in scrutiny assessment, on the issue identified by the Id. Pr.CIT was not erroneous or in so far as prejudicial to the interest of revenue. Rather as stated earlier, the Assessing Officer after making requisite enquiry, denied benefit of mutuality and depreciation. The Id. AR for the assessee submits that the order passed by the Id. Pr.CIT is in fact erroneous as he has not dealt with various submissions and explanation furnished by assessee. The Id. Pr.CIT simply concluded that the Assessing Officer failed to make such disallowance rendering the assessment order erroneous and prejudicial to the interests of revenue.

13. The Id. AR of the assessee further submits that the Id. Pr.CIT in sub-para (iv) to (ix) of para 4, has given additional finding by way of his observation, which was neither the part of show cause notice under Section 263 nor any opportunity of hearing on such observation/passing remark was given to the assessee, therefore, such observation/passing remark in the impugned order is uncalled for and void ab-initio being in violation of principles of natural justice. The Id. AR of the assessee by inviting our attention on the computation of total income has pointed out that the assessee has not claimed any such deduction, which are the subject matter of revision proceedings, thus the order is not at all erroneous. The Id. AR of the assessee specifically invited our attention on

note attached with computation of income, clearly specifying that the income received from non-members of Rs. 26,63,574/- is not considered as exempt income. Further Rs. 19,32,733/- is also not claimed as expenses while computing taxable income. Thus, the Id. AR of the assessee submits that the assessee has not at all claimed deduction on all three issues identified by the Id. Pr.CIT, so the order of Id. Pr.CIT is erroneous and liable to set aside.

14. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. PCIT. The Id. CIT-DR for the revenue submits that the specific issues identified by the Id. Pr.CIT has not been examined either by Assessing Officer or Id. CIT(A) or by Tribunal, under such circumstances, the Id. Pr.CIT is justified in revising the assessment order on such issues. The Id. CIT-DR for the revenue submits that the provisions of Clause (c) of Explanation-1 below sub-section (1) of Section 263 of the Act is not applicable on the issues identified by the Id. Pr.CIT as such issues was not the part and parcel of subject matter of appeal before the Id. CIT(A). The Id. CIT-DR for the revenue prayed for upholding the order passed by the Id. Pr.CIT under Section 263 of the Act.

15. We have considered the rival submissions of both the parties and perused the record carefully. We have also perused the order of Tribunal in ITA No. 152 & 153/Srt/2023 for the A.Y. 2017-18 and 2018-19 dated 31/05/2023. There is no dispute that the assessee is a Public Limited

Company set up by the State Government for treatment of disposal of industrial waste in an around Vapi industrial area. Various industrial units are members of assessee company who are contributing fund for treatment of industrial waste. The assessee is claiming its income as exempt under the principle of mutuality, such principle of mutuality has been accepted either at the stage of Id. CIT(A) or in appeal before the Tribunal. For the year under consideration, the assessee also claimed exemption of receipt received from its Member and offered the income/receipt received from non-members. The Assessing Officer in the assessment order under Section 143(3) passed on 03/03/2021 denied exemption under the principle of mutuality to the extent of Rs. 9.09 crores. Similarly, the Assessing Officer also disallowed depreciation of Rs. 4.19 crores. However, on appeal before the Id. CIT(A), the assessee was allowed full relief on the basis of order of Tribunal in assessee's own case in earlier years and on further appeal before the Tribunal, the order of Id. CIT(A) was upheld.

16. The Id. Pr.CIT issued show cause notice by identifying three issues with regard to bad and doubtful debts of Rs. 15.28 crores, interest on TDS of Rs. 10,410/- and interest of Rs. 40,93,611/- paid to GIDC. We find that the assessee filed a very detailed and exhaustive written reply dated 19/03/2023 and specifically brought to the notice of Id. Pr.CIT that the assessee has not claimed any deduction in respect of three issues which

were the subject matter of show cause notice under Section 263 of the Act. We find that the Id. Pr.CIT scanned the entire reply of assessee in his order, however failed to give any finding on such reply, rather simply reiterated his stand taken in his show cause notice that the Assessing Officer failed to disallow such expenditure rendering the assessment order as erroneous. Before us, the Id. AR of the assessee while making her submission, clearly demonstrated that the assessee has not claimed deduction of any of the item/issues identified by the Id. Pr.CIT in its total computation of income, which we find in order. Such deduction was not claimed by assessee as the liability of receipt/income of assessee is exempt under the principle of mutuality which has been upheld or approved or sustained by the Tribunal in various appeals including a latest decision for same assessment year in ITA No. 152 & 153/Srt/2023 dated 31/05/2023. Thus, in our considered view, the Id. Pr.CIT has wrongly exercised his jurisdiction under Section 263 of the Act and again failed to examine the issue when it was brought to his notice that such component/issue is not claimed on account of deduction in computation of income by the assessee. Therefore, the order passed by the Assessing Officer is not at all erroneous or even prejudicial to the interest of revenue, therefore, the order passed by the Id. Pr.CIT is set aside.

17. So far as passing reference/observation of Id. Pr.CIT in sub-para (iv) to (ix) of para 4 of his order is concerned, as such issue was neither the

subject matter of show cause notice nor any opportunity on such observation was given to the assessee to counter such observation, therefore, such adverse observation is uncalled being in violation of principle of natural justice and the same is also set aside. In the result, various grounds of appeal raised by the assessee are allowed.

18. In the result, this appeal of assessee is allowed.

Order pronounced on 21/09/2023 in open court.

Sd/-  
**(Dr. ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 21/09/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. Pr.CIT
4. DR
5. Guard File

By Order

Sr. Private Secretary, ITAT Surat