आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ- अहमदाबाद।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'C'

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
MS.MADHUMITA ROY, JUDICIAL MEMBER

ITA No.1119/Ahd/2015
***निर्धारणवर्ष*/Asstt. Year: 2010-11**

Gujarat Energy Transmission Corporation Ltd. Sardar Patel Vidyut Bhavan Race Course Circle, Baroda. Pan : AABCG 4029 R	v.	The PCIT-I Vadodra

ITA No.1765/Ahd/2017
***निर्धारणवर्ष*/Asstt. Year: 2010-11**

Gujarat Energy Transmission Corporation Ltd. Sardar Patel Vidyut Bhavan Race Course Circle, Baroda. Pan : AABCG 4029 R	v.	The Deputy Commissioner of Income Tax, Circle 1(1)(1), Vadodra Baroda.

अपीलार्थी/ (Appellant)		*प्रत्यर्थी/* (Respondent)

Assessee by	:	Shri Mehul K. Patel, AR
Revenue by	:	Shri Kamlesh Makwana, CIT-DR & Shri Ashok Kumar Suthar, Sr.DR

सुनवाईकीतारीख/Date of Hearing : 21/11/2023
घोषणाकीतारीख/Date of Pronouncement: 24/01/2024

आदेश/**O R D E R**

PER MADHUMITA ROY, JUDICIAL MEMEBR:

The above two appeals are filed by the assessee; one against order of the ld. Pr.Commissioner of Income Tax-I, Vadodra (hereinafter referred to as "Pr.CIT" for short) dated 2.3.2015 passed under section 263 of the Income Tax Act, 1961, and another appeal against order of the ld.Commissioner of Income Tax (Appeals)-1,

Vadodara (hereinafter referred to "as the ld.CIT(A)) dated 5.4.2017 passed under section 250(6) of the Act, vide which the ld.CIT(A) had confirmed the order of the Assessing Officer passed under section 143(3) r.w.s 263 rws 153(3) of the Act for the Asst.Year 2010-11. Both the appeals are disposed of by this common order for the sake of convenience.

2. We shall first adjudicate the appeal of the assessee in ITA No.1119/Ahd /2015 challenging the order of the ld. Pr.CIT passed under section 263 of the Act.

3. The grievances of the assessee in this appeal are reflected in the following grounds of appeal:

> *" 1.0 The learned Commissioner of Income Tax-1, Baroda has erred in law and on facts in holding that the assessment order dated 13-02.2013 under section 143(3) of the Income Tax Act, 1961 is erroneous and prejudicial to the interest of revenue and thereby erred in invoking the provisions of section 263 of the I T Act.*
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> *2.0 The learned Commissioner of Income Tax-I , Baroda has erred in invoking and applying the provisions of section 40(a)(ia) of the I T Act for the year under consideration, the assessment of which has already been finalized under section 143(3) of the I T Act.*
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> *3.0 The learned Commissioner of Income Tax-I, Baroda erred in law and on facts has held that the aggregate payments of Rs. 1,69,44,850/- have been made without deducting tax at source and has thereby directing the Assesing Officer to make addition of Rs. 1,69,44,850/- under section 40(a)(ia) of the I T Act.*
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> *The learned Commissioner of Income Tax-I, Baroda failed to appreciate the said payments have been made in subsequent year and further that the same were for capital works shown under Capital WIP.*
>
> *4.0 The learned Commissioner of Income Tax-I , Baroda erred in law and on facts has set aside the assessment order passed on 13-02-2023 under section 143(3) of the I T Act.*
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> *5.0 The above grounds of appeal are without prejudice to each other.*
>
> *6.0 The appellant craves leave to add to, alter , delete or modify any of the grounds of appeal either before or at the time of hearing of this appeal."*

4. The facts leading to the present case, as can be noticed from the relevant orders of the Revenue authorities are that the assessee is Government of Gujarat undertaking engaged in transmission of power. In assessment framed under section 143(3) of the Act, the AO had assessed business income of the assessee at NIL, while book profit under section 115JB of the Act was determined at Rs.88,81,40,000/- and passed assessment order accordingly. Thereafter, it was noticed by the ld.Pr.CIT that the assessee had credited payments amounting to

Rs.84,92,987/- and Rs.84,51,863/- totaling to Rs.1,69,44,850/- to the accounts of contractors, viz. M/s.Sintex Industries, Kalol, and M/s.Hiren B. Engineer, Surat respectively. The ld.Pr.CIT observed that since no TDS was made on these payments/credits, the amount was required to be disallowed u/s.40(a)(ia) of the Act. The ld.Pr.CIT accordingly show caused the assessee as to why the amount of Rs.1,69,44,850/- should not be disallowed under section 40(a)(ia) of the Act. It was explained by the assessee that during the assessment proceedings, the assessee had produced a letter dated 29.1.2013, containing Annexure-A, wherein the names of two parties viz. Sintex Industries, and Hiren B Engineer against whom the details of invoice amounts had been mentioned, and no TDS had been deducted; that on further verification of the facts during the assessment, it was observed that names of the above two parties were inadvertently mentioned in the annexure; that the bills of both the parties actually pertained to the subsequent year i.e. financial year relevant to the Asstt.year 2011-12, when the same was accounted for and TDS also had been deducted; that the assessee had voluminous data in respect of payments to number of contractors for various construction and transmission activities at the divisions and circle offices; that the mentioning of their names in the Annexure-5 during the assessment proceedings for the impugned year was an inadvertent typographical mistake in the form of cut & pastes; that all the relevant documents showing processing of payments and TDS deductions were submitted to the AO, and the AO had considered the same, and finding no error, he passed assessment order under section 143(3); that the payments were accounted for in the subsequent year and TDS thereon was made, therefore, there was no loss to the Revenue, much less any prejudice to the Department so as to invoke the provisions of section 263 of the Act. However, the Pr.CIT did not accept the submissions of the assessee. He maintained that since the assessee was following mercantile system of accounting, though the payments were made in subsequent financial year,thepayments relating to the F.Y.2009-10 relevant to A.Y. 2010-11 were required to be credited in the year under consideration on accrual basis. Since the assessee failed to do so, he directed

the AO to invoke provisions of section 40(a)(ia) of the Act and disallow the impugned payment made to these two contractors.

5. Aggrieved against the order of the Pr.CIT, the assessee is now in appeal before us.

6. Before us, the ld.counsel for the assessee reiterated the submissions as were made before the Revenue authorities. The assessee also filed a chart at page no.62 of the PB showing details of TDS deducted and deposited in respect of the above two parties. This chart details out invoice no, payment date, invoice amount, TDS amount and TDS payment date etc. All these details demonstrated that payments have been made and TDS has been deducted and deposited in the subsequent year i.e. Asst.Year 2011-12. These payments were made towards running account bills (RA Bills) and final bills were booked in capital work-in-progress. The assessee had given work-order to the Sintex Industries only on 8.3.2010 and Shri Hiren B. Engineer on 19.2.2010. Copy of work order is placed at pg. no.5 to 32 and 35-43 of the paper book. Assessee has filed a copy of ledger accounts of Sintex Industries and Hiren B. Engineer, at page no.64-65 of the PB wherein it has been showed that the work has been completed on 15.6.2010 in the case of Sintex Industries, and in the case of Hiren B Engineer on 18.6.2010. Therefore, all the details and evidence would substantiate the claim of the assessee that the impugned transactions pertained to subsequent assessment year, and same is required to be treated accordingly. Though all these details were before the AO during the assessment proceedings, and the AO considered and appreciated that the same and accepted the assessee's submission that the list of the above two parties were inadvertently included, which otherwise have to be considered for the subsequent year, but the ld.Pr.CIT had taken a different view, contrary to the facts on record and passed the impugned 263-order, which is not tenable as lacking justification, liable to be quashed and set aside, the original order of the ld.AO passed under section 143(3) of the Act liable to be restored in the interest of justice.

On the other hand, the ld.DR supported order of the Pr.CIT under section 263 of the Act, and consequential order passed by the AO and the confirmed by the ld.CIT(A).

7. We have carefully considered the arguments presented by both parties and examined orders of the Revenue authorities, including the order issued by the ld.Pr.CIT under section 263 of the Act. We have also perused the materials provided by the assesses in the paper book submitted before us.

The decision of the Pr.CIT to invoke provisions of section 263 was based on the presumption that details of the payments made to two parties, namely M/s. Sintex Industries and Hiren B. Engineer, amounting to Rs.84,92,987/- and Rs.84,51,863/- respectively, totaling to Rs.1,69,44,850/-, were listed in Annexure-5 furnished by the assessee during the assessment proceedings. The Pr.CIT assumed that the assesses had not deducted Tax Deducted at Source (TDS) while making the payments to these parties. Consequently, the assessee was deemed to be in default for the failure to deduct TDS during the payments, leading to the disallowance of the aforementioned payment of Rs.1,69,44,850/- under section 40(a)(ia) of the Act.

8. During the proceedings, the counsel for the assessee pointed out that the details of these two parties were inadvertently included in the Annexure-5 attached to a letter dated 29.1.2013, and that no TDS was actually withheld for these parties. The inclusion of these details was a clerical error made while consolidating extensive financial data from the assesse's records. Additionally, it was clarified that the bills associated with these parties were actually relevant to the subsequent financial year, i.e., the assessment year 2011-12, during which the assesses duly accounted for the payments and deducted TDS as required. The AO had duly considered and accepted this explanation, leading to the assessment being framed under section 143(3) of the Act. However, the ld.Pr.CIT did not appropriately consider this explanation and merely relied on the list provided by the assesses during the assessment proceedings. Disregarding the inadvertent nature of the

mistake in including these two names in the data compilation, the Pr.CIT deemed the non-consideration of payments to the aforementioned parties in the assessment order as both erroneous and prejudicial to the interests of the Revenue. Consequently, Pr.CIT directed the AO to treat the assessee as being in default for the failure to deduct TDS on the payments made to these parties and to apply the provisions of section 40(a)(ia) of the Act accordingly.

9. In the light of the above submissions made by the assessee, supported by the material evidence on record, it is apparent that the Pr.CIT has misinterpreted/misconstrued the factual aspects presented by the assessee while exercising authority under section 263 of the Act. The assessee has demonstrated, as indicated on page no. 62 of the paper book, that invoices were indeed raised and payments were made to the mentioned parties during the subsequent financial year, i.e., Financial Year 2010-11, for which the TDS was duly deducted and remitted to the Government.In support of its claims, the assessee has furnished a copy of the work orders, Form No.16A, a comprehensive chart delineating the details of the invoices, payments, and TDS payments, along with ledger accounts pertaining to both parties. Furthermore, the details furnished convincingly indicate that the work carried out by the two parties was quantified and crystalised during the subsequent year. Considering the entirety of the materials presented, the assessee's genuine admission of inadvertently including the names of the aforementioned parties in the list of entities with no TDS deduction, which was duly recognized by the AO during the framing of the assessment under section 143(3), it becomes evident that there is no justifiable ground for the ld.Principal CIT to invoke power under section 263 of the Act.

10. Moreover, it is important to note that there is no revenue implication, and no prejudice has been inflicted upon the Revenue, as the applicable tax rate for the invoice payment in the subsequent year, during which the invoice payment was properly accounted for, included the appropriate TDS deduction. Considering the above, we find support from the decision of Hon’ble Calcutta High Court in the case

of Pr.CIT Vs. Britannia Industries Ltd., in ITAT/211/2022. The relevant ratios of the decisions laid down therein are as under:

> *"11. The assessee also furnished the relevant extracts of the financial statement for the financial year 2015-2016 highlighting all the relevant details. Further the location wise break up of those items of expenses as reflected in the profit and loss account were also placed before the learned tribunal and it was explained that the items set out in the Column (B)(C)(D)(E) in the above table formed part of the depreciation on scientific research assets; assets written off and profit and loss on sales of asset debited in the profit and loss account. Thus, it was explained that the sum of Rs. 1,34,45,166/- was added back in the computation of income. This aspect of the matter has been analyzed by the learned tribunal and it has found that the said sum was added back in the computation of income and therefore there was absolutely no basis for the PCIT to invoke his power under Section 263 of the Act. Furthermore, records clearly show that the assessing officer had issued notices to the assessee on the very same issue considered their reply thereafter pointing out certain discrepancies issued show cause notice for which reply was submitted by the assessee and after a detailed enquiry the assessment has been completed. Thus, it is not a case of lack of enquiry or lack of proper enquiry. The PCIT does not in as many words states that there was lack of enquiry or lack of proper enquiry and all that is said is that the assessing officer did not verify these aspects which is factually incorrect. Therefore, it is not a case where the PCIT could have invoked his jurisdiction under Section 263 of the Act.*
>
> *12. With regard to the second issue, the learned tribunal had noted the facts that the invoices issued by the "LINKED IN" towards advertisement expenses in June 2014 were admitted as liability and crystallized for payment in the year under consideration owing to the fact that the "LINKED IN" being non-resident had furnished the necessary documents in the such as TRC under Section 90(4) of the Act read with Rule 21 AB of the Rules and no PE certificate etc. only in the assessment year under consideration. Further the tribunal noted it is not the case where these expenses were charged as deduction in the preceding year more importantly, the tribunal noted that there is no revenue implication and no prejudice is caused to the revenue since the tax rate applicable to the assessee during the assessment year 2015-2016 to which invoices relates and the tax rates applicable for the assessment year 2016-2017 in which the invoices were accounted and paid were the same.*
>
> *13. At this juncture, we take note of the decision in the case of the Hon'ble Supreme Court in Malabar Industrial Company Limited Versus Commissioner of Income Tax 1 wherein it was held that every loss of revenue cannot be treated as prejudicial to the interest of revenue and if the assessing officer has adopted one of the courses permissible under law or where two views are possible and the assessing officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order, unless the view taken by the assessing officer is unsustainable under law. Furthermore, on facts the tribunal found that the PCIT has not carried out any enquiry on his own and merely set aside the assessment order and sent the file back to the assessing officer to re-examine the issues which is contrary to the law as laid down in several decisions and the tribunal rightly noted the decision in Income Tax Officer Versus DG Housing Projects Limited."*

Therefore, considering the lack of substantial grounds for the Pr.CIT to exercise authority under section 263 of the Act, and in light of the absence of justifiable reasons to alter the assessment framed by the AO under section 143(3) of the Act, we hereby quash and set aside the impugned order of the ld.Pr.CIT passed under section 263 of the Act and restore the original assessment order of the AO passed under section 143(3) of the Act.

Thus, the grounds of appeal of the assessee are allowed

11. In the result, the appeal of the assessee in ITA No.1119/A/2015 challenging the order of the ld.PCIT is allowed.

12. So far as the appeal of the assessee in ITA No.1765/Ahd/2017 challenging order of the ld.CIT(A) passed under section 250, vide which, the ld.CIT(A) confirmed the order giving effect of ld.Pr.CIT's order, is concerned the same becomes mere academic for adjudication, as we have already quashed 263 order passed by the ld.Pr.CIT.

13. In the result, the appeal of the assessee in ITA No.1119/Ahd/2015 is allowed, and that of ITA No.1765/Ahd/2017 disposed of as being mere academic in nature.

Order pronounced in the Court on 24th January, 2024 at Ahmedabad.

Sd/-	Sd/-
(RAMIT KOCHAR)	(Ms.MADHUMITA ROY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

True Copy

Ahmedabad; Dated 24/01/2024

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

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2. *प्रत्यर्थी*/ The Respondent.
3. *संबंधितआयकरआयुक्त*/ Concerned CIT
4. *आयकरआयुक्त(अपील)* / The CIT(A)
5. *विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण*/ DR, ITAT,
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