

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 911/Ahd/2019  
निर्धारण वर्ष/Assessment Year: 2014-15

Paschim Gujarat Vij. Co. Ltd., Off. Nana Mava Main Road, Laxmi Nagar, Rajkot-360004 PAN : AADCP 1453 C	Vs.	The Principal Commissioner of Income-tax-2, Vadodara
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Mehul K. Patel, Advocate
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 29.01.2024  
घोषणा की तारीख /Date of Pronouncement: 02.02.2024

**आदेश/ORDER**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Principal Commissioner of Income-Tax, Vadodara-2 [herein-after referred to as "PCIT"] dated 27.03.2019, in exercise of his revisionary powers under Section 263 of the Income-tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year (AY) 2014-15.

2. The grounds raised by the assessee are as under:-

*"(1) That on facts, and in law, the learned CIT has grievously erred in assuming jurisdiction u/s.263 of the Act, without recording a satisfaction as to how the assessment order passed u/s 143(3) of the Act is erroneous and prejudicial to the interest of Revenue.*

*(2) That on facts, and in law, the proceedings u/s.263 are void as the original assessment order was passed u/s.143 (3) of the Act after due inquiry and application of mind / and is not erroneous and prejudicial to the interest of the Revenue.*

*(3) That on facts, and in law the learned CIT has grievously erred in setting aside the assessment order and directing to frame fresh assessment order on the issue of allowance of additional Depreciation, although it is clearly held in paras 5.8 and 5.9 of the order under appeal that such additional depreciation is not admissible to the appellant assessee.*

*(4) That on facts and in law, the learned CIT has grievously erred in holding that the appellant is not entitled to the claim of additional depreciation of Rs.190,48,38,998/-.*

*(5) That on facts, and in law the learned CIT has grievously erred in setting aside the assessment order and directing to frame fresh assessment order on the issue of claim of Bad Debts of Rs.3,28,28,616/-, without pointing any error in appellant's claim."*

3. The arguments of the assessee in the present case against the order passed u/s 263 of the Act were two-fold.

3.1 With respect to the error of incorrect allowance of additional depreciation by the Assessing Officer as noted by the ld. PCIT, the ld. Counsel for the assessee fairly conceded that this issue was covered against the assessee by the decision of the ITAT Ahmedabad Benches in the case of Dakshin Gujarat Vij Co. Ltd. Vs. PCIT in ITA No. 1527/Ahd/2019, dated 30.03.2022.

3.2 With respect to the issue of claim of bad debts wrongly allowed by the Assessing Officer as noted by the ld. PCIT, the contention of the ld. Counsel for the assessee was that there was no finding of any error by the ld. PCIT with respect to this issue.

4. Having said so, we shall now proceed to bring out the facts relating to the present case before us.

5. As transpires from the order of the ld. PCIT, he noted two irregularities in the assessment order passed in the case of the assessee so as to assume jurisdiction for revision under Section 263 of the Act.

- (i) Incorrect allowance of additional depreciation;
- (ii) Wrong claim of Bad Debts

These facts find mention at paragraph nos. 2 & 2.1 of the order of the Id. PCIT as under:

*"2. Incorrect allowance of additional depreciation:- On verification of records, it is seen that during the year under consideration, you have claimed additional depreciation of Rs. 190,48,38,998/- and the same was allowed during the assessment proceedings. The assessee company is engaged in the distribution of power. As per section 32(1)(iii) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31<sup>st</sup> day of March, 2005, by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or generation and distribution of power, a further sum equal to twenty per cent of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii).*

*2.1. Wrong claim of Bad Debts:- On verification of records, it is seen that you have claimed claim Bad & Doubtful Debts written off/provided for, under the head Miscellaneous losses & write offs in Profit Les account amounting to Rs.2244.07 lakh. During the assessment proceedings, you had submitted that this is provision for bad and doubtful debts and not the actual bad debt written off. However, as per records, you have only added back Rs.19,15,78,384/- in your statement of income. The amount of Rs.3,28,28,616/-(22,44,7000 - 19,15,78,384) was not added back by the assessee in the computation of income under normal provision as well as under MAT provisions. As per the provisions u/\* 36(1)(vii) of the Act, the provision of bad debts, made by the assessee company during the year was not allowable and required to be disallowed and added to the total income under normal provisions and for computation of book profit u/s 115JB of the Act and hence the order passed u/s 143(3) of the Act is erroneous & it was prejudicial to the interest of revenue."*

6. With respect to the issue of allowance of additional depreciation, the Id. Counsel for the assessee has fairly conceded that he has no case since an identical issue of incorrect allowance on additional depreciation in identical set of facts, and on which revisionary jurisdiction was exercised u/s 263 of the Act, was upheld by the ITAT in the case of Dakshin Gujarat Vij Co. Ltd. (supra). Copy of the order was placed before us.

6.1. Therefore, we have no hesitation in holding that with respect to the finding of error by the Ld. PCIT in the assessment order on account of incorrect allowance of claim of additional depreciation, the same is confirmed.

7. With respect to the claim of bad debts allegedly wrongly allowed by the AO, the order of the ld. PCIT reveals that the assessee submitted explanation to him during revisionary proceedings which are reproduced at page nos. 2 & 3 of the order as under:-

*“Wrong claim of Bad Debts: - It is stated in the notice that the amount of provision for Bad or Doubtful Debts added back in the computation of total income is wrong. It is stated that the company has added back only an amount of Rs.19,15,78,384/- in respect of Provision for Bad Debts in the IT Return as against Rs. 3,28,28,616/- during the year.*

*In this context, it is submitted that the tour has been raised without proper understanding of the accounting of the Bad Debts in the Books of Accounts. The Company is making provision for Bad & Doubtful Debts which is disallowed in the year in which the provision is made. Further the Company claims deduction in respect of the Debt written off during the year as Bad.*

*For the year under consideration, the Opening Balance of provision for Bad Debt amounted to Rs. 4,87,15,74,512/-. The Company made a fresh provision for Rs. 22,44,07,363/- and the actual Bad Debts written off were of Rs.3,28,28,616/-. Hence the net amount of provision of Rs. 19,15,78,384/- (22,44,07,363/-less Rs. 3,28,28,616/-) was rightly offered for disallowance. The details are tabulated below for reference:-*

<i>Particulars</i>	<i>Amount in</i>
<i>Opening Balance</i>	<i>4,87,15,74,512/-</i>
<i>Add: Provision For Bad debts</i>	<i>22,44,07,363/-</i>
<i>Less: Actual Bad debts written off</i>	<i>3,28,28,979/-</i>
<i>Closing Balance</i>	<i>5,06,31,32,987/-</i>

*In view of the above, it is submitted that the company has rightly offered the provision made for doubtful debts for disallowance and has rightly claimed the deduction on account of Bad Debts and the same does not require any revision.”*

8. After considering the same, ld. PCIT noted the claim of the assessee to be in order, but still went on to hold the assessment order erroneous since the

Assessing Officer had not examined the case. His findings in this regard are at paragraph No. 4.1 of his order as under:-

*“4.1 The submission of the assessee-company has been perused and the clarification given on the issue of Bad Debts written off appears to be in order in view of supporting filed during 263 proceedings. However the assessment record does not show that these were submitted before the assessing officer. Further, the AO failed to examine and verify the facts as now presented by the assessee company. The assessee company has submitted that it has rightly claimed the Bad Debts. The assessee company has also submitted documentary evidences in support of its claims. The assessing officer should have examined the same at the time of assessment proceedings, failing to do so resulted in assessment order being erroneous as proper enquiries & examination of the material evidence in the light of provisions was not done.”*

9. Having so noted, the Id. PCIT goes on to hold the assessment order erroneous merely for the reason that these explanations and documents were not filed to the Assessing Officer during assessment proceedings and therefore, the Assessing Officer did not make proper inquiries on this issue.

10. It is clearly evident from the findings of the Ld. PCIT, as noted above by us, that in very clear terms he stated to be satisfied with the explanation of the assessee regarding the irregularities noted by him in the assessment order and for which purpose he assumed jurisdiction u/s 263 of the Act for revision of the assessment order.

11. It is but obvious that as per Id. PCIT himself there was no error in the assessment order in allowing the above claims to the assessee. The Id. PCIT was satisfied that these claims had been rightly allowed to the assessee on the basis of the assessee's explanation and the documents filed before him. When the Id. PCIT himself was satisfied that there was no error in the order of the Assessing Officer vis-à-vis irregularities noted by him initially, there can be no case for exercising any revisionary power u/s 263 of the Act. The

provisions of the section are very clear. The concerned authorities can exercise revisionary powers only on fulfillment of the essential conditions of finding error in the order sought to be revised and the error being such as causing prejudice to the Revenue. In the absence of any of the two conditions the power of revision u/s 263 of the Act cannot be exercised. Section 263 itself is very clearly worded as under:

*“263. (1) The [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including, –*

- (i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or*
- (ii) an order modifying the order under section 92CA; or*
- (iii) an order cancelling the order under section 92CA and directing a fresh order under the said section].”*

12. It has been interpreted so by the Hon’ble Apex Court in the case of Malabar Industrial Co. Ltd. Vs. CIT, [2000] 243 ITR 83 (SC). In the present case, with the Id. PCIT’s recording of satisfaction vis-à-vis explanation of the assessee regarding the alleged errors noted by him in the assessment order, it can be safely said that as per the Id. PCIT, there was no error in the assessment order. And having found no error in the assessment order himself, there was possibly no scope of the issue being examined again by the AO, an officer junior in Rank to the Ld. PCIT. There was no case therefore, we hold, for the Ld. PCIT to exercise any revisionary power u/s 263 of the Act on the issue.

13. Merely because the Assessing Officer had not examined these issues during assessment proceedings does not make the assessment order erroneous particularly when the Id. PCIT finds, on the basis of explanation

and documents furnished to him, that the assessee's claim was eligible as per law. At the cost of repetition, it may be stated that the powers of revision can be exercised only when the orders are found to be in error with regard to any application of law or assumption of fact noted by the authorities passing the orders. In the absence of any such error causing prejudice to the Revenue being noted, the revisionary powers cannot be exercised.

14. In view of the same, we have no hesitation in holding that the order passed by the Id. PCIT u/s 263 of the Act is not sustainable in law in the absence of any error noted by him in the assessment order passed the issue of allowance of claim of bad debts.

15. In view of the above, the order of the Id. PCIT is confirmed on the issue of "incorrect claim of additional depreciation" following the order of the Tribunal in the case of Dakshin Gujarat Vij Co. Ltd. (supra); however, with respect to Id. PCIT's finding that the assessment order being erroneous on account of allowance of claim of bad debts, the same is set aside since we find that the Id. PCIT has noted satisfaction subsequently with the assessee's claim of bad debts as being in order. There is no finding of error, therefore, by the Id. PCIT vis-à-vis the allowance of claim of bad debts by the Assessing Officer.

16. In effect, the appeal of the assessee is partly allowed.

**Order pronounced in the open Court on 02/02/2024 at Ahmedabad.**

**Sd/-**

**(T.R. SENTHIL KUMAR)  
JUDICIAL MEMBER**

Ahmedabad; Dated 02/02/2024

\*\*%

**Sd/-**

**(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad