

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. 909/Ahd/2019
निर्धारण वर्ष/Assessment Year: 2013-14

Madhya Gujarat Vij Co. Ltd., Sardar Patel Vidyut Bhavan, Race Course, Vadodara-390007 PAN : AADCM 7439 H	Vs.	The Principal Commissioner of Income-tax-2, Vadodara
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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) 2013-14.

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 issues of Interest accrued but not paid to Power Rs.5,79,50,223/-, Finance Corporation (PFC) of claim of Bad Debts of Rs. 12,78,54,821/- and provision on account of leave encashment of Rs.23,29,71,801/-, without pointing any error in appellant's claim."

3. The solitary contention of the ld. Counsel for the assessee against the order passed by the ld. PCIT in exercise of his powers of revision u/s 263 of the Act, was to the effect that there was no categorical finding of error in the assessment order by the ld. PCIT. That in fact the ld. PCIT had noted finding merit in the explanation furnished by the assessee to the allegedly incorrect claims allowed by the Assessing Officer for which purpose he had assumed jurisdiction to revise the order of the Assessing Officer u/s 263 of the Act.

4. Having noted so, we shall now proceed to bring out the facts relating to the case. As transpires from the order of the ld. PCIT, jurisdiction for revision of the assessment order was assumed u/s. 263 of the Act noting three irregularities in the same as under:-

- i) incorrect allowance of interest accrued but not paid on loans from PFC;
- ii) wrong claim of Bad Debts;
- iii) incorrect allowance of provision on account of Leave Encashment.

These facts find mention at paragraph nos. 2 to 2.2 of the order of the ld. PCIT as under:-

*"2. Incorrect allowance of Interest accrued but not paid on loans from PFC:-
On going through the assessment records, it is seen that the assessee company has shown an amount of Rs.5,79,50,223/- on account of interest accrued but not paid on loans from ADFC. Power Finance Corporation (PFC) has been declared as a public finance institution and the interest payable to PFC is*

covered u/s. 43B(d) of the I.T. Act, 1961. As per section 43B(d) of the Act, interest payable to any public finance institution is only allowed when it is actually paid, it is clearly mentioned that the interest of Rs.5,79,50,223/- paid by the assessee company to PFC after the due date for furnishing the return of income under section 139(1) of the Act, it was required to be disallowed by the assessing officer at the time of assessment proceedings u/s. 143(3) of the Act.

2.1. Wrong claim of Bad Debts:- On verification of records, it is seen that the assessee company has claimed bad debts of Rs. 12,78,54,821/- in its statement of income while working out the taxable income. As per the provisions of the Act, bad debt is allowable as deduction under section 36(1)(vii) only if it is written off as irrecoverable in the books account in the previous year in which claim for deduction was made. In this case, the assessee company has not written off the amount of Rs. 12,78,54,821/- as bad debts in its books of accounts but has claimed the deduction in statement of income. The deduction claimed was not allowable as the bad debts were not written off in the books of account and hence the order passed u/s. 143(3) of the Act is erroneous & prejudicial to the interest of revenue.

2.2. Provision on account of Leave Encashment:- On verification of records, it is also seen that the assessee company has made the provision of Rs. 23,29,71,801/- on account of Leave Encashment as noticed from Annexure 6B of clause 21(B) attached with 3CD form. It is also noticed that the said amount was not paid before filing of Return of Income. However, while working out the taxable income, the assessee company added back an amount of Rs. 15,89,19,530/- only, in its statement of income. The assessee was required to add back total amount of Rs.23,29,71,801/-. The difference works out to Rs.7,40,52,271/-. Further, vide submission dated 7th March 2016, the assessee company has also confirmed that the company has made provision of Rs.23,29,71,801/- on account of leave encashment and amount was unpaid before the due date of filing of Return of Income. Hence, the amount of Rs.7,40,52,271/- was required to be disallowed at the time of assessment proceedings u/s. 143(3) of the Act."

5. The order further reveals that, when confronted with the same during revisionary proceedings, the assessee explained that all the above claims of the assessee had been rightly allowed by the Assessing Officer in accordance with law. His reply in this regard is reproduced at paragraph no.3 of the order of the Ld. PCIT as under:-

As per terms of Sanction Letter of the Loan from PFC, the Loan under RAPDRP Parts and SCADA aggregating to Rs. 6155 Lacs was to be converted into Capital Grant on fulfilment of stipulated conditions. It was provided that if conditions are not fulfilled, the loan shall be repayable in 70 equal monthly instalments over a period of 10 years of Rs.51.40 Lacs each starting from June 2014. Further the Loan under Part-B of R-APDRP Scheme, amounting to Rs. 1545 Lacs will be converted into Grant upto 50% on fulfilment of stipulated conditions. If conditions are not fulfilled, the loan will be repayable in 150 equal monthly instalments over a period of 15 years of Rs.7.62 Lacs each, starting from June 2014 Applicable Rate of Interest was 9% p.a. The copy of the relevant Sanction Loan/Agreement is enclosed for immediate reference in Annexure-II. As a matter of fact, the said loan now has been converted into Capital Grant.

This apart, even the Tax Auditor in its Report for the year under consideration has categorically reported that such interest accounted in the books has not been routed through Profit & Loss Account. Hence there is no applicability of section 43B of the IT Act

In view of the facts, it is clear that as per the terms of sanction of Loan by PFC the Company was not liable to pay any instalment either of principle or interest atleast till June 2014 which was beyond the date of filing of IT Return of the year under consideration. It was only because the Company is following the mercantile system of accounting and as per the Companies Act and various Accounting Standards, it has to mandatorily recognize and account the interest accrued on all the borrowings, the Company has accounted the said interest. However, the provisions of section 43B of the IT Act cannot be made applicable to the same. The law is well settled on the issue that the book entries are totally irrelevant for the purpose of making allowances and/or disallowances under any provision of the IT Act.

Under the circumstances, it is submitted that there is no infirmity in the claim of interest on PFC loan under 43B of the IT Act 1961 and the issue requires no revision.

2) Wrong claim of Bad Debts

It is stated in the notice that the deduction claimed in respect of Bad Debts amounting to Rs. 12,78,54,821/- in the IT Return is wrong as the same has not been debited to the Profit & Loss Account during the year.

In this context, it is submitted that the issue 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 Debts written off during the year as Bad.

For the year under consideration, the Opening Balance of provision for Bad Debts amounted to Rs.1,01,56,31,942/-. The Company made a fresh provision for Rs.37,40,442/- which was considered as inadmissible while filing the return of Income. However, the actual Bad Debts amounts to Rs. 12,78,54,821/-which were written off against the existing provision in Books, already made in earlier years. Hence the same was rightly claimed as allowable. The details are tabulated below for reference:

Particulars	Amount in Rs./Lacs	Treatment in Return of Income
Opening Balance of Provision for Bad Debt as on 01.04.2012	10156.32	
Add: Fresh Provision in Books for FY 12-13	37.40	Disallowed
Less: Amount written off against existing provision in Books	(1278.54)	Allowed
Closing Balance of Provision for Bad Debt as on 31.03.2013	8915.18	

In view of the above, it is submitted that the company has rightly claimed the deduction on account of Bad Debts and the same does not require any revision.

(3) Provision for Leave Encashment:

It has been stated in the notice that the Company has wrongly offered the disallowance on account of provision for Leave Encashment.

It is submitted that for the year under consideration, the opening balance of Leave Encashment was Rs. 84,88,77,625/- as on 01.04.2012. There was fresh addition of accrual (including provision of Rs.7,40,52,271/-) during the year amounting Rs. 15,89,19,530/- which was rightly added back in statement of income and also as reported in the Tax Audit Report vide Form 3CD serial no.21(i)B)(b) (Copy enclosed in Annexure-III). Further, payment during the year was made for an amount Rs. 8,48,67,259/- which was also disclosed in Form 3CD of Tax Audit Report in serial no. 21(1)(A)(a) (Refer Annexure-III). The closing balance of Leave Encashment was Rs.92,29,29,896/- as on 31.03.2013 which is summation of Long Term and Short Term Leave Encashment amounting Rs.8136.10 Lacs and Rs. 1093.20 Lacs respectively

reflecting in the Note no. 8 and 12 of the Audited Annual Accounts. The details are tabulated as under.

Particulars	Amount in Rs./Lacs
Opening Balance of Leave Encashment Provision as on 01.04.2012	8488.78
Add: Fresh Accruals in Books for FY 12-13 (including Provisions)	1589.20
Less: Amount paid during the year to regular and retired employees	(848.68)
Closing Balance of Leave Encashment Provision as on 31.03.2013	9229.30

In view of the above, it is submitted that the company has rightly offered the disallowance under section 43B of the Act on account of Leave Encashment and the same does not require any revision.

Considering the above facts and circumstances, it is submitted that there is no error in the assessment order passed under section 143(3) of the IT Act and the same is not prejudicial to the interest of revenue in any manner. We would, therefore, request your honour to kindly quash the notice issued under section 263(1) of the Act and drop the proceedings initiated under said section at the earliest and oblige."

6. After considering the same, the Id. PCIT takes notes of the submission of the assessee in brief at paragraph No. 4 of the order as under:-

"4. Shri Vijay Tewar, CA and AR of the assessee attended on 23.03.2019 and discussed the case. Shri Vijay Tewar also submitted additional details to support the stand of the assessee company. From the submission made during 263 proceedings it is seen that the assessee has claimed that there was no error in the order passed under section 143(3) of the Act dated 21.11.2016. On the issue of Bad debts, it was clarified that though provisions was created for Rs.37,40,442/- however the same was not debited to P & L account and only the amount written off as irrecoverable in the books of accounts was debited to the P & L account."

7. Thereafter, he notes a very important finding which has been stressed upon by the Id. Counsel for the assessee when pointing out that the Id. PCIT

noted no error in the assessment order. His findings at paragraph no. 4.2 of the order with respect to the assessee's reply and clarification are that he finds the same to be in order in view of the supporting details filed by the assessee. The same are reproduced hereunder:-

"4.2 The submission of the assessee company has been perused and the clarification given on the issues referred above appear to be in order in view of supporting filed during 263 proceedings."

8. 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 these issues. His findings, in this regard, are as under:-

"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 assessing officer, at the time of assessment proceedings, thus did not make proper enquiries on these three issues and passed the assessment order. The assessee company has submitted that it has rightly claimed the Bad Debts, Leave Encashment and has not debited the amount of Interest due to PFC during the year. 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. 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.

10. 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]."*

11. 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 ld. 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.

12. Merely because the Assessing Officer had not examined these issues during assessment proceedings does not make the assessment order erroneous particularly when the ld. 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.

13. In view of the same, we have no hesitation in holding that the order passed by the ld. 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 order passed by the ld. PCIT is, therefore, set aside and the appeal of the assessee is allowed.

14. In effect, the appeal of the assessee is 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 फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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