

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.396/Ahd/2023
Assessment Year : 2018-19

GSP Crop Science Pvt.Ltd. 404, Lalita Complex Rasal Road, Navrangpura, Ahmedabad City Ahmedabad - 380 009, Gujarat	Vs	The Principal CIT, Ahmedabad-1
PAN: AAACG 7984 Q		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Shri M.K. Patel, AR	
Revenue by :	Shri Shri Akhilendra Pratap Yadaw, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 07/02/2024
घोषणा की तारीख /Date of Pronouncement: 09/02/2024

आदेश/ORDER

PER MS.SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Assessee against the order dated 28/03/2023 passed by the Commissioner of Income-tax, Ahmedabad-1. ["CIT(A)" in short] for Assessment Year 2018-19.

2. Grounds of appeal are as under:

"(1) That on facts, and in law, the learned PCIT has grievously erred in exercising jurisdiction u/s 263 of the Act.

(2) That on facts, and in law, the learned PCIT has grievously erred in holding that Rs.9,98,678/- is required to be disallowed u/s 14A of the Act.

(3) That the learned PCIT has grievously erred in law, and on facts, in holding that the AO has not properly examined the issue of deduction u/s 80JJAA of the Act of Rs.17,82,400/-, although it is only continuation of claim of 30% of amount, in respect of employees employed in earlier year, as allowed by said section.

(4) That the learned PCIT has grievously erred in law, and on facts, in holding that the AO has not properly examined the issue of Loss of assets due to fire of Rs.14,27,35,236/-, whereas, the said item is already disallowed suo moto by appellant in the return of income.

(5) That the learned PCIT has grievously erred in law, and on facts, in holding that the AO has not properly Reinstatement examined obligation Rs.2,90,00,000/-, whereas, the of issue assets of the said item is already disallowed suo moto by appellant in the return of income.

(6) That the learned PCIT has grievously erred in law, and on facts, in holding that the AO has not properly examined the issue of Tax Reversal on loss of assets due to fire of Rs.1,98,37,335/-, whereas, the said item is already disallowed suo moto by appellant in the return of income.

(7) That on facts, and in law, the learned PCIT has grievously erred in holding that the appellant has not furnished any details in respect of Employees compensation of Rs.181,00,0000 /-, whereas, this issue was never disputed/ raised by learned PCIT in the notice u / s 263 of the Act."

3. The assessee filed return of income for AY 2018-19 on 31/10/2018 declaring total loss of Rs.22,80,49,617/-. The case was selected for complete scrutiny on the issues, such as, expenditure of personal nature, refund claim, duty draw-back, ICDS compliance & adjustment, deduction on account of donation for scientific research and expenditure by way of penalty or fine for violation of any law. The assessment was completed u/s.143(3) read with sections 143(3A) & 143(3B) of the Income Tax Act, 1961 on 17/03/2021, determining the loss of Rs.18,26,35,179/- making the disallowance u/s.35(2AB) of the Act amounting to Rs.3,60,000/-,

disallowance of sale commission amounting to Rs.56,73,327/- and disallowance on account of CBEC data amounting to Rs.2,039/-. The Pr.CIT observed that, during the year, assessee has earned exempt income of Rs.20,24,02,746/- through profit from firm and disallowed the amount of Rs.6,39,327/- as expenditure related to exempt income. The same was not correctly calculated as the assessee has shown total investment in equity share and partnership-firm of Rs.2,678.30 lakhs and disallowed only of Rs.6,39,327/- as expenditure related to exempt income. The Pr.CIT further observed that the Auditor in assessee's case reported that the assessee is eligible for deduction of Rs.42,43,211/- u/s.80JJAA of the Act for the year under consideration. But it was noticed that the assessee has claimed deduction u/s.80JJAA (employment of new employees) of Rs.17,82,400/- for the year under consideration. The Pr.CIT further observed that assessee claimed employees' compensation of Rs.181 lakhs, loss of asset due to fire of Rs.1427.35 lakhs, assets reinstatement obligation of Rs.290 lakhs and tax reversal on loss of stock and asset due to fire of Rs.672.16 lakhs for the year under consideration. The Pr.CIT has issued show-cause notice u/s.263 of the Act dated 09/03/2023. The assessee submitted its reply and taking cognizance of the said reply and the details, the Pr.CIT directed the Assessing Officer to frame the assessment only after conducting proper enquiries/verification on the issues and set aside the order passed u/s.143(3) rws.143(3A) & 143(3B) of the IT Act, dated 17/03/2021.

4. Being aggrieved by the order passed u/s.263 of the Act, the assessee filed appeal before us.

5. The Ld.AR submitted that the Pr.CIT was not correct in holding that Rs.9,98,678/- is required to be disallowed u/s.14A of the Act. The Ld.AR

submitted that the assessee has given all the details related to the *suo moto* disallowance of Rs.6,39,327/-. The Ld.AR submitted that the calculation of the Pr.CIT in respect of remaining amount of expenditure on exempt income of Rs.9,98,678/- (Rs.16,38,005 – Rs.6,39,327) was not justified as the assessee has given the details during the assessment proceedings to the Assessing Officer in respect of query No.2 specifically related to disallowances. The Ld.AR submitted that the Pr.CIT has taken a view which is contrary to the records provided by the assessee during the assessment proceedings. In fact, the Pr.CIT has taken the equity shares which has not yielded any dividend income and thus the assessee has not earned any exempt income in the particular years; i.e. the present assessment year. Thus, Ld.AR submitted that the Pr.CIT was not justified in invoking the section 263 in respect of this issue.

5.1. As regards to the issue related to deduction u/s.80JJAA of the Act of Rs.17,82,400/- although it is only continuation of claim of 30% of amount, in respect of employees' employed in earlier year as allowed by the section, but in the present assessment year, the assessee has not claimed on that deduction and, hence, this will not be termed as erroneous or prejudicial to the interests of Revenue as envisaged in the section 26 of the Act.

5.2. As regards of loss of assets due to fire of Rs.14,27,35,236/-, the said item is already disallowed *suo moto* by the assessee in the return of income.

5.3. As regards the issue related to reinstatement obligation of assets of Rs.2,90,00,000/-, whereas the said item was already disallowed *suo moto* by the assessee in the return of income.

5.4. As regards the issue related to tax reversal on loss of assets due to fire of Rs.1,98,37,335/-, the Ld.AR submitted that this issue was never disputed/raised in notice u/s.263 of the Act dated 09/03/2023 and, therefore, the Pr.CIT has acted beyond the scope of notice issued u/s.263 of the Act which is not permissible.

6. The Ld.DR submitted that in respect of *suo moto* disallowance in respect of 14A of the Act disallowance regarding expenditure on exempt income, the Pr.CIT has rightly made the calculation and disallowed the remaining amount of Rs.16,38,005/- (i.e.1% of Rs.16,38,00,500/-) as the investment in equity shares should have been calculated by the Assessing Officer and, therefore, u/s.263 of the Act was rightly invoked by the Pr.CIT. As regards deduction u/s.80JJA of the Act, loss of assets due to fire, reinstatement obligation of assets and tax reversal on loss of assets due to fire, all these issues were claimed by the assessee and, therefore, the Pr.CIT has rightly invoked section 263 of the Act. As regards employees' compensation, the notice u/s.263 of the Act has categorically mentioned this issue and, therefore, it emerges from the notice itself and is a valid issue for which section 263 was rightly invoked.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the *suo moto* disallowance in respect of 14A of the Act disallowance related to expenditure on exempt income, the assessee has categorically shown the opening balance of investment as well as the monthly closing details. The assessee has not taken into account the equity shares investment as the same has not yielded

any dividend income in the particular year and, thus, the Pr.CIT should have taken cognizance of the said aspect. Section 263 of the Act cannot be invoked in the cases where details were filed by the assessee during the assessment proceedings and the issues were properly verified by the Assessing Officer. In the present case, the Assessing Officer has categorically raised the query related to disallowances and the assessee has given the details of disallowances u/s.14A of the act including the relevant monthly closing and opening balance of investment. Thus, 263 of the Act cannot be invoked on this issue. As regard the issue relating to deduction u/s.80JJAA of the Act, the assessee has claimed at 30% of amount which was in continuation of the earlier year in respect of employees employed in the earlier year and the same was allowed by the said section. In fact, in the present assessment year, the assessee has not claimed the same as there was a loss due to fire. Merely mentioning the same in the accounts, will not give it a colour that assessee has claimed deduction under the said section. Hence, 263 of the Act cannot be invoked in this issue as well. As regards the issue of loss of assets due to fire, issue of reinstatement obligation of assets and issue of tax reversal on loss of assets due to fire, all these three headings were *suo moto* disallowed by the assessee in the return of income and, therefore, there was no prejudicial to the interests of Revenue and thus section 263 of the Act which is a revisionary power cannot be exercised by the Pr.CIT in these issues. As regards employees' compensation of Rs.1,81,00,000/-, the notice u/s.263 of the Act has categorically invoked the provisions of section 263 in respect of reinstatement obligation of assets, tax reversal on loss of assets due to fire, loss of assets due to fire and the claim of employees' compensation was not included in section 263 of the Act notice. Thus, the scope of section 263 notice was expanded by the Pr.CIT at

the time of passing the order and the assessee was not confronted and was not given any opportunity to present his case on the said issue. Since this issue is emerging beyond the scope of notice issued u/s.263 will not be admissible while invoking section 263 of the Act. Hence, the order passed by the Pr.CIT u/s.263 of the Act is not justifiable as the Assessing Officer in original assessment order has taken cognizance of all the aspects and there is no case made out by the Revenue that the assessment order is erroneous and prejudicial to the interests of Revenue.

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

Order pronounced in the Court on 9th February, 2024 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 09/02/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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