

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 371/Ahd/2023
Assessment Year 2018-19**

Hyderabad Yadgiri Tollway Pvt. Ltd. Sadbhav House, Opp. Law Garden Police Chowki, Ellisbridge, Ahmedabad-380006 PAN: AACCH3521J (Appellant)	Vs	Principal Commissioner of Income Tax-1, Ahmedabad (Respondent)
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**ITA No. 372/Ahd/2023
Assessment Year 2018-19**

Rohtak Hissar Tollway Pvt. Ltd. Sadbhav House, Opp. Law Garden Police Chowki, Ellisbridge, Ahmedabad-380006 PAN: AAGCR4799A (Appellant)	Vs	Principal Commissioner of Income Tax-3, Ahmedabad (Respondent)
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Assessee Represented: Shri Dhinal Shah, A.R.
Revenue Represented: Dr. Darsi Suman Ratnam, CIT-DR

Date of hearing : 22-02-2024
Date of pronouncement : 23-02-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

These two appeals are filed by two different Assesseees as against separate exparte Revision orders dated 26.03.2023 & 22.03.2023 passed by the Principal Commissioner of Income Tax, Ahmedabad arising out of the assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2018-19. Since common issue of exparte Revision orders are involved in both the appeals, the same are disposed of by this common order for the sake of convenience.

2. ITA No. 371/Ahd/2023 is taken as the lead case. The assessee herein M/s. Hyderabad Yadgiri Tollway Pvt. Ltd. is a company which is a special purpose vehicle (SPV) incorporated in January 2010, for the purpose of four laning of Hyderabad-Yadgiri section of NH 202 and also a subsidiary of 'Sadbhav Infrastructure Projects Ltd.'. For the Asst. Year 2018-19, the assessee filed its Return of Income on 11.10.2018 declaring a loss of Rs.37,84,22,186/-. Regular assessment u/s. 143(3) was completed on 28.01.2021 by accepting the returned loss without any addition or disallowance by the Assessing Officer.

3. On perusal of the assessment records, Ld. PCIT found that the assessee was requested to furnish details alongwith supporting documentary evidences in respect of any other amount allowable as deduction claimed for Rs.70,84,35,131/- in the schedule BP of the

ITR filed by the assessee for the Asst. Year 2018-19. In reply, the assessee submitted that an amount of Rs.28,72,73,150/- has been claimed as deduction in schedule BP of ITR with respect to actual loss on repayment of foreign currency loan. However no supportive documentary evidences were furnished by the assessee and also claimed deduction u/s. 37(1) of the Act, which is a capital expenditure not eligible for deduction. Thus the A.O. while completing the assessment has not properly examined the issue and therefore the order passed by the A.O. is an erroneous order and prejudicial to the interest of Revenue, which is liable for Revision u/s. 263 of the Act.

3.1. Therefore a show cause notice was issued to the assessee requesting to produce the documentary evidences to substantiate the claim of Rs.28.72 crores eligible for deduction u/s. 37(1) of the Act specifying the nature, purpose and usage of foreign currency loan in its business activities. The assessee was issued with further notices on 07.03.2023, 16.03.2023 wherein assessee requested one week time to file the details and documents. Therefore Ld. PCIT refixed the case for hearing on 21.03.2023. However, there was no response from the assessee. In the absence of details and non-cooperation by the assessee, the Ld. CIT(A) set aside the assessment order and directed the Ld. A.O. to pass fresh assessment on the loss of repayment of foreign currency loan, which is not allowable deduction u/s. 37(1) of the Act, being capital in nature.

4. Aggrieved against the Revision order, the assessee is in appeal before us raising the following Grounds of appeal:

1. On the facts and in the circumstances of the case and in law, learned PCIT has erred in exercising the revisionary powers under section 263 of Act and setting aside the order passed by learned Assessing Officer (AO) under section 143(3) read with section 143(3A) and 143(3B) of the Act dated 28 March 2021.

2. On the facts and in the circumstances of the case and in law, learned PCIT has erred in holding that the assessment order passed by learned AO is erroneous as well as prejudicial to the interest of the Revenue.

5. Ld. Counsel Shri Dhinal Shah appearing for the assessee submitted before us a Paper Book containing the financial statements, notices issued by the Assessing Officer u/s. 142(1) and the reply filed by the assessee claiming that the very same issue and further submitted that the Assessing Officer considered this issue in detail before framing assessment. Thus, there is no question of inadequate enquiry, by the A.O. Therefore the question of invoking Revision proceedings itself is bad in law and requested to quash the Revision order passed by Ld. PCIT.

6. Per contra, Ld. CIT-DR Dr. Darsi Suman Ratnam appearing for the Revenue submitted that the assessee has not participated in the Revision proceedings, wherein Ld. PCIT has given three hearing opportunities to the assessee and the assessee also has not explained why he is not appeared for the hearing opportunities given to the assessee. However the assessee has filed Paper Book and explaining various details, therefore the matter may be set aside to the file of Ld. PCIT for fresh adjudication.

7. We have given our thoughtful consideration and perused the materials available on record. In spite of three opportunities given

by Ld. PCIT, the assessee has not availed the hearing opportunities. From the documents filed by the assessee in its Paper Book that the same were considered by the Assessing Officer during the assessment proceedings is also required to be verified by the Ld. PCIT. But perusal of the Cryptic Assessment Order, makes it clear whether the Ld. A.O. made necessary verifications before passing that order. Since the present Revision order is an ex parte order, we deem it fit to set aside the matter back to the file of Ld. PCIT and direct him to pass fresh order in accordance with law by providing one final opportunity to the assessee. Needless to say that the assessee should cooperate by filing all the required details before Ld. PCIT for passing fresh Revision order.

8. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

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9. In this case, the Ld. PCIT has given show cause notice on 01.02.2023 and hearing opportunities on 01.03.2023 and 09.03.2023. However the assessee failed to appear before Ld. PCIT which has resulted in passing ex parte order. Before us the assessee has filed various details in the Paper Book. For the reasons stated in ITA No. 371/Ahd/2023, this appeal is also set aside to the file of Ld. PCIT with a direction to pass fresh Revision order after providing one final opportunity to the assessee. Needless to say that the assessee should cooperate by filing all the required details before Ld. PCIT for passing fresh Revision order.

10. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 23-02-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 23/02/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद