

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member
And Shri Waseem Ahmed, Accountant Member**

**ITA No. 203/Ahd/2022
Assessment Year 2017-18**

Vadodara Gas Ltd., Shri Municipal Commissioner Gas Office Building, Dandia Bazar, Vadodara-390001 PAN: AAECV6565E (Appellant)	Vs	The PCIT-1, Vadodara (Respondent)
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**Assessee by: Shri Milan Mehta, A.R.
Revenue by: Shri Durga Dutt, CIT-D.R.**

Date of hearing : 29-02-2024
Date of pronouncement : 06-03-2024

आदेश/ORDER

PER : SUCHITRA KAMBLE, JUDICIAL MEMBER:-

This is an appeal filed against the order dated 30-03-2022 passed by Principal Commissioner of Income Tax, PCIT, Vadodara-1 for assessment year 2017-18.

2. The grounds of appeal are as under:-

“1. On facts and in the circumstances of the case and in law, the learned Principal Commissioner of Income Tax Vadodara-1 (“PCI”) erred in setting aside the assessment passed under section 143(3) r.w.s. 144C of the Income-tax Act, 1961 (“the Act”) by invoking provisions of section 263 of the Act.

2. The learned Principal Commissioner of Income Tax, Vadodara (PCIT) erred in fact and in law in exercising jurisdiction u/s 263 of the Income Tax Act, 1961 (the Act) despite the fact that the conditions specified for invoking such extra-ordinary jurisdiction were not satisfied.

3. On facts and in the circumstances of the case and in law, the learned PCIT erred in directing to frame fresh assessment on an issue already considered and verified during the course of assessment u/s. 143(3).

4. The learned PCIT erred in law and in fact in holding that the order passed by the Assessing Officer u/s. 143(3) is erroneous and prejudicial to the interest of revenue despite the fact that the order passed by the learned AO was after due verification of the issue and that the order has been passed after due application of mind and based on one of the possible views.

5. The learned PCIT erred in law and in fact in setting aside the order by exercising the jurisdiction u/s 263 without appreciating the facts that the impugned loss on account of shortage of PNG was on accounts of various commercial and economic factory and same are duly demonstrated by the Appellant by filing necessary evidence in the course of assessment.

6. Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all of any of the above grounds of appeal.”

3. The assessee filed its return of income for assessment year 2017-18 on 31-10-2017 declaring total loss at Rs. 11,98,48,153/- and book profit u/s. 115JB of the Act of Rs. 15,36,64,470/-. The case was selected for scrutiny. The assessment u/s. 143(3) of the Act was finalized on 23-12-2019 determining the total loss at Rs. 11,96,69,252/- and book profit u/s. 115JB of the Act at Rs. 15,36,64,478/-. The Pr. CIT observed from the finance statement and tax audit report furnished by the assessee for the year under consideration that the assessee has shown purchases of 3,67,14,529/- SCM units on piped natural gas (PNG) during the year under consideration for total cost of Rs. 50,22,45,320/- (as per cost audit report) furnished by the assessee). Further, the PCIT observed that as per tax audit report in Form No. 3CD, the assessee has shown shortage of 1,80,86,187/- SCM unit of PNG. Accordingly, the shortage of PNG claimed by the assessee 49.26% of the total purchases of PNG. The Pr. CIT observed that the assessee submitted reply during the assessment proceedings and the said reply was not supported with any evidence to justify the huge shortage of PNG. Thus, the Pr. CIT issued show cause notice dated 11-03-2022 u/s. 263 of the Act. After taking cognizance of the assessee's reply, the Pr. CIT held that the assessment passed u/s. 143(3) in the assessee's case is erroneous so far as prejudicial to the interest of the Revenue. Thus, Pr. CIT set aside the assessment order with a direction to the Assessing Officer to pass fresh assessment order after taking into consideration the issues.

4. Being aggrieved by the order passed u/s. 263 by the Pr. CIT, the assessee is before us.

5. The Id. A.R. submitted that during the course of regular assessment proceedings, the assessee has filed the detailed reply for the shortage as there was a specific query raised by the Assessing Officer during the assessment proceedings recording the same. The Id. A.R. submitted that the Assessing Officer has properly made the verification and in fact the assessee has given why the bills raised and the actual consumption differs in few cases. The Id. A.R. submitted that the comparative shortage details of PNG/CNG and captive consumption of natural gas was also given to the Assessing Officer at the time of assessment. The Id. A.R. further submitted that the assessee had duly submitted that detailed specific reasons on account of which shortage is reported and assessee had also submitted the cost audit report wherein the cost auditor has duly certified the sales and cost of sales for the assessee. The Pr. CIT had totally ignored that the Assessing Officer has verified the details after raising the specific inquiry and therefore the PCIT cannot give his second view and invoked jurisdiction u/s. 263 of the Act. The Id. A.R. further submitted that the change of opinion cannot be the basis for revisionary proceedings u/s. 263 of the Act. The Id. A.R. submitted that the CIT(A) has not made out the case as to how the assessment order is erroneous or prejudicial to the interest of Revenue.

6. The Id. D.R. submitted that the assessee at the time of assessment proceedings has not given any details as to the shortage of PNG and therefore in the light of the decision of Hon'ble Delhi High Court in case of CIT vs. Nagesh Knitwears P. Ltd. and others (2012) 345 ITR 315 which considered the ratio laid down in earlier decisions of the Hon'ble Supreme Court in case of Rampyari Devi Sarogi vs. CIT (1968) 67 ITR 84 (SC) and

Tara Devi Aggarwal vs. CIT (1973) 88 ITR 323 (SC) has invoked the provisions of section 263 and directed the Assessing Officer to pass fresh assessment order. The ld. D.R. relied upon the order of the Pr. CIT.

7. We have heard both the parties and perused all the relevant materials available on record. During the hearing, the ld. A.R. submitted that the details relating to claim of furnishing of PNG was accepted by the Revenue in the earlier assessment as well as in the subsequent assessment years. The assessee is following this as per his business exigencies and therefore there is a shortage of PNG for the assessee not only has given the explanation during the assessment proceedings but also filed the details such as the billing cycle of each house except any few cases as well as consumption which differs from particular family to any other family. This was also reflected in cost audit report which was allowed by the Revenue in earlier assessment year and subsequent assessment year as well. The Pr. CIT primarily held that the Assessing Officer has not made proper inquiry but in the present case, the Assessing Officer has taken cognizance of the records of the assessee such as the details of the consumption units and its audit report along with the submissions of the assessee during assessment proceedings. Thus, this cannot be called as limited verification of the factual aspect of the assessee's claim. Besides this, the Pr. CIT has not demonstrated in the revisionary power as to how this assessment order is erroneous or prejudicial to the interest of revenue. When the assessee has given all the details which are substantial for the claim of shortage of PNG, the Pr. CIT has observed contrary without giving any specific observation to that effect of the evidences produced during assessment proceedings. Thus,

in the present case, the Pr. CIT was not justified in invoking revisionary power u/s. 263 of the Act.

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

Order pronounced in the open court on 06-03-2024

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 06/03/2024

Sd/-
(SUCHITRA KAMBLE)
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