

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T R SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 397/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2018-2019

Gujarat Metro Rail Corporation (GMRC) Limited, Block No.1, First Floor, Kar,yogi Bhavan, Sector 10A, Gandhinagar-382010. PAN: AAGCM3807M	Vs.	Principal Commissioner of Income Tax, Ahmedabad-3, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri SN Soparkar, Sr. Advocate with Shri Parin Shah, AR
Revenue by :	Dr. Darsi Suman Ratnam, CIT.D.R

सुनवाई की तारीख/**Date of Hearing** : **21/02/2024**

घोषणा की तारीख /**Date of Pronouncement**: **06/03/2024**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Principal Commissioner of Income Tax, Ahmedabad-3, arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2018-2019.

2. The only grievance raised by the assessee is that the Ld. PCIT erred in holding the assessment framed u/s 143(3) of the Act, as erroneous in so far prejudicial to the interest of Revenue.

3. The necessary facts are that the assessee in the present case, a limited company, is engaged in the business of construction and maintenance of roads, rail, bridges, tunnels, ports, harbor, runways etc. The assessee filed the return of income declaring an income of Rs. Nil. However, the assessment was framed u/s 143(3) of the Act, dated 25/03/2021, after making addition of interest income of Rs. 14,57,73,748/- only which was set-off against the loss of Rs. 24,61,522 and resultantly the income was assessed at Rs. 14,33,12,226/- only.

4. The Ld. PCIT on examination of case records found that the assessee has borrowed money Rs. 213.68 lakhs and incurred interest expenses against the borrowed amount at Rs. 46,00,700/- only. As per the Ld. PCIT, such amount was claimed as revenue expense whereas the same deserves to be capitalized in the Financial Statement. But the AO has not verified this aspect during the assessment proceedings. Accordingly, a show-cause notice was issued to the assessee seeking clarification. The assessee vide letter dated 04/03/2023 submitted that the impugned amount of interest has already been capitalized in the books of account. To this effect, the assessee filed the copy of the Financial Statement demonstrating that the interest was capitalized. However, the Ld. PCIT disagreed with the contentions of the assessee by observing that the assessee has furnished partial information. As per the Ld. PCIT, the assessee has not furnished the full details and therefore the Ld. PCIT held the assessment order as erroneous in so far prejudicial to the interest of the revenue by holding under:

In the light to above discussion I am, therefore, of the opinion that the assessment order passed by the AO u/s.143(3) of the Act dated 25.03.2021 is erroneous and prejudicial to the interest of the revenue. By virtue of the powers vested in me u/ s. 263 of the IT Act, I hereby set-aside the order u/s.143(3) of the Act dated 09.11.2020 on the issues discussed above. The AO is directed to make proper inquiries in relation to the borrowing cost of Rs. 213.68 lakhs and exceptional items claimed by the assessee. Penalty proceedings are to be

initiated separately for issues where additions are made during the assessment proceedings.

5. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 70 and drew our attention to the Financial Statements placed at pages 24, 36, 43 & 62 of the paper book demonstrating that interest has already been capitalized and therefore the assessment order cannot be subject to revision u/s 263 of the Act on account of non-capitalization of interest.

6.1 The Ld. AR further submitted that there was no show-cause notice issued by the Ld. PCIT with respect to exceptional items shown by the assessee in the income tax return. As per the Ld. AR, the Ld. PCIT has directly held the order of the AO as erroneous in so far prejudicial to the interest of the revenue in respect of exceptional items without issuing any show-cause notice which is against the provisions of law. Thus, it was contended by the Ld. AR that on this count alone the assessment cannot be revised u/s 263 of the Act. The Ld. AR in support of his contention relied on the judgment of the Hon'ble Bombay High Court in the case of Universal Music India Pvt. Ltd. Vs. PCIT reported in 155 taxmann.com 230 which was also upheld by the judgment of the Hon'ble SC reported in 155 taxmann.com 231.

7. On the other hand, the Ld. DR contended that the interest cost was part of the exceptional items and therefore it cannot be said that there was no notice issued with respect to the exceptional items. Likewise, the assessee has not furnished full information demonstrating that the interest on this subordinate loan has been capitalized. The Ld. DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. Regarding the exceptional items, we note that there was no show-cause notice issued by the Ld. PCIT and therefore the same cannot be made subject to the revision in the proceedings carried out u/s 263 of the Act. In this regard, we draw support and guidance from the judgment of Hon'ble Bombay High Court in the case of Universal Music India (P) Ltd. (*Supra*) wherein it was held as under:

9. In the case at hand, there is a finding by the Tribunal, as noted earlier, that no issue was raised by the CIT in respect of particulars of payment made to persons specified under section 40A(2)(b) of the Act and even the show cause notice is silent about that.

10. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

8.1 With respect to the capitalization of the interest, we have referred to profit, and loss account placed on pages 23 and 36 of the paper books and note that such interest has already been capitalized in the books of accounts of the assessee. Therefore, we are of the view that on this count as well the assessment order cannot be held as erroneous in so far prejudicial to the interest of the revenue. In view of the above, we hold that the order passed by the Ld. PCIT u/s 263 of the Act, is not sustainable and accordingly we quash the same. Hence, the ground of appeal of the assessee is hereby allowed.

9. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the Court on 06/03/2024 at Ahmedabad.

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

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

**(True Copy)
06/03/2024**