

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.343/Ahd/2022
Assessment Year : 1996-97

Gujarat Urja Vikas Nigam Ltd. Sardar Patel Vidyut Bhavan Race Course Vadodara - 390 007 (Gujarat)	Vs	The Dy.CIT Circle-1(1)(1) Vadodara - 390 007
PAN: AAACG 8540 N		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Manish J. Shah, AR & Shri Jimi Patel, AR
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 20/06/2024
घोषणा की तारीख /Date of Pronouncement: 28/06/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal by the Assessee is directed against the order of the Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC), Delhi (Hereinafter referred to as "Ld.CIT(A)"), which was filed against the order of by the Assessing Officer (hereinafter referred to as "AO") u/s.143(3) r.w.s 254 regarding the unpaid Electricity Duty under section 43B of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the Assessment Year (AY) 1996-97.

Facts of the Case:

2. The assessee is a company engaged in the business of generation, transmission, and distribution of electricity in Gujarat. For the Financial Year (FY) relevant to the Assessment Year 1996-97, the assessee filed a Return of Income on 29-11-1996 declaring a total income of Rs.NIL. Assessment under section 143(3) of the Act was completed on 28-08-1998 with several additions and disallowances, enhancing the total income. At the time of the original assessment, the assessee explained that the provisions of section 43B of the IT Act were not applicable to the liability of Electricity Duty and Tax thereon, as it did not fall within the definition of "Statutory Liability." However, the AO disallowed this, leading the assessee to file an appeal with the Ld.CIT(A). The Ld.CIT(A), after detailed verification of facts, allowed the matter and deleted the additions.

3. The Revenue, aggrieved by the Ld.CIT(A)'s order, preferred an appeal before the Tribunal. The Tribunal's order passed in ITA No.1930/Ahd/2001 dated 03-03-2008, confirmed the additions, holding that Electricity Duty is covered by section 43B of the IT Act, following the Hon'ble Gujarat High Court judgment in the case of Ahmedabad Electricity Co. reported in 262 ITR 97(Guj.). As per this judgement, the issue relating to unpaid electricity duty was allowed in favour of Revenue and Disallowance of Lease Rentals was set aside for proper verification of facts submitted by the assessee. The Assessing Officer passed the order giving effect to the appellate order without giving proper opportunity to the assessee and added the unpaid electricity duty of Rs.51,99,98,843/- and Lease Rent amounting to Rs. 98,74,46,565/-

4. Aggrieved by the order of AO, the assessee filed an appeal before Ld.CIT(A), who dismissed the ground of appeal of assessee. While passing such an order of dismissal, he concluded that Hon'ble Supreme Court has not yet decided this issue.

4.1. The assessee is, therefore, in appeal before us with following grounds of appeal:

"1.0 *The learned Commissioner of Income Tax (Appeals) erred in law and on facts has confirmed the action of the Assessing Officer in not allowing any relief whatsoever in respect of the unpaid Electricity Duty amounting to ₹51,99,98,843/- on the ground that the same is inadmissible under section 43B of the I T Act in view of the Gujarat High Court judgment in case of CIT vs. Ahmedabad Electricity Co.Ltd. 262 ITR 97.*

The learned Commissioner of Income Tax (Appeals) out to have appreciated that Electricity Duty and Tax on Sale of Electricity Duty is covered by section 43B of the I T Act, hence deduction has to be allowed on payment basis. The Electricity Duty was already adjusted before the end of the year under consideration.

2.0 *The appellant craves leave to add to , alter, delete or modify the ground of appeal either before or at the time of hearing of this appeal."*

On the grounds of appeal:

5. The counsel for the assessee submitted that an amount of Rs.51,99,98,843/- payable as of 31-03-1996 was adjusted by the Government of Gujarat on 29-03-1997, thus the deduction should be allowed in the year of payment/adjustment. He further submitted that the Electricity Duty and Tax on the sale of electricity were adjusted against the Government subsidy, as confirmed by the Department of Energy & Petrochemicals' letter dated 24-02-2000.

5.1. The Ld.Counsel for the assessee represented that the Ld.CIT(A) has wrongly concluded that the Hon'ble Supreme has not decided the issue in favour of the assessee. He submitted the copy of order of Hon'ble Supreme Court - Civil Appeal No. 6455 of 2012 arising out of S.L.P. (C) No.11323/2009.

6. The Ld.Departmental Representative relied on the orders of lower authorities.

7. We have heard the contentions of both the parties and gone through the material available on record. In our considered opinion the Ld.CIT(A) has erred in concluding that the Hon'ble Supreme Court has yet to decide and only admitted the SLP filed by the assessee against the judgement of Hon'ble Gujarat High Court passed for AY 1990-91. We reproduce the operative portion of the judgement below:

"In this case, there is no dispute that the assessee is entitled to the benefit of Section 43B of the Income Tax Act,1961 ('Act' for short).

The narrow controversy which arises in this assessee has not produced the certificate of a Chartered Accountant, as defined in the Explanation to Section 288 of the Act. that, till today, such certificate has not been produced. In the context of Section 43B of the Act, apart from entitlement, the assessee was duty bound to produce the certificate showing the proof of payment which the assessee claims by way of adjustment on 21st August, 1990.

In the above circumstances, we direct the assessee to produce certificate before the Assessing Officer within a period of four weeks. The Assessing Officer will take the certificate on record and decide the matter in accordance with law.

Accordingly, the civil appeal filed by the assessee is disposed of with no order as to costs."

7.1. As it can be seen here that the Hon'ble Supreme Court, in its judgement relating to the Assessment Year 1990-91, has held that the assessee is entitled to the benefit of section 43B of the Act.

7.2. It is also noted that the adjustment of Electricity Duty by the Government against the subsidy sanctioned by the Government amounts to valid payment for the purposes of section 43B of the IT Act, vide its order dated 12-09-2012 and deduction should be allowed on a payment basis in the year the payment is made.

7.3. The assessee has demonstrated that the Hon'ble Supreme Court's order dated 12-09-2012 addressed the issue of unpaid electricity duty, requiring a certificate from a Chartered Accountant.

7.4. The AO's failure to consider the Supreme Court's directive and the Tribunal's instructions has resulted in an improper assessment. Ld.CIT(A) has failed to take into consideration the judgement of the Hon'ble Supreme Court relating to AY 1990-91 and decide the case on merits for the year under consideration.

7.5. In view of the above, we decide as follows:

- The order passed by the CIT(A) confirming the AO's decision is set aside.
- The matter is restored to the AO for fresh adjudication in light of the Supreme Court's order and after considering the facts and evidence presented by the assessee, particularly the Chartered Accountant's certificate as mandated.

- The AO is directed to provide the assessee with a fair opportunity to present its case and to re-evaluate the issue based on the Supreme Court's directive and the Tribunal's instructions.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 28 June, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 28/06/2024

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 CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC), Delhi
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