

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "DIVISION BENCH-A"
AHMEDABAD

**Before: Shri Ramit Kochar, Accountant Member &
Shri T R Senthil Kumar, Judicial Member**

**ITA No. 760/Ahd/2024
Assessment Year:2014-15**

Akash Petroleum Private Limited 2,Abhishek Building, Ground Floor, Sector-11, Gandhinagar- 382011 Gujarat PAN:AAICA0427G (Appellant)	v.	The Principal Commissioner of Income Tax , Pratyakshkar Bhawan Behind Stock Exchange, Ambawadi Ahmedabad,-380014, Gujarat (Respondent)
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**Assessee by: Shri Mehul K Patel, A.R.
Revenue by: Shri Akhilendra Pratap Yadav,
CIT D.R.**

Date of hearing : 01-08-2024
Date of pronouncement : 01-08-2024

आदेश/ORDER

This appeal in ITA No. 760/Ahd/2024 for assessment year: 2014-15 , filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Division Bench, Ahmedabad has arisen from the Revisionary Order dated 21-03-2024 passed by ld. Principal Commissioner of Income Tax ,

Ahmedabad(DIN & Order No. ITBA/REV/F/REV5/2023-24/1063094629(1)), holding that the assessment order passed by the learned Assessing Officer dated 18/03/2024 (sic. dated 24/03/2022) u/s 143(3) (sic. u/s 147 read with Section 144B) of the Income-tax Act, 1961 is erroneous and prejudicial to the interest of Revenue, on the ground that the AO has failed to make additions to the tune of 9,95,000/- u/s. 2(22)(e) of the 1961 Act , and the said assessment order passed by AO was set aside by ld.PCIT and directions were issued by ld. PCIT to the AO to pass fresh assessment order and compute the addition considering above referred observations.

2. When this appeal came up for hearing before Division Bench today, the ld. Counsel for the assessee at the outset stated that the ld. PCIT has issued only one notice of hearing dated 11.03.2024 u/s 263 seeking compliance latest by 18.03.2024. The assessee filed submissions on 21.03.2024. The ld. PCIT passed revisionary order u/s 263 on 21.03.2024 , but did not consider the written submissions dated 21.03.2024 filed by the assessee. Thus, it was submitted that principles of natural justice are violated, and prayers were made to set aside the revisionary order dated 21.03.2024 passed by ld. PCIT u/s 263 and restore the matter back to the file of ld. PCIT for passing fresh revisionary orders after considering the submissions of the assessee. It was submitted that ld. PCIT has given directions to AO to make additions of

Rs. 9,95,000/- u/s 2(22)(e) of the 1961 Act w.r.t. loans received from M/s Abhishek Caplease Private Limited in which the assessee holds and is the beneficial owner of the shares having 49.63% shareholding, and the said company M/s Abhishek Caplease Private Limited has accumulated profits to the tune of Rs. 26,22,208/-. It was submitted that ld. PCIT has set aside the reassessment order dated 24.03.2022 passed by the AO and have given directions to the AO to make additions to the tune of Rs. 9,95,000/- u/s 2(22)(e) without giving proper opportunity of hearing to the assessee as only one notice of hearing dated 11.03.2024 giving date of compliance latest by 18.03.2024 was issued by ld. PCIT, and revisionary order was passed by ld. PCIT u/s 263 on 21.03.2024 without considering the submissions filed by the assessee on 21.03.2024. Our attention was drawn to para 3 of the revisionary order passed by ld. PCIT wherein it is stated by ld. PCIT that no submissions were filed by the assessee. Our attention was drawn to paper book page no. 29-33/wherein the submissions filed by the assessee on 21.03.2024 before ld. PCIT during revisionary proceedings are placed. It was prayed that now AO is bound to make additions as per directions of ld. PCIT, and even if the submissions are filed by the assessee before AO both on legal as well factual grounds, the AO will make the additions as the AO is bound to follow the directions of ld. PCIT who is higher in hierarchy to the AO. It was

submitted that the assessee has also raised ground no. 1 in the memo of appeal filed with ITAT, Ahmedabad Bench , wherein specific ground is taken as to not providing of reasonable and sufficient opportunity of hearing by ld. PCIT to the assessee and passing an ex-parte revisionary order u/s 263. The ld. Counsel for the assessee prayed that the revisionary order dated 21.03.2024 passed by ld. PCIT u/s 263 be set aside and revisionary proceedings u/s 263 be restored back to the file of ld. PCIT for passing fresh revisionary order u/s 263 , after giving proper opportunity of being heard to the assessee. The ld. Counsel for the assessee also submitted that the assessee has good case , both on facts as well on legal grounds, and paper book is filed by the assessee before Tribunal consisting of 33 pages, but since the ld. PCIT has not gone through the submissions filed by the assessee, the matter may be restored back to the file of ld. PCIT for passing fresh revisionary order u/s 263 of the 1961 Act, after considering the submissions and contentions of the assessee, both on legal as well factual grounds. The ld. CIT-DR relied upon the revisionary order passed by ld. PCIT u/s 263 and submitted that the assessee did not submitted its reply on or before 18th March 2024 i.e. the date of compliance given by ld. PCIT, and prayers were made to uphold the revisionary order dated 21.03.2024 passed by ld. PCIT u/s 263.

3. After hearing both the parties and considering material on record, we are of the considered view that proper opportunity of heard was not granted by ld. PCIT to assessee while passing revisionary order u/s 263, dated 21.03.2024. Only one notice was issued by ld. PCIT, dated 11.03.2024 fixing date of compliance on 18.03.2024. The assessee did not file any submissions on or before 18.03.2024 and also no adjournment application was filed by the assessee. No further opportunity was granted by ld. PCIT, before passing the revisionary order dated 21.03.2024 u/s 263. The assessee filed written submissions on 21.03.2024, which was also not considered by ld. PCIT while passing revisionary order dated 21.03.2024 u/s 263. In our considered view, the principles of natural justice are breached by ld. PCIT. Prejudice has been caused to the assessee, vide revisionary order dated 21.03.2024 passed by ld. PCIT u/s 263 which was passed by ld. PCIT without giving proper and adequate opportunity of heard to the assessee. The assessee has raised specific grounds in the memo of appeal filed with Tribunal vide ground no. 1, wherein the assessee has contended that the revisionary order dated 21.03.2024 was passed by ld. PCIT u/s. 263 without providing reasonable and sufficient opportunity of hearing while passing an exparte order. The submissions filed by the assessee on 21.03.2024 before ld. PCIT were also not considered by ld. PCIT. In its revisionary

order dated 21.03.2024 passed by ld. PCIT u/s 263 , the assessment order passed by the AO was set aside and directions were issued to the AO by ld. PCIT to make additions to the tune of Rs. 9,95,000/- u/s 2(22)(e) . Under these facts and circumstances of the case, we are inclined to set aside the revisionary order dated 21.03.2024 passed by ld. PCIT u/s 263 and restore the matter back to the file of ld. PCIT to pass fresh revisionary order u/s 263 after giving proper and adequate opportunity of being heard to the assessee. We clarify that we have not commented on the merits of the issues in this appeal. All the contentions are kept open. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

3. In the result, the appeal of the assessee in ITA No. 760/Ahd/2024 for assessment year: 2014-15 is allowed for statistical purposes

Order pronounced on 01st August, 2024 in Open Court on the conclusion of the hearing at Ahmedabad in the presence of both the parties, and reduced to writing and signed on 02.08.2024

Sd/-
(T R SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad : Dated : 02/08/2024