

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
**BEFORE SMT. KAVITHA RAJAGOPAL, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 2140/Mum/2024 (A.Y.2018-19)

M/s. Vidarbha Industries Power Ltd.,

Reliance Centre, Ground Floor,
19 Walchand Hirachand Marg,
Ballard Estate, Mumbai – 400 092
PAN: AADCR1892D

..... Appellant

Vs.

PCIT-6,

R. No. 501, 5th floor,
Aayakar Bhavan, M. K. Road,
Mumbai- 400 020

..... Respondent

Appellant by : Shri Niraj Seth, Ld. AR
Respondent by : Shri Ankush Kapoor, Ld. DR
Date of hearing : 08/08/2024
Date of pronouncement : 19/08/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of Ld. PCIT, Mumbai dated 26.02.2024 passed u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

VALIDITY OF ORDER PASSED U/s. 263 OF THE ACT

1. On the facts and in circumstances of the case and in law, the Hon'ble Principal Commissioner of Income Tax-6, Mumbai ("the Hon'ble Pr. CIT") erred in holding that the Assessment Order passed by the Additional/Joint/Deputy/Assistant Commissioner of Income Tax/Income Tax Officer, National e-Assessment Centre, Delhi ("the Assessing Officer") u/s. 143(3) of the Income Tax Act ("the Act") dated 06/04/2021, is erroneous and prejudicial to the interests of Revenue as per Explanation 2(a) to Sec. 263 of the Act and setting aside of the Assessment Order u/s. 143(3) of the Act by passing Order u/s. 263 of the Act dated 26/02/2024 ("the Impugned order").

2. The Appellant prays that, it be held that, the action of Hon'ble Pr. CIT in invoking provisions of Sec. 263 of the Act to cancel the Assessment order on the issues specified therein and directing the Assessing Officer to frame the assessment Order de novo is ab-initio and / or otherwise void and bad-in-law.

3. The Appellant prays that, it be held that, the action of Hon'ble Pr. CIT invoking provisions of Explanation 2(a) to Sec. 263 of the Act, without demonstrating the basis on which he is of the view that the Assessing Officer has passed the assessment order without making adequate enquiries or verification is baseless and consequently, the impugned order ought to be quashed.

WITHOUT PREJUDICE TO GROUNDS OF APPEAL No. 1 TO 3 ABOVE

4. On the facts and in circumstances of the case and in law, the Hon'ble Pr. CIT erred in holding that the Assessing Officer has failed to make necessary enquiry and verify the facts before passing the assessment order and setting aside the Assessment Order u/s. 143(3) of the Act to the file of the Assessing Officer and directing to frame the assessment de-novo as per observations made in the impugned order.

5. On the facts and in circumstances of the case and in law, the Hon'ble Pr. CIT failed to appreciate that, the Financial Statements for year ended 31.03.2018 ("Financial Statement") has been revised to give effect to the judgement of Appellate Tribunal for Electricity ("APTEL") in relation to petition filed before Maharashtra Electricity Regulatory Commission ("MERC") for truing up Annual Revenue Requirement ("ARR") and tariff of F.Y. 2014-15, Provisional Truing up of ARR and tariff for F.Y. 2015-16 and approval of ARR and determination of Multi Year Tariff ("MYT") for F.Y. 2016-17 to 2019-20.

6. On the facts and in circumstances of the case and in law, the Hon'ble Pr. CIT failed to appreciate that, the Financial Statement has been revised after seeking permission of

Hon'ble Bombay High Court and with the Approval of Hon'ble National Company Law Tribunal ("NCLT").

7. On the facts and in circumstances of the case and in law, the Hon'ble Pr. CIT failed to appreciate that, the Income Tax Department gave No Objection Certificate in reply to notice served in relation to petition file before NCLT for revision of Financial Statement.

8. On the facts and in circumstances of the case and in law, the Hon'ble Pr. CIT failed to appreciate that, the reasons for revision of Financial Statement have been provided in Financial Statement which were duly submitted during the course of original assessment proceedings.

9. On the facts and in circumstances of the case and in law, the Hon'ble Pr. CIT erred in setting aside the order of the Assessing Officer on the issue of allowance of Rs. 129.48 Crore being reduction in current year's accrued revenue and Rs. 170.60 Crore being reversal of earlier year's revenue reflected as part of trade receivable.

GENERAL

10. The Appellant craves leave to add to, alter, amend or vary all or any of the aforesaid ground(s) of appeal as they/their representative may deem fit.

2. The brief facts of the case are that the assessee is a company and has filed its return of income for A.Y. 2018-19 on 30.03.2019 declaring a loss of Rs. 233,43,24,921/-. The Assessee's return was processed under section 143(1) (a) of the Income tax Act, 1961 (hereinafter referred to as "the Act") on 02.02.2020. The Assessee's case was selected for scrutiny in the Computer Assisted Scrutiny Selection (CASS) cycle and notices were issued to the Assessee under sections 143(2) and 142(1) of the Act. In response to the notices the Assessee filed its replies and furnished the relevant documents. The AO during the Assessment proceedings observed that the Assessee had its investments in equities and Government Bonds where the returns are in the nature of dividends, which is an exempt income, the Assessee was asked to furnish a working of the disallowance

of expenses under section 14A of the Act read with rule 8D of the Income Tax Rules, 1962, the Assessee furnished the working to the AO vide its reply dated 28.01.2020 which showed that Government Bonds worth Rs. 23,22,442/- were purchased by the Assessee and that the Assessee received interest income from these bonds amounting to Rs. 1,41,249/-, lastly the Assessee submitted it had earned no dividend income. The AO added a sum of Rs. 55, 48,530/- to the total income of the Assessee and observed that the expenditure attributable to an activity which is not includible in total income of the assessee such as income earned from investments and the disallowance of this amount is restricted as per the proviso to Rule 8D of the Income Tax Rules, 1962. Thus, the AO computed the total assessed income (loss) at Rs. 232, 87, 76,391/-.

3. Subsequently, the Ld. PCIT-6, Mumbai observed that the Assessee had offered lesser income amounting to Rs. 129.48 crore and had deducted Rs. 170.60 Crore on account of reversal of earlier year's revenue. The Ld. PCIT observed that these entries were passed by the Assessee of its own volition pending adjudication before the relevant appellate authorities. The Ld. PCIT thus held that since the claim of the Assessee had not crystallized during the relevant A.Y. the income under consideration should be increased by Rs. 300.08 crores (Rs. 170.60 Cr. + 129.48 Cr.) and thus the Ld. PCIT issued show cause notices to the Assessee under section 263 of the Act. The Assessee in its reply provided the reasoning behind the revision of the Financial Statement for the F.Y. 2017-18 citing the decisions of the Hon'ble Bombay High Court and Hon'ble Appellate Tribunal for Electricity (APTEL) and also stated that it had filed its originally audited Financial

Statement before the Registrar of Companies on 16.10.2018 and revised its Financial Statements by reversing revenue accrued for the F.Y. 2017-18 amounting to Rs. 129.48 crore and revenue claims of earlier years amounting to Rs. 170.60 crore. Accordingly, the assessee company filed its Return of Income on 30.03.2019 declaring a loss of Rs (-) 233, 43, 24,921/-. The Assessee contended that only actual profits are to be taxed and placed reliance on the decisions of the Hon'ble Supreme Court in **Poona Electric Supply Co. Ltd. v. CIT, (1965) 57 ITR 521:1965 SCC OnLine SC 194, Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530, CIT v. Excel Industries Ltd., (2014) 13 SCC 459 and Morvi Industries Ltd. v. CIT, (1972) 4 SCC 451**. The Ld. PCIT dismissed the Assessee's submissions by observing that the Assessee's liability is a contingent liability which had not been crystallized during the year in question i.e. A.Y. 2018-19 as the appeal preferred by the Hon'ble MERC before the Hon'ble Supreme Court had not been finalized till the date on which the Assessee filed its Return of Income i.e. 30.03.2019. Further the Ld. PCIT observed that the Hon'ble NCLT had passed its order on 19.05.2021 which stated that the AO had given his N.O.C. on 03.03.2021 and this was contrary to the Assessee's contention that the Financial Statement were revised with the approval of the NCLT after obtaining the NOC from the department. The Ld. PCIT also observed that that the Assessee had filed its Return of Income on 30.03.2019 whereas the last day for filing the return was 31.10.2018 and therefore the Assessee neither is eligible to carry-forward current year losses nor claim the deduction under section 80IA of the Act. The Ld. PCIT thus, set aside the order of the AO and held that the AO should not have accepted the revised Financial Statements as the appeal filed by the Hon'ble MERC against the order of the Hon'ble APTEL before the Hon'ble Supreme Court as well as the Assessee's

petition before the Hon'ble NCLT seeking approval to revise the Financial Statements were pending adjudication.

4. The Assessee being aggrieved by the order of the Ld. PCIT preferred the present appeal before us. We have gone through the order passed under section 143(3) of the Act, order of the Ld. PCIT passed under section 263 of the Act and submissions of the Assessee along-with grounds taken before us. It is observed that the Assessee filed its return of income for A.Y. 2018-19 on 30.03.2019 declaring a loss of Rs. 233,43,24,921/-. The Ld. PCIT held that the Assessee had offered lesser income amounting to Rs. 129.48 crore and had further deducted 170.60 crore on account of reversal of revenue and stated that the income for the year under consideration should have been increased by Rs. 300.08 Crores. Thus, the only question before us is whether the Assessee should be taxed on actual profits or on notional profit. We observe that the Assessee is a Company which is engaged in the business of power generation and supplies electricity to Adani Electricity Mumbai Ltd. under a long-term Power Purchase Agreement dated 14.08.2013 approved by Maharashtra Electricity Regulatory Commission (MERC) vide order dated 19.07.2013. Thereafter, the Company filed a petition before the Hon'ble MERC for truing up of Annual Revenue Requirement (ARR) for F.Y. 2014-15, provisional truing up of ARR for F.Y 2015-16 and determination of Multi Year Tariff (MYT) for F.Y. 2016-17 to F.Y. 2019-2020. The MERC passed an order dated 20.06.2016 in the said Case No. 91 of 2015 and disallowed certain claims related fuel cost of the company. The Assessee being aggrieved thereafter challenged the above order passed by the Hon'ble MERC dated 20.06.2016 before the Hon'ble

Appellate Tribunal for Electricity (APTEL) and the Hon'ble APTEL vide its order dated 03.11.2016 partly allowed the Assessee's appeal with respect to disallowance of fuel cost. The Hon'ble MERC subsequently preferred a Civil Appeal bearing No. 372 of 2017 before the Hon'ble Supreme Court. This appeal is still pending for adjudication, **but no stay has yet been accorded to the MERC.** After the filing of the Civil Appeal by the MERC, the Hon'ble Supreme Court judgment dated 11.04.2017 in the case titled **Energy Watchdog v. CERC, (2017) 14 SCC 80** laid down the law with respect to non-availability of supply of domestic coal by determining that it constituted as a 'Change in Law event' which required the passing through of the cost of coal procured from an alternate source in tariff. Thereafter, in light of the order passed by the Hon'ble APTEL and the fact that no stay was granted by the Hon'ble Supreme Court, the Assessee filed a Miscellaneous Application bearing No. 3 of 2018 in Case 91 of 2015 on 02.07.2018 2017 on 02.07.2018 and Miscellaneous Application bearing No. 4 of 2018 in Case 199 of 2017 on 03.07.2018 before the MERC for amending its pending Petitions for raising additional grounds and prayers for approving the methodology for compensation under Change in Law. The Hon'ble MERC in its order dated 14.09.2018 in Miscellaneous Application Nos. 3 and 4 of 2018 allowed the Assessee's Prayers in accordance with the Supreme Court Judgment in **Energy Watchdog v. CERC (supra)** and directed the Assessee to submit its revised consolidated Petition for Mid-term review for Truing up of ARR of F.Y. 2015-16 and F.Y. 2016-17, provisional Truing up of A.R.R. of F.Y. 2017-18, approval of revised A.R.R. of F.Y 2018-19 and F.Y. 2019-20 along with revised Truing up of F.Y. 2014-2015. The said revised MTR petition was heard on 08.01.2019 by the Hon'ble MERC and the order has been reserved since then. Thus, since the

Petition filed by the Assessee before the Hon'ble MERC for implementation of the Hon'ble APTEL's Judgment was pending, the Assessee continued to recognize revenue in its books of accounts as per the terms and condition defined under the P.P.A. The Assessee also sought to revise its Financial Statement to comply with Section 129 of the Companies Act, 2013 and pursuant to this the Assessee filed a Writ petition before the Hon'ble Bombay High Court seeking permission to revise its financial statements for F.Y. 2017-18 and to seek approval of the Hon'ble NCLT under section 131 of the Companies Act, 2013 in order to file the I.T.R. for the year under consideration. The Hon'ble Bombay High Court vide its order dated 26.03.2019 allowed the appeal of the Assessee similarly the Hon'ble NCLT, Mumbai vide its order dated 19.05.2021 allowed the assessee to file its I.T.R. on the basis of revised financial statement and observed that the Income Tax Authority had submitted its NOC on 03.03.2021. The Assessee had filed their originally audited Financial Statement before the Registrar of Companies on 16.10.2018, thereafter the Assessee proposed that the Financial Statement for the F.Y. 2017-18 needs to be revised. The Assessee subsequently revised its Financial Statements for F.Y. 2017-18 in accordance with the Tariff Order 20.06.2016 and the judgment of the Hon'ble APTEL by reversing revenue accrued for the F.Y. 2017-18 amounting to Rs. 129.48 crore and revenue claims of earlier year reflected as part of trade receivables amounting to Rs. 170.60 crore as charge to the Statement of Profit and Loss for the year. Accordingly, the assessee company filed its Return of Income on 30.03.2019 declaring a loss of Rs (-) 233, 43, 24,921/-. The Hon'ble Supreme Court in **Poona Electric Supply Co. Ltd. v. CIT, (1965) 57 ITR 521: 1965 SCC Online SC 194** held that: -

11. *The appellant Company is a commercial undertaking. It does business of the supply of electricity subject to the provisions of the Act. As a business concern its real profit has to be ascertained on the principles of commercial accountancy. As a licensee governed by the statute its clear profit is ascertained in terms of the statute and the schedule annexed thereto. **The two profits are for different purposes — one is for commercial and tax purposes and the other is for statutory purposes in order to maintain a reasonable level of rates. For the purposes of the Act, during the accounting years the assessee credited the said amounts to the “Consumers Benefit Reserve Account”. They were a part of the excess amount paid to it and reserved to be returned to the consumers. They did not form part of the assessee's real profits. So, to arrive at the taxable income of the assessee from the business under Section 10(1) of the Act, the said amounts have to be deducted from its total income.***

12. *In this view it is not necessary to express our opinion on the question whether the said amounts would be allowable deductions under Section 10(2) (xv) of the Act.*

13. *the next question is whether the amount so reserved for future payment, were deductible in computing the income, profits or gains from the assessee's business for assessment years 1953-54 and 1954-55. It is not disputed that the assessee adopts the mercantile system of accounting. The liability to return the amounts was incurred by the assessee during the relevant accounting years. This Court held in *Calcutta Co. Ltd. v. CIT* [(1959) 37 ITR 1] that where an assessee maintained his accounts on mercantile basis, the accrued liability and the estimated expenditure which it would incur in discharging the same could be deducted from the income of the accounting year in which the said liability accrued. Indeed, this legal position was not contested on behalf of the Revenue.*

5. Further in ***Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530: (1997) 225 ITR 746*** The Hon'ble Supreme Court held that:-

13. *Under the Act income charged to tax is the income that is received or is deemed to be received in India in the previous year relevant to the year for which assessment is made or on the income that accrues or arises or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with the method of accounting regularly employed by the assessee. It may be either the cash system where entries are made on the basis of actual receipts and actual outgoings or disbursements or*

it may be the mercantile system where entries are made on accrual basis, i.e., accrual of the right to receive payment and the accrual of the liability to disburse or pay. In *CIT v. Shoorji Vallabhdas and Co.* [(1962) 46 ITR 144 (SC)] it has been laid down: (ITR p. 148)

*“... Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. **If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a ‘hypothetical income’, which does not materialise.**”*

14. This principle is applicable whether the accounts are maintained on cash system or under the mercantile system. If the accounts are maintained under the mercantile system what has to be seen is whether income can be said to have really accrued to the assessee company. In *H.M. Kashiparekh & Co. Ltd. v. CIT* [(1960) 39 ITR 706 (Bom)] the Bombay High Court had said:

“... Even so, (the failure to produce account losses) we shall proceed on the footing that, the assessee company having followed the mercantile system of account, there must have been entries made in its books in the accounting year in respect of the amount to commission. In our judgment, we would not be justified in attaching any particular importance in this case to the fact that the company followed mercantile system of account. That would not have any particular bearing in applying the principle of real income in the facts of this case.”

15. The said view was approved by this Court in *CIT v. Birla Gwalior (P) Ltd.* [(1974) 3 SCC 196: 1973 SCC (Tax) 519: (1973) 89 ITR 266] where the assessee maintained its accounts on the mercantile system. In that case this Court, after referring to the decision in *Morvi Industries Ltd. v. CIT* [(1972) 4 SCC 451 : 1974 SCC (Tax) 140 : (1971) 82 ITR 835] , which was also a case where the accounts were maintained on mercantile system, has said : (ITR p. 273 : SCC p. 201, para 12)

*“Hence it is clear that this Court in *Morvi Industries case* [(1972) 4 SCC 451: 1974 SCC (Tax) 140: (1971) 82 ITR 835] did emphasise the fact that the real question for decision was whether the income had really accrued or not. It is not a hypothetical accrual of income that has got to be taken into consideration but the real accrual of the income.”*

16. In *Poona Electric Supply Co. Ltd. v. CIT* [(1965) 57 ITR 521: AIR 1966 SC 30] this Court has said:

“... Income tax is a tax on the real income, i.e., the profits arrived at on commercial principles subject to the provisions of the Income Tax Act.”

17. In that case the Court has approved the following principle laid down by the Bombay High Court in *H.M. Kashiparekh & Co. Ltd. v. CIT* [(1960) 39 ITR 706 (Bom)] :

“The principle of real income is not to be so subordinated as to amount virtually to a negation of it when a surrender or concession or rebate in respect of managing agency commission is made, agreed to or given on grounds of commercial expediency, simply because it takes place sometime after the close of an accounting year. In examining any transaction and situation of this nature the court would have more regard to the reality and speciality of the situation rather than the purely theoretical or doctrinaire aspect of it. It will lay greater emphasis on the business aspect of the matter viewed as a whole when that can be done without disregarding statutory language.”

18. In *State Bank of Travancore v. CIT* [(1986) 2 SCC 11 : 1986 SCC (Tax) 289 : (1986) 158 ITR 102] after considering the various decisions of this Court, *Sabyasachi Mukharji, J.* (as the learned Chief Justice then was) has said: (ITR p. 154 : SCC pp. 65-66, para 67)

“An acceptable formula of correlating the notion of real income in conjunction with the method of accounting for the purpose of the computation of income for the purpose of taxation is difficult to evolve. Besides, any strait-jacket formula is bound to create problems in its application to every situation. It must depend upon the facts and circumstances of each case. When and how does an income accrue and what are the consequences that follow from accrual of income are well-settled. The accrual must be real taking into account the actuality of the situation. Whether an accrual has taken place or not must, in appropriate cases, be judged on the principles of real income theory. After accrual, non-charging of tax on the same because of certain conduct on the ipse dixit of a particular assessee cannot be accepted. In determining the question whether it is hypothetical income or whether real income has materialised or not, various factors will have to be taken into account. It would be difficult and improper to extend the concept of real income to all cases depending upon the ipse dixit of the assessee which would then become a value judgment only. What has really accrued to the assessee has to be found out and what has accrued must be considered from the point of view of real income

taking the probability or improbability of realisation in a realistic manner and dovetailing of these factors together but once the accrual takes place, on the conduct of the parties subsequent to the year of closing an income which has accrued cannot be made 'no income'."

19. *If the matter is examined in the light of the aforementioned principles laid down by this Court, it must be held that even though the assessee company was following the mercantile system of accounting and had made entries in the books regarding enhanced charges for the supply made to the consumers, no real income had accrued to the assessee company in respect of those enhanced charges in view of the fact that soon after the assessee company decided to enhance the rates in 1963 representative suits (Civil Suits Nos. 152 of 1963 and 50 of 1964) were filed by the consumers which were decreed by the trial court and which decree was affirmed by the appellate court and the learned Single Judge of the High Court and it is only on 3-12-1968 that the letters patent appeals filed by the assessee company were allowed by the Division Bench of the High Court and the said suits were dismissed. But appeals were filed against the said judgment by the consumers in this Court and the same were dismissed by the judgment of this Court dated 26-2-1969 [(1969) 1 SCC 781: (1969) 3 SCR 836]. Shortly thereafter, on 19-3-1969, the Under Secretary to the Government of Gujarat wrote a letter advising the assessee company to maintain status quo for the rates to the consumers for at least six months and the Chief Electrical Inspector was directed to go through the accounts of the assessee company from year to year and to report to the Government about the actual position about the reasonable returns earned by the assessee company. On 16-5-1969 another representative suit (Suit No. 118 of 1969) was filed by the consumers wherein interim injunction was granted by the Court and which was finally decreed in favour of the consumers on 23-6-1974. It would thus appear that after the decision was taken by the assessee company to enhance the charges it was not able to realise the enhanced charges on account of pendency of the earlier representative suits of the consumers followed by the letter of the Under Secretary to the Government of Gujarat and the subsequent suit of the consumers and during the pendency of the subsequent suit the management of the undertaking of the assessee company was taken over by the Government of Gujarat under the Defence of India Rules, 1971 and the undertaking was subsequently transferred to the Gujarat State Electricity Board.*

22. *The question whether there was real accrual of income to the assessee company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realisation in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee*

company in respect of the enhanced charges for supply of electricity which were added by the Income Tax Officer while passing the assessment orders in respect of the assessment years under consideration. The Appellate Assistant Commissioner was right in deleting the said addition made by the Income Tax Officer and the Tribunal had rightly held that the claim at the increased rates as made by the assessee company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the Income Tax Officer did not represent the income which had really accrued to the assessee company during the relevant previous years. The High Court, in our opinion, was in error in upsetting the said view of the Tribunal.

6. In the case of **CIT v. Excel Industries Ltd., (2014) 13 SCC 459: (2013) 358 ITR 295: 2013 SCC Online SC 929**

14. First of all, it is now well settled that income tax cannot be levied on hypothetical income. In *CIT v. Shoorji Vallabhdas and Co.* [*CIT v. Shoorji Vallabhdas and Co., (1962) 46 ITR 144 (SC)*], it was held as follows: (ITR p. 148)

“... Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted viz. the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a ‘hypothetical income’, which does not materialise. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the recipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account.”

7. In light of the above judicial pronouncements we observe that it is settled law that, firstly, where an assessee maintained its accounts on mercantile basis, the accrued liability and the estimated expenditure which it would incur in discharging the same could be deducted from the income of the accounting year

in which the said liability accrued. Secondly, income tax is a tax on the real income, i.e. the profits arrived at on commercial principles subject to the provisions of the Income Tax Act. Thirdly, if income does not result at all, there cannot be a tax, even though in bookkeeping, an entry is made about a 'notional income', which does not materialise. To adjudicate the present case the principle of prudence in accounting has been elucidated as follows, the principle prudence is a practice of anticipating possible future losses but not future gains. The principle of Prudence deviates from conventional accounting as it provides for all possible losses, but does not anticipate profits, hence, revenues are only recognised when they are certain, but expenses are recorded accurately and in full when they are probable or projected. Further, the principle of prudence requires expenses to be logged before the payment leaves the account. When there is a likelihood of an expense, a record needs to be made of this expense in the company's books right away and the expense needs to be provisioned.

8. In view of the judgements of the Hon'ble and on the basis of the principle of prudence in accounting, it is clear that the Assessee ought to be taxed on actual profit and not on any notional or hypothetical profit. Therefore, it is patently clear that the Ld. PCIT erred in setting aside the Order of the AO by ignoring the accounting principle of prudence and the law settled by the various judgements of the Supreme Court. Therefore, **Grounds 4, 5, 6, 7, 8 and 9** of the Assessee are **allowed** and since the Order passed by the AO is held to not be erroneous the Assessee's **Grounds 1, 2 and 3** are also allowed.

9. In these circumstances and facts on record we uphold the appeal and set aside the order passed by the Ld. PCIT and restore the decision passed by the AO keeping in view the ratio laid down by the Hon'ble Supreme Court in the cases of **Poona Electric Supply Co. Ltd. v. CIT, (1965) 57 ITR 521 : 1965 SCC Online SC 194, Godhra Electricity Co. Ltd. v. CIT, (1997) 4 SCC 530** and **CIT v. Excel Industries Ltd., (2014) 13 SCC 459 : (2013) 358 ITR 295 : 2013 SCC Online SC 929.**

10. In the result, the appeal filed by the assessee is fully allowed.

Order pronounced in the open court on 19th day of August, 2024.

Sd/-

(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 19/08/2024

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai