

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.368/Ahd/2023
Assessment Year : 2018-19

Sabarmati Gas Ltd. Plot No.907, Sector 21 Gandhinagar 382 021 PAN : AAKCS 0110 N	Vs	The Ld.Pr.CIT Ahmedabad-3.
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(Applicant)	(Responent)
Assessee by :	Shri Bandish Soparkar, AR
Revenue by:	Shri H. Phani Raju, CIT-DR

सुनवाई की तारीख/Date of Hearing : 13/06/2024
घोषणा की तारीख /Date of Pronouncement: 04/09/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

This is assessee's appeal against the order of the Id.Pr. Commissioner of Income Tax-3, Ahmedabad dated 15.3.2023 passed under section 263 of the Income Tax Act, 1961 ("the Act" for short) for the assessment year 2018-19 in exercise of revisionary jurisdiction, finding the assessment order passed in the case of the assessee for the impugned year u/s 143(3) of the Act to be erroneous and causing prejudice to the Revenue.

2. The grounds raised in the appeal are descriptive in nature, which in fact raises the following issues, as mentioned in the ultimate prayer in the grounds of appeal as under:

"(I) Order U/s. 263 of the Act be considered as null & void and deserves to be quashed.

(II) Disallowance of depreciation of Rs.1,68,21,472/- due to reclassification of assets of as calculated by the learned Pr. CIT being contrary to law may kindly be deleted.

Alternatively:

If the Disallowance of Depreciation of Rs.1,68,21,472/- due to rectification of assets is confirmed, then the appellant humbly prays that appellant may kindly be granted deduction of the said depreciation in earlier years in view of depreciation, being mandatory deduction as per section 32 of the Act.

(III) Disallowance u/s 40(a)(ia) of Rs. 58,56,612/- on account of short deduction of IDS on rent expenses as calculated by the learned Pr. CIT being contrary to law may kindly be deleted.

(IV) Initiation of penalty proceedings may kindly be quashed.”

3. Perusal of the order of the ld.Pr.CIT reveals that the assessment order passed in the case of the assessee under section 143(3) of the Act for the impugned assessment year i.e. Asst.Year 2018-19, was found to be erroneous causing prejudice to the Revenue on two counts viz;

- i) Incorrect allowance of claim of depreciation pertaining to prior period amounting to Rs.1,68,21,472/-;
- ii) Non-examination of the issue of rent payment of Rs.58,56,612/- on the aspect of non-deduction of tax at source thereon by the AO.

4. Taking up the first issue of incorrect allowance by the AO of the depreciation pertaining to prior period amounting to Rs.1.68 crores, the ld.Pr.CIT noted from the records of the assessee that assets amounting to Rs.11,20,19,420/- ,which had earlier been classified as Plant & Machinery ,were during the impugned year classified as Right of Way (ROW)/Right of Use(ROU) and treated as intangible assets; that as a consequence, the assessee applied higher rate of depreciation thereon, being @25% as opposed to 15% earlier applied on its classification as Plant & Machinery. That the assessee worked out the Written Down Value(WDV) of this intangible asset as at the

beginning of the impugned year applying the higher rate of depreciation and the depreciation short claimed in preceding years as a consequence was claimed while computing the profits liable to tax for the impugned year as prior period depreciation, which worked out to Rs. 1,68,21,472/-.

5. The case of the Id.Pr.CIT was that this claim of the assessee was not allowable in law in terms of section 37(1) read with section 32 of the Act, and therefore, the order of the AO was erroneous causing prejudice to the Revenue for having allowed the said claim to the assessee. The reasoning of the Id.Pr.CIT for holding that the impugned claim of the assessee of prior period depreciation was not tenable in law was that as per the provisions of section 32 of the Act, the assessee was entitled to depreciation only on the written down value of block of assets as on the first of April of relevant years adjusted for addition/deletion made thereto as provided in the Act. That therefore, as per the provisions of law, the assessee was entitled to claim depreciation only on the WDV of the assets as at the beginning of the year, and there was no provision of law entitling the assessee to claim depreciation of prior period. That even as per section 37(1) of the Act claim of prior period expenses is not allowable. The finding of the Id.Pr.CIT in relation to the facts of the issue and her finding pertaining to the assessment order being erroneous for having allowed a palpably incorrect claim of the assessee is recorded at para 4.0 and 4.1 of her order as under:

4 I have carefully considered assessee's submission and relevant facts on records. The brief facts as discussed herein above are that assessee company was following accounting policy of capitalising amount paid to Government Authorities towards permission for use of land for laying pipelines, along with cost of pipelines and depreciation was charged on useful life of assets in books of accounts. In current year, assessee company has changed the method of accounting whereby such assets are considered as ROU/ROW as intangible assets in books of accounts, Based upon change in accounting policy, assessee has also made similar changes in Block of Assets of Income Tax wherein assets are reclassified as "Intangible Assets" from Plant & machinery. Due to such change in books of accounts and similar treatment in Income Tax, Assessee has claimed further depreciation of Rs 1,68,21,472/- under other deduction in ITR filed by it and claimed that assessee has wrongly claimed lower depreciation in earlier years hence it is entitled to such **Prior Year Depreciation** in current year.

4.1 It is found that assessee has already claimed depreciation on similar assets considering it as part of Block of Assets of Plant & machinery. Simply because assessee has changed method of accounting in books of accounts, similar treatment has been provided in Income Tax which is not in accordance with provisions of law. It is observed that there is no provision in Income Tax Act to allow depreciation of earlier years (correctly or incorrectly claimed at lower rate) in year under consideration. The issue in present case is not relating to crystallisation of liability in current year or dispute relating to any expenditure resolved in current year and claiming such expenditure while computing taxable income of current year but assessee has claimed higher depreciation of earlier years in current year based upon change of its accounting policy in current year which is not permissible in eyes of law. The Assessee ought to have exercised other alternate remedies if any available for claiming such depreciation of earlier years to which it pertains but it is not permissible to claim higher depreciation of such years in current year. As per provisions of Section 32 of the Act, assessee is entitled to depreciation on **WDV of such Assets** as on 1st April of relevant years subject to change of addition/sales as provided in Act hence claim made by Assessee for claiming higher depreciation pertaining to earlier years in current year and adjusting such WDV of block of assets is patently incorrect and contrary to provisions of the Act which makes present assessment order passed by AO prejudicial to interest of revenue and erroneous. The Assessing Officer while passing the order has incorrectly allowed such claim.

6. The order of the Id.Pr.CIT notes the fact that this issue was examined during the assessment proceedings by the AO, and the assessee had submitted detailed explanation for the entitlement of its

claim of prior period depreciation, stating that the same arose on account of change in its accounting policy. The assessee had stated that it was capitalizing the amount paid to the government authorities towards permission for use of land for laying pipelines along with cost of pipelines, treating it as plant & machinery and claiming depreciation thereon on the basis of useful life of the pipelines; that during the impugned year, a change in the accounting policy for cost incurred for the acquisition of right of way of land was effected based on management review and to fall in line with the accounting policy followed by the group companies as well as similar treatment followed by other players in the industries, and accordingly, cost incurred for ROU/ROW was treated as an intangible assets; that as a consequence to this change in accounting policy, the intangible assets of the assessee was increased by Rs.11,20,19,420/- and plant & machinery decreased by the said amounts, and as a consequence of re-classification of the assets from plant & machinery to intangible assets, the rate of depreciation eligible/applicable thereon was 25% as opposed to earlier rate of depreciation applied on plant & machinery at 15%. The assessee reworked the WDV of these re-classified assets as on first of April of the impugned year applying the increased rate of depreciation, and the short depreciation claimed as a consequence in the earlier years was accordingly claimed in the impugned year. The contention of the ld.counsel for the assessee was that higher depreciation of earlier years claimed in the impugned year was based upon the change in accounting policy in the impugned year; that therefore, the expenditure on account of increased depreciation had crystalized in the impugned year, and therefore allowable in terms of section 37(1) read with section 32 of the Act.

7. The assessee had also contended to the AO that in case the AO did not agree with the contention of the assessee, he may allow the amount of deduction of the said depreciation in earlier years, since it was a mandatory deduction as per section 32 of the Act and non-granting of deduction in earlier years would result in double taxation to the assessee-company. The submission of that assessee in this regard to the AO is reproduced in the order of the Id.CIT at page no.5 to 7. The Id.Pr.CIT has held that this claim of the assessee of earlier year depreciation was not allowable in law, and therefore, the AO having accepted the explanation of the assessee and allowed the claim of earlier years' depreciation had resulted in the assessment order being erroneous causing prejudice to the Revenue.

8. The arguments of the Id.counsel for the assessee before us was that view taken by the AO was a plausible view and he vehemently opposed to the finding of the Id.Pr.CIT that the claim of earlier years' depreciation was untenable in law.

The Id.DR, however, supported the order of the Id.Pr.CIT.

9. We have heard contentions of both the parties.

We are not in agreement with the Ld.PCIT that the claim of prior period depreciation was absolutely untenable in law. We find that the Ld.PCIT has not been able to make out her case so. On the contrary, we agree with the Ld.Counsel for the assessee that the view of the AO allowing the claim of prior period depreciation was a plausible view.

Also we find that there is no prejudice caused to the Revenue on account of allowing the claim of prior period depreciation to the assessee.

And for both the aforesated reasons we hold that the order passed by the Ld.PCIT holding the assessment order erroneous causing prejudice to the Revenue is not sustainable.

The reasoning for our above findings follows.

10. On our finding that the Ld.PCIT has been unable to make out a case of the allowability of claim of prior period depreciation being wholly untenable in law and the view of the AO being a plausible view.

11. Para 4.1 of the Ld.PCIT's order reveals her finding of the claim being untenable in law to rest on the provisions of section 32 of the Act. As per the Ld.PCIT, section 32 of the Act allows claim of depreciation only on WDV of assets/block of assets, which means the WDV as at beginning of the year adjusted for addition/ deletion made thereto. That no question therefore arises for allowing any earlier year depreciation as per the said section. The Ld.PCIT also refers to section 37(1) of the Act, allowing only expenditures incurred during the year, for denying this claim of earlier years.

12. The fact of the matter to be kept in mind is that the assessee had during the impugned year changed its accounting policy for accounting of land user rights acquired from the government for laying pipelines, which was earlier accounted for as Plant and Machinery alongwith cost of pipelines, to Intangible asset of Right of User/ Right of Way. That as a result the WDV of Plant and Machinery as at the beginning of the year was reduced by the value of such reclassified intangible assets contained therein creating thus a new block of asset of intangible assets attracting higher rate of depreciation of 25% as opposed to 15% applied on Plant and

Machinery. The assessee also had recalculated the WDV of this new block of asset by applying the higher rate of depreciation applicable from the beginning, i.e since the acquisition of the ROU/ ROW. And the difference between the WDV derived from Plant and Machinery and the actual WDV so worked out of the intangible asset was claimed as prior period depreciation in the impugned year.

13. Having so brought out the pertinent facts and reverting now to the law as applicable to the issue at hand, there is no dispute with respect to the interpretation of the provision of section 32 of the Act by the Ld.PCIT that depreciation is allowable on the opening WDV of the asset/block of asset , i.e as at the beginning of the year adjusted for any additions or deletions made thereto by way of sale or demolition or destruction. Section 32 of the Act is reproduced hereunder as also section 43(6)(c) which defines Written Down Value of block of assets on which depreciation is to be computed as per section 32 of the Act.

32. (1) In respect of depreciation of—

- (i) buildings, machinery, plant or furniture, being tangible assets;*
- (ii) know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, [not being goodwill of a business or profession,]*

owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed—

- (i) in the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost thereof to the assessee as may be prescribed⁹³;*
- (ii) in the case of any block of assets, such percentage on the written down value thereof as may be prescribed⁹⁴.*

Section 43(6)(c) defining Written Down Value is reproduced hereunder:

provision of section 32 of the Act for holding prior period claim of depreciation not allowable, to only part of the impact of reclassification of asset effected by the assessee. This is not justified. The Ld.PCIT ought to have considered the reclassification of asset in totality, considering the circumstances in which it was effected and then proceeded to find whether there was any error in the order of the AO causing prejudice to the Revenue in allowing the claim of prior period depreciation to the assessee. The finding of the Ld.PCIT therefore that the claim of prior period depreciation was not tenable in terms of section 32 of the Act, is not completely and palpably convincing.

15. In fact, Ld.Counsel for the assessee has demonstrated before us that considering the reclassification of asset in totality the view taken by the AO that the claim of the assessee of prior period depreciation was allowable is a plausible view.

16. As is evident from the facts noted above the claim of earlier years' depreciation arose on account of change of accounting policy of the assessee, treating user rights of land acquired from government for laying pipelines earlier treated as Plant and Machinery to treating it as intangible asset of Right to Use/ Right of Way in the impugned year.

17. During the course of hearing before us, the ld.counsel for the assessee contended that the effect of change in accounting policy with respect to the deprecation is to be claimed in the financial statement of the year in which change is adopted, as prescribed by AS-16 issued by the Institute of Chartered Accountants of India (ICAI), an apex body, governing and laying down principles of the accounting. Copy

of the said accounting standard was placed before us, pointing out the said principle in AS-16 at para-21 as under:

ACCOUNTING PRINCIPLES

20. The depreciable amount of a depreciable asset should be allocated on a systematic basis to each accounting period during the useful life of the asset.

21. The depreciation method selected should be applied consistently from period to period. A change from one method of providing depreciation to another should be made only if the adoption of the new method is required by statute or for compliance with an accounting standard or if it is considered that the change would result in a more appropriate preparation or presentation of the financial statements of the enterprise. When such a change in the method of depreciation is made, depreciation should be recalculated in accordance with the new method from the date of the asset coming into use. The deficiency or surplus arising from retrospective recomputation of depreciation in accordance with the new method should be adjusted in the accounts in the year in which the method of depreciation is changed. In case the change in the method results in deficiency in depreciation in respect of past years, the deficiency should be charged in the statement of profit and loss. In case the change in the method results in surplus, the surplus should be credited to the statement of profit and loss. Such a change should be treated as a change in accounting policy and its effect should be quantified and disclosed.

18. The ld.counsel for the assessee contended that provisions of Income Tax Act did not deal with implication of change in accounting policies with respect to depreciation under section 32 of the Act, and therefore, the accounting standard prescribed by the ICAI would be applicable. According to which, therefore, the claim of the assessee of the prior period depreciation arising on account of change in accounting policy was allowable.

19. We find merit in the contention of the Ld.Counsel for the assessee. As noted above section 32 of the Act allows depreciation on the WDV of the block of assets. It does not cater to the situation of change in WDV on account of change in accounting policy as in the present case. Ld.Counsel for the assessee has demonstrated AS 16

issued by the ICAI to provide for dealing with such situation by claiming all previous year depreciation, accruing on account of change in policy, in the year in which change is effected. Therefore the allowance of claim of prior period depreciation to the assessee arising on account of change in accounting policy appears to be plausible view.

20. On the finding that there is no prejudice caused to the Revenue by allowing claim of prior period depreciation.

21. During the course of hearing before us, ld.counsel for the assessee was specifically asked to demonstrate, whether this claim of prior period depreciation was a tax neutral exercise, whether allowed in the impugned year or in the respective years to which the depreciation pertained. The ld.counsel for the assessee in response submitted that it was a company assessee paying taxes at a fixed rate .A detailed table was filed before us showing that the assessee had paid taxes in all the preceding year and by allowing depreciation of prior periods in the relevant earlier years to which it pertained would have resulted in refund of equivalent amount being generated as of the tax demand being sought to be raised in the impugned year by disallowing the same. That therefore the entire exercise of allowability of claim of depreciation of earlier years in the impugned year or the year to which it pertained was a tax neutral exercise. Even otherwise, we are aware, that even if the assessee had returned losses in any preceding year, the assessee was entitled to claim the unabsorbed depreciation of that year as the depreciation of the succeeding year in terms of section 32(2) of the Act. Section 32(2) of the Act states so as under:

32. (1) In respect of depreciation of—

unwarranted since it fails to satisfy the twin primary conditions of the assessment order being erroneous and causing prejudice to the Revenue, both of which conditions need to be satisfied for a valid exercise of revisionary power u/s 263 of the Act.

24. For the above reasons, therefore, we do not agree with the ld.Pr.CIT of the assessment order being erroneous causing prejudice to the Revenue for having allowed the claim of prior period depreciation amounting to Rs. 1,68,21,472/-, and the order passed by the ld.Pr.CIT, therefore, on this count is set aside.

25. Taking up next issue, the same relates to the issue of tax deducted at source on rent not being examined by the AO. The ld.counsel for the assessee fairly agreed that the same was not examined during the assessment proceedings. But he pointed out that it was explained to the ld.Pr.CIT that the assessee had deducted TDS on rent on which provisions of TDS was applicable pointing out that while the assessee had claimed rent expenditure of Rs.2.50 crores, TDS had been deducted on the expenses of Rs.55,34,961/- while the balance amount of expenditure of Rs.1,95,22,321/- did not attract provisions of TDS at all. The ld.counsel for the assessee further pointed out that in the assessment order passed by the AO in consequence to the order passed u/s 263 of the Act, the AO was satisfied with the explanation of the assessee, and no addition had been made to the income of the assessee on account of non-deduction of TDS on rent expenses as per the provisions of section 40(a)(ia) of the Act.

26. Considering the admission of the ld.counsel for the assessee that the issue of tax at source on rent expenses was not examined by

the AO at all, we do not find any infirmity in the order of the ld.Pr.CIT holding the assessment order erroneous on this count.

27. In view of the above, the order of the Ld.PCIT u/s. 263 of the Act is partly confirmed on the issue of non-examination by the AO of TDS on rent expenses, while his finding of the assessment order being erroneous causing prejudice to the Revenue on account of allowance of claim of prior period depreciation is set aside.

28. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 4th September, 2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 04/09/2024

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**