

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 902/Ahd/2024  
Assessment Year 2018-19**

AMNS Ports Vizag Terminals Ltd. (Formerly Known as Essar Vizag Terminal Ltd.) Ahmedabad PAN: AADCE4272C (Appellant)	Vs	The PCIT, Ahmedabad-1 (Respondent)
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**Assessee by: Shri Ronak Doshi, A.R.  
Revenue by: Shri Prathvi Raj Meena, CIT-D.R.**

Date of hearing : 12-12-2024  
Date of pronouncement : 20-12-2024

**आदेश/ORDER**

**PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-**

The present appeal has been filed by the assessee against order passed by the Ld. Principal Commissioner of Income Tax, PCIT, Ahmedabad-1,(in short “PCIT”) in revisionary proceedings u/s. 263 of the Income Tax Act, 1961(hereinafter referred to as “Act”) dated 01/03/2024 pertaining to Assessment Year (A.Y) 2018-19.

2. The grounds of appeal raised by assessee are as under:-

*“GROUND NO. I IMPUGNED ORDER PASSED BY INVOKING PROVISIONS OF SECTION 263 OF THE ACT IS BAD IN LAW:*

1. *On the facts and circumstances of the case and in law, the ld. Pr. CIT erred in invoking the provisions of section 263 of the Act and setting aside the assessment order treating the same as erroneous and prejudicial to the interest of the revenue and directing the Assessing Officer ("AO") to pass a fresh order after examination of the facts of the case.*

2. *Ld. Pr. CIT, inter-alia, erred in observing that the AO has not examined the issues during the assessment proceedings even when the AO has verified the issues.*

*Ld. Pr. CIT, inter-alia, failed to appreciate that:*

*i. Provisions of section 263 of the Act cannot be invoked when assessment order is passed after making enquiries;*

*ii. Provisions of section 263 of the Act cannot be invoked where two views are possible and AO has adopted a possible view;*

*iii. the pre-requisites for invoking provisions of section 263 of an order being erroneous in so far as is prejudicial to the interest of the revenue are not satisfied in the facts of the present case;*

*iv. Notice issued on erroneous facts is bad-in-law and accordingly the order u/s. 263 of the Act ought to be quashed.*

*v. Merely because the order of AO is not speaking, it does not tantamount to non enquiry or non application of mind by the AO.*

4. *The Appellant prays that it be held that the provisions of section 263 of the Act cannot be invoked and accordingly, the impugned order be quashed as bad in law.*

*WITHOUT PREJUDICE TO GROUND NO. I*

*GROUND NO. II: DISALLOWANCE OF DEPRECIATION U/S 32 OF THE ACT OF RS. 35,69,12,010/-:*

1 *On the facts and circumstances of the case and in law, Pr. CIT erred in directing AO to limit the depreciation of Rs. 35,73,93,106/- claimed by the Appellant to the amortized value of Rs. 4,81,095/-, thereby directing the AO to disallow the depreciation of Rs 35,69,12,010/-*

2 *On facts, the premise of contending that the assessment order is prejudicial to revenue is based on facts as per AY 2016-17, whereas in the current year, the nature of additions are different.*

*3 The Appellant prays that the direction of Pr. CIT to the AO to disallow the depreciation u/s 32 of the Act of Rs. 35,69,12,010/- be deleted and AO be directed to allow depreciation as claimed by the Appellant.*

*WITHOUT PREJUDICE TO GROUND NO. 1*

*GROUND NO. III: DIRECTION TO AO TO VERIFY ALLOWABILITY OF APPELLANT'S CONTRIBUTION TO PROVIDENT FUND AND OTHER FUNDS WITH REGARD TO RULE 87 OF THE INCOME TAX RULES, 1962 ("the Rules") AMOUNTING TO RS. 5,71,810/-*

*1. On the facts and circumstances of the case and in law, Pr. CIT erred in directing AO to verify the allowability of the Appellant's contribution to the Provident Fund and other funds with regard to Rule 87 of the Rules amounting to Rs. 5,71, 810/-*

*2. The Appellant prays that the aforesaid direction of Pr. CIT be deleted and AO be directed to allow the Appellant's contributions made to the Provident Fund and other funds.*

*GENERAL:*

*The Appellant craves leave to add, amend, modify, rescind, supplement or alter any of the Grounds stated hereinabove, either before or at the time of hearing of this appeal."*

3. We have gone through the order of Id. PCIT, heard both the parties and have also taken note of the documents referred to before us filed in the form of paper book, as also the case laws relied upon by both the sides.

3.1 On considering of all the above, we hold that the order passed by the Id. PCIT holding the assessment order erroneous so as to cause prejudice to the Revenue is not sustainable. Reason being that the order of the Ld. PCIT is a cryptic, non-speaking order, passed without dealing or for that matter even considering the detailed contentions made by the assessee before him, who we find made out a fair enough case before the Ld. PCIT of there being no error in the order of the Assessing Officer on the issues identified by Id. PCIT.

3.2 Our detailed reasoning leading to our findings as above follows.

4. The order of the Id. PCIT reveals that he found the assessment order passed by the AO u/s 143(3) of the Act in the case of the assessee for the impugned year erroneous causing prejudice to the revenue on two counts, for the AO having allowed the assessee:

(i) claim of employers contribution to staff provident fund in excess of 27% of the salary ,which was contrary to Rule 87 of the Income Tax Rules, 1962,

(ii) depreciation on addition of new plant and machineries amounting to Rs. 35,73,93,105/- while the same ought to have been limited to the amortized value of the assets amounting to Rs. 4,81,095/-.

5. Ld. Counsel for the assessee during the course of hearing before us demonstrated that with respect to both the issues the assessee had filed detailed submissions to the Ld. PCIT to the effect that the impugned issues were examined during assessment proceedings and a plausible and correct view taken by the Assessing Officer and also that both the claims were allowable as per law. Our attention was drawn to the letter filed by the assessee during revisionary proceedings dated 19<sup>th</sup> Feb, 2024 ,which was placed before us in paper book at page nos. 97 to 155. Our attention was also drawn to all the documents, placed in the paper book at pages 1-93 evidencing the examination of both the issues by the AO during assessment proceedings.

**Submissions regarding examination of issue of excess contribution to PF by AO**

6. With respect to the examination by the AO of the issue of allowance of contribution to staff provident fund it was pointed out that during the course of assessment proceedings, the Assessing Officer vide its notice dated 10-01-2020(P.B 50-52) had asked the assessee to furnish copy of ITR, Computation of income, tax audit report and audited financial statements and was also asked to make its submissions on the excess claim of deduction of contribution to staff provident fund and other fund. That in response to the same, the assessee had filed its reply dated 03-03-2021(P.B 57-63) pointing out that employers contribution made by the assessee was in line with the Provident Fund Act and that two employees had opted for voluntary provident fund scheme therefore employees contribution towards provident fund was higher than 12%. **It was further pointed out that another notice was issued by the Assessing Officer dated 15-12-2020(P.B 53-56) regarding the excess contribution to provident fund asking the assessee to submit details regarding the employees whose PF was deducted and the calculation sheet for calculating the percentage contribution by the employer to the provident fund and superannuation fund. That in response to the same, the assessee filed reply dated 03-03-2021 (P.B 57-63) submitting all the details.**

6.1 Thus, Ld. Counsel for the assessee contended that the assessee had demonstrated to the Ld. PCIT that the specific issue of claim of excess contribution to PF was duly examined by the AO during assessment proceedings and the **assessee had explained that no such excess claim had been made by the assessee.** That the explanation was substantiated with necessary details and evidence. And the AO therefore was rightly

satisfied with the explanation of the assessee and made no disallowance of the same.

**Submissions made before PCIT on the issue of excess claim of contribution to PF**

7. The Id. counsel for the assessee further pointed out that the facts relating to the issue which were explained to the Assessing Officer were also pointed out to the Id. PCIT. That it was explained to him that the limit of contribution to provident fund and superannuation fund as per rule 87 of the rules was applicable only with respect to PF and superannuation fund and did not include other funds. That the excess noted by the Id. PCIT was of contribution made to other funds like gratuity fund, NPS, leave encashment etc. The Ld. Counsel for the assessee pointed out that detailed working of the contribution made to PPF and superannuation fund was also furnished to the Ld. PCIT demonstrated the contribution being to the tune of 4.07% of salary, which was well within the limit of 27% prescribed rule 87 of the Income Tax Rules. He also pointed out that the Ld. PCIT had noted this explanation of the assessee of having made no contribution in excess of the prescribed limit of 27% as per Rule 87 of Income Tax Rules, 1962 but of only 4.04% of the salary wages and bonus paid at para 4 of his order.

**Submissions regarding examination of issue by AO of depreciation on new assets as opposed to amortization of the same.**

8. With respect to the issue of claim of depreciation/amortization, Id. counsel for the assessee pointed out that during assessment proceedings the Assessing Officer had examined the issue of claim of depreciation on assets

acquired by it from the Vishakhapatnam Port Trust and noting that in the preceding years, the assessee had been allowed only amortization of the same, the Assessing Officer accordingly allowed amortization on these assets. Ld. counsel for the assessee pointed out that during assessment proceedings all details of assets added during the year were furnished as and when called. The Assessing Officer had examined issue of claim of depreciation/amortization on the assets of the assessee both acquired from Vishakhapatnam Port Trust and that created by the assessee. Thereafter, the ld. counsel for the assessee pointed out that even the copy of concessionaire agreement entered into with Vishakhapatnam Port Trust was furnished to the Assessing Officer wherein it was categorically mentioned that the new assets created by the assessee were to be treated as the assessee's own assets. The ld. counsel for the assessee therefore pointed out that in view of the same considering all these facts that the new assets of the assessee were its own assets, depreciation on the same was allowable in terms of the section 32 of the Act and the AO therefore had rightly allowed the same.

**Submissions made before PCIT on the issue of depreciation on new assets as opposed to amortization of the same.**

9. Ld. Counsel for the assessee pointed out that during revisionary proceedings, it was clarified to the ld. PCIT that the ratio applied for amortizing the assets which were *acquired* by the assessee from Vishakhapatnam Port Trust was not applicable to the assets which were *created* by the assessee since there was a difference in the fact situation of both the assets. It was pointed out to the ld. PCIT that there is no reason at all for the Assessing Officer to have followed the same proposition as

followed in the case of acquired assets to the assets created by the assessee since the assets created by the assessee were owned by it and the assessee was therefore entitled to depreciation on the same. It was also pointed out to the Id. PCIT that there was several rulings of the ITAT including Special Bench of the ITAT in the case of ACIT vs. Progressive Construction Ltd. (2018) 92 taxman 104, Hyderabad holding that even in the case of assets acquired through concessionaire agreement, the assessee was entitled to depreciation and not amortization of the same. It was pointed out that the Special Bench in the said case had held the CBDT Circular No. 9 of 2014 dated 23-01-2014, relied on by the revenue for allowing only amortization of acquired assets , to be not applicable . Besides that, it was pointed out, several other decisions were referred before PCIT ruling in favour of assessee allowing depreciation on assets acquired for a specified period by virtue of concessionaire agreements.

10. It is evident from the above that the assessee had made detailed submissions on both the issues being examined by the AO during assessment proceedings and also of the same being rightly claimed by the assessee in accordance with law.

11. We find that at para 4, the PCIT briefly notes the contentions of the assessee before him with respect to both the issues which were to the effect:

- (i) on the issue of contribution to staff provident fund, the contention of the assessee was noted to be that its contribution was not in excess of the prescribed limit of 27% as per Rule 87 of Income Tax Rules, 1962 but was only 4.04% of the salary wages and bonus paid.

(ii) That with regard to depreciation on additional plant & machinery not restricted to amortized value of asset, the assessee was noted to have explained that claim of depreciation was with respect to new facilities/asset created by the assessee at Vishakhapatnam Port Trust and the case was not covered by **CBDT Circular No. 9 of 2014 dated 23-01-20214.**

(iii) That both the issues were examined during assessment proceedings.

11.1 Briefly noting the submissions of the assessee as above, the Id. PCIT thereafter goes on hold the assessment order erroneous causing prejudice to the revenue by simply noting that

- (i) with respect to issue of depreciation the Assessing Officer ought to have restricted depreciation to the amortized value of the asset of Rs. 4,81,095/- instead of allowing the whole amount of deprecation of Rs. 35.73 crores and
- (ii) with respect to the assessee's contribution to PF the Assessing Officer has allowed claim despite the contribution being in excess to the limit as prescribed under Rule 87 of the IT Rules.

12. The findings of the Id. PCIT in this regard are noted at para 5.2 of his order is as under:-

*"5.2 Hon'ble Supreme Court have ruled out in recent past that if A.O. did not go into whole amount on the issue, there is error. The reliance is placed on the judgment in the case of BSES Rajdhani Power Ltd vs Pr. CIT [2023] 152 taxmann.com 139 (SC), the head note of the judgment reads as under:*

*Section 32, read with section 263, of the Income-tax Act, 1961 Depreciation - Allowance/Rate of (Revision) - Assessment year 2010-11 - High Court by impugned order held that non-consideration of larger claim for Rs. 298.93 crores*

*as depreciation and consideration of only a part of it (Rs. 644,81,091) by Assessing Officer, who did not go into issue with respect to whole amount, was an error, that could be corrected under section 263 - Whether SLP filed against impugned order of High Court was to be dismissed - Held, yes [Para 2] [In favour of revenue]*

*Section 263 of the Income-tax Act, 1961-Revision Of orders prejudicial to interest of revenue (Scope of) Assessment year 2010-11 High Court by impugned order held that Commissioner has power to consider all aspects which were subject matter of Assessing Officer's order, if in his opinion, they were erroneous, despite assessee's appeal on that or some other aspect Whether SLP filed against impugned order of High Court was to be dismissed - Held, yes [Para 2] [In favour of revenue]*

***In view of the above jurisprudence, the undersigned can exercise jurisdiction u/s 263 of the Act when the A.O. did not go into issue with respect to whole amount. Therefore, the A.O. while making addition should have restricted the depreciation to the amortized value of Rs.4,81,095/- instead of whole amount of Rs.35,73,93,105/-. The erroneous order of the A.O. resulted in underassessment by Rs.35,69,12,010/- thereby short levy of taxes to such extent. Therefore, the order of the A.O. is erroneous and prejudicial to the interest of the revenue.***

***Further, it is seen that the maximum allowable deduction as per Rule 87 of IT Rules comes to Rs.31,85,190/- whereas the A.O. has allowed excess deduction as contribution to PF and other funds by Rs.5,71,810/- (Rs.37,57,000-Rs.31,85,190/-). the erroneous order has resulted in underassessment of income of Rs.5,71,810/- and short levy of taxes to such extent. Therefore the order of the A.O. is erroneous and prejudicial to the interest of the Revenue."***

13. Beyond the above there is no other finding in the entire order of the ld. PCIT running into 13 pages. The maximum number of pages from 3 to 13 are devoted to various legal proposition relating to exercise of revisionary powers u/s. 263 of the Act referring to various decisions of judicial authorities and thereafter at para 7.1 the ld. PCIT notes that **the impugned assessment order has been passed without making proper verification and examination on the issues and therefore the order is erroneous and prejudicial to the revenue.** The contents of para 7 and 7.1 of the Ld. PCIT's order are as under:-

*“7. In the light of facts and circumstances narrated above, I hold that the Assessing Officer has erred in not limiting the depreciation of Rs. 35,73,90,105/- to the amortized value of Rs.4,81,095/-, This error has caused loss of revenue. Further, the A.O. has not verified the issue of allowability of Contribution of Provident Fund with respect of Rule 87 of Income-tax Rules, 1962.*

*7.1 In view of the fact of the case and ruling of Hon'ble Supreme court, it is clear that the assessment order is passed by the A.O., without making proper examination of the issues mentioned above. The Assessing Officer has failed to make addition in accordance with the provisions of the Act. The error in the assessment order has resulted into loss of revenue. The order passed by the Assessing Officer is, thus, erroneous and prejudicial to the interest of the Revenue. Therefore, provisions of section 263 of the Act are applicable in this case.”*

14. Thereafter, the Id. PCIT at para 8 of his order sets aside the assessment order directing the Assessing Officer to pass fresh order in accordance with law after duly examining the facts of the case on the extant issues.

15. Thus, the finding of error by the Id. PCIT is confined to para 5.2 and para 7.1 of his order and a perusal of the same reveal that the finding is clearly without any application of mind or consideration of the submissions of the assessee before him.

16. Regarding his finding that the AO had not conducted proper inquiry on the issues, we find, that the assessee had demonstrated both the issues being examined by the AO and even the Id. PCIT notes the same in his order. He however finds to the contrary that the Assessing Officer had not made inquiry with respect to these issues without specifying as to how he found so. No attempt has been made by the Ld. PCIT to contradict the contention of the assessee before him after dealing with the specifics relating

to the same. It is just a general cursory finding of the Ld. PCIT, without considering or dealing with the contention of the assessee before him.

17. With regard to his finding of the assessment order being erroneous for having wrongly allowed the contribution made by the assessee to PF in excess of the limit specified u/r87 of the Rules, we find that the assessee had explained no excess claim to have been made and had pointed out the demonstration of this fact to the AO with details during assessment proceedings. He had also explained how the excess had been erroneously calculated by the Ld. PCIT by considering contribution to funds which were not covered u/R87 of the Rules. The ld. PCIT however we find completely ignores these submissions and goes on to record a contrary finding, of the assessee having contributed to PF in excess of the limits specified under Rule 87 of the Rules. There is nothing in his order mentioning why and how he contradicts this factual contention of the assessee.

18. With regards to the Ld. PCIT finding the assessee to have been wrongly allowed depreciation on new plant and machinery by the AO as opposed to being allowed to amortize the assets over their life, the Ld. PCIT notes in his order that the assessee had contended that this depreciation had been claimed on **new** assets created by it and the circular no. CBDT Circular No. 9 of 2014 dated 23-01-20214 did not apply. Without dealing with the contentions of the assessee, the ld. PCIT holds the assessment order erroneous on this count simply by noting the impugned assets ought to have amortized and depreciation ought not to have been allowed to the assessee.

19. Thus, it is abundantly clear that the impugned order passed by the ld. PCIT is in gross violation of the principles of natural justice, passed without considering the contentions of the assessee before him and a completely non-speaking order .The impugned order of the Ld. PCIT therefore is clearly not sustainable.

20. In the light of above, the order passed by the ld. PCIT is set aside and grounds raised by the assessee allowed.

21. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20-12-2024

**Sd/-**

**Sd/-**

**(TR SENTHIL KUMAR)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 20/12/2024**

**(ANNAPURA GUPTA)**  
**ACCOUNTANT MEMBER**