

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI PARESH M. JOSHI, JUDICIAL MEMBER

ITA No.551/Ind/2023
Assessment Year: 2012-13

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|---|----------------------------------|----------------------|
| Madhya Pradesh Madhya Kshetra Vidut Vitaran Company Limited, 1, Nishtha Parisar, Bijli Nagar Colony, Govindpura, Bhopal | <u>बनाम/</u> Vs. | DCIT-2(1) Bhopal |
| (Assessee/Appellant) | | (Revenue/Respondent) |
| PAN: AADCM6799G | | |
| Assessee by | Shri Gagan Tiwari, Advocate & AR | |
| Revenue by | Shri Ram Kumar Yadav, CIT-DR | |
| Date of Hearing | 28.04.2025 | |
| Date of Pronouncement | 30.04.2025 | |

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first-appeal dated 03.11.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of penalty-order dated 31.03.2018 passed by learned DCIT-2(1), Bhopal ["AO"] u/s 271(1)(c) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2012-13, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to this appeal are such that the assessee is an electricity distribution company. For AY 2012-13, the assessee filed return declaring a loss of Rs. 10,82,05,00,000/-. The case was selected for scrutiny and the AO passed assessment order dated 24.03.2015 u/s 143(3) reducing loss to Rs. 1,31,27,00,000/- due to certain additions/disallowances. Thereafter, the PCIT-1, Bhopal ["PCIT"] found the assessment-order passed by AO as erroneous-cum-prejudicial to the interest of revenue, raising an issue that the AO had wrongly allowed deduction of Rs. 57,52,00,000/- claimed by assessee on account of "Provisions for bad and doubtful debt". The PCIT carried such a view on the footing that the deduction of "Provisions for bad and doubtful debt" is allowed only to banks and financial institutions u/s 36(1)(viiia) and not to assessee which is engaged in electricity distribution. Ultimately, the PCIT passed revision-order dated 23.03.2017 u/s 263 directing the AO to re-frame assessment after examining the issue of deduction of "Provisions for bad and doubtful debt". Pursuant to such revision-order, the AO passed order of fresh assessment dated 15.06.2017 u/s 143(3) r.w.s. 263 wherein he made an addition of Rs. 57,52,00,000/- by disallowing the claim of assessee. This addition/disallowance made by AO further reduced loss of assessee by Rs. 57,52,00,000/-. Therefore, the AO also initiated penalty proceedings u/s 271(1)(c) and ultimately passed penalty-order dated 31.03.2018 imposing a penalty of Rs. 18,70,00,000/- qua the addition/disallowance of Rs. 57,52,00,000/-. Aggrieved by penalty-order, the assessee filed first-appeal to

CIT(A) but did not get any success. Now, the assessee has come in next appeal before us.

3. Ld. AR for assessee carried us to Para 2 & 3 of impugned order passed by CIT(A), reading as under:

“2. अपीलीय कार्यवाही के दौरान, रिकॉर्ड पर उपलब्ध विवरण के अनुसार, यह देखा गया है कि निर्धारण वर्ष 2012-13 के उपरोक्त विचाराधीन अपील के लिए प्रत्यक्ष कर विवाद से विश्वास योजना, 2020 के तहत फॉर्म 5 दिनांक 10.05.2023 (बकाया कर के पूर्ण और अंतिम भुगतान के लिए आदेश) को नामित प्राधिकारी यानी प्रधान आयकर आयुक्त के द्वारा जारी किया गया है। चूंकि अपीलकर्ता ने विवाद से विश्वास योजना, 2020 और फॉर्म 5 का लाभ लेने का विकल्प चुना है, जो पहले से ही नामित प्राधिकारी द्वारा जारी किया गया है, वर्तमान अपील को प्रत्यक्ष कर विवाद से विश्वास, अधिनियम, 2020 की धारा 4 (2) के प्रावधानों के अनुसार वापस ले लिया गया माना जाता है।

3. परिणामस्वरूप, सांख्यिकीय उद्देश्य के लिए अपील को वापस लेने के आधार पर खारिज कर दिया जाता है।”

4. Referring to above, Ld. AR submitted that the CIT(A) has dismissed assessee's first-appeal on a wrong assumption of fact that the assessee has settled its case under 'Vivad Se Vishwas Scheme, 2020' ["VsV"]. He explained that the correct position is such that the assessee settled under VsV its case of dispute arising from assessment-order dated 24.03.2015 passed by AO u/s 143(3) and not the dispute arising from penalty-order dated 31.03.2018 which was subject-matter of appeal before CIT(A). Ld. AR has also filed copies of Form No. 1 to 5 of VsV at Pages 1-15 of Paper-Book to demonstrate this correct position. Therefore, Ld. AR requested, the order

of first-appeal passed by Ld. CIT(A) deserves to be set aside and the case be restored at the level of CIT(A) for a fresh adjudication on merit.

5. Ld. DR for revenue does not have any objection to the submissions of Ld. AR.

6. The submissions made by parties as above are accepted and in view of same, the impugned order passed by CIT(A) is set aside and the CIT(A) is directed to re-fix the first-appeal of assessee and dispose of same on merit after hearing assessee.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 30/04/2025

Sd/-

(PARESH M. JOSHI)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30/04/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore