

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं/ .ITA No.307/RJT/2024
निर्धारणवर्ष / Assessment Year: 2018-19

Saurashtra Cement Ltd. Near Railway Station, Saurashtra Cement Factory, P.O. Ranavav, Adityana Road, Porbandar, Gujarat-360560 PAN : AAHFS5211J (अपीलार्थी/ Assessee)	बनाम Vs.	Principal Commissioner of Income Tax, Jamnagar, Jamnagar (प्रत्यर्थी/Respondent)
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निर्धारिती की ओर से/Assessee by : Shri Vimal Desai, Id.AR
राजस्व की ओर से/Revenue by : Shri Sanja Punglia, Ld. CIT-DR

सुनवाई की तारीख/Date of Hearing : 16/10/2025
घोषणा की तारीख/Date of Pronouncement : 08/01/2026

ORDER

Per, Dr. Arjun Lal Saini, Accountant Member:

By way of this appeal, the assessee has challenged the correctness of the order dated 19.03.2024 passed by the Learned Principal Commissioner of Income-tax (in short "Ld PCIT") under section 263 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the assessment year 2018-19. Grievances raised by the assessee, which, being interconnected, will be taken up together, are as follows:



1. The order u/s. 263 is bad in law.

2. The learned Principal CIT has erred in law as well as on facts in not considering the submission of the assessee that the order passed by the A.O. u/s.143(3) was neither erroneous nor prejudicial to the interest of revenue and provisions of Section 263 of the Act were not applicable to the case of the assessee.

3 The learned Principal CIT has erred in law as well as on facts in setting aside the assessment order passed by the A.O. u/s. 143(3) to the extent of examining the applicability of provisions of Section 14A of the Act without appreciating the fact that there is no exempted income earned and the assessee has not incurred any expenditure.

4. The learned Principal CIT has erred in law as well as on facts in setting aside the assessment order passed by the A.O. u/s. 143(3) to the extent of examining the applicability of provisions of 36(1)(iii) in respect of interest on borrowed capital without appreciating the fact that there is no diversion of interest bearing funds.

2. The relevant material facts, as culled out from the material on record, are as follows. In this case, the assessee has filed return of income for the assessment year (AY) 2018-19, on 28/09/2018, declaring total income of Rs. 5,87,87,300/- after claiming deduction under chapter VI-A of the Act, amounting to Rs.33,24,12,992/-, under normal provisions and Book Profit of Rs. 46,83,48,940/-. The case of the assessee was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019. Accordingly, the assessment order was passed u/s 143(3) r.w.s. 144C(3) of the Income-tax Act (in short 'the Act') on 29/10/2021, determining total income of Rs.37,04,75,290/-.

3. Later on, Learned Principal Commissioner of Income-tax (in short "Ld PCIT"), has exercised his jurisdiction under section 263 of the Income-tax Act, 1961. On perusal of case records, ld.PCIT observed that during the course of scrutiny assessment proceedings, the following issues have not been verified, by the assessing officer:

(i) Disallowance u/s 14A of the Act r.w.r. 8D of Income-tax Rule in respect of expenses incurred for earning exempt income.



(ii) Disallowance u/s 36(1)(iii) of the Act, for interest in respect of capital borrowed.

4. The Id.PCIT noticed that during assessment proceedings, the assessing officer has failed to verify above issues and the same remained unverified at the time of passing the order u/s 143(3) rws 144C(3) of the Act, dated 29/10/2021. In view of the above, the order passed by the assessing officer u/s 143(3) r.w.s. 144C(3) of the Act, dated 29/10/2021, is prima facie erroneous and prejudicial to the interest of revenue within the meaning of the provisions of section 263 of the Act.

5. Accordingly, a show cause notice for initiation of proceedings u/s 263 of Act, dated 12/01/2024 was issued to the assessee through ITBA, which is reproduced by the learned PCIT, on page No. 2 to 4 of the revision order. In the said notice, learned PCIT stated that the assessing officer has failed to make the disallowance u/s 14A of the Act, rwr 8D of the Rule which works out to be at least to the tune of Rs. 35,89,720/-(1% of Rs.35,89,72,000/-). Such failure on the part of the assessing officer has rendered the assessment order erroneous and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act. Therefore, Id PCIT intended to revise the order passed by the assessing officer u/s 143(3) rws 144C(3) rws 144B of the Act dated 29/10/2021 for the AY 2018-19. The Id.PCIT also noticed that during the previous year, the borrowed funds have been diverted to non-business uses. The proportionate interest expense on loans and advances of Rs.2,12,54,000/- applying average interest rate paid by assessee @12.11% comes to Rs.25,73,859/- and the same was required to be disallowed by the assessing officer at the time of finalizing the assessment order passed u/s 143(3) rws 144C(3) rws 144B of the Act dated 29/10/2021. This has resulted under



assessment of Rs. 25,73,859/-, Such failure on the part of the assessing officer has rendered the assessment order erroneous and prejudicial to the interest of the revenue within the meaning of the provisions of section 263 of the Act.

6. In response to the above, assessee, submitted its written reply before learned PCIT, vide letter dated 22/01/2024. The assessee submitted that in the assessment proceedings, if the A.O. has not verified any specific issues which were not within the scope of selection of scrutiny, such assessment order cannot be said to be erroneous or prejudicial to the interest of revenue and therefore, the proposed revision on the issues, viz:(i) Disallowance u/s 14A of the Act r.w.r. 8D of Income-tax Rule in respect of expenses incurred for earning exempt income, and (ii) Disallowance u/s 36(1)(iii) of the Act, for interest in respect of capital borrowed, as these were not subject matter of verification before the A.O. under the limited scrutiny is not permissible as the order sought to be revised cannot be erroneous or prejudicial to the interest of revenue. About disallowance u/s. 14A r.w.r. 8D in respect of expenses incurred for earning exempt income, the assessee further submitted that during the year under consideration, the assessee has not earned any exempt income and the same is evident from remarks mentioned by the tax auditor against clause 21(h) in the notes to Form 3CA-3CD enclosed as Annexure-C. Hence, in the absence of any exempt income earned during the year under consideration, there is no question of disallowance of expenditure u/s. 14A of the Act. In respect of disallowance u/s 36(1) (iii) of the Act, the assessee submitted that for interest in respect of capital borrowed, that loans and advances given to Agrima Consultants International Ltd. and Reeti Investments Private Limited are not given during the year under consideration but were given many years ago. The assessee further submitted that "the question of diversion of interest-bearing funds of



current year as interest free advance or loan does not arise and correspondingly, the question of disallowance of interest shall also not arise.

7. However, learned PCIT rejected the above reply of the assessee and held that the assessment order, dated 29/10/2021 passed by the Assessing Officer u/s 143(3) rws 144C(3) of the Act, for the AY 2018-19 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of section 263 of the Act and therefore, ld PCIT set aside the assessment order to the extent of the issues mentioned and discussed in the foregoing paragraphs and directed the assessing officer to examine the genuineness of the documents submitted by the assessee during the course of revision proceedings u/s 263 of the Act, by issuing notices u/s 133(6) of the Act wherever necessary. The Assessing Officer was also directed to revise the assessment after giving proper opportunity of being heard to the assessee.

8. Aggrieved by the order of Ld. PCIT, the assessee is in appeal before us.

9. Shri Vimal Desai, Ld. Counsel for the assessee, vehemently argued that the assessee has not earned any exempt income and the same is evident from remarks mentioned by the tax auditor against clause 21(h) in the notes to Form 3CA-3CD (copy submitted before the bench). Hence, in the absence of any exempt income earned during the year under consideration, there is no question of disallowance of expenditure u/s. 14A of the Act. Besides, it is also evident from the fact that the assessee- company has plenty of own interest free funds in the form of Share Capital and Reserves & Surplus amounting to Rs. 41,638.78 Lakhs which are more than the loans and deposit amount and it a settled position of the law that the interest free advances, if any, are to be considered as made out of interest free funds and not otherwise. Therefore, order passed by



the assessing officer is neither erroneous nor prejudicial to the interest of revenue.

10. On the other hand, Ld.CIT- D.R. for the Revenue, has primarily reiterated the stand taken by the Id.PCIT, which we have already noted in our earlier para and is not being repeated for the sake of brevity. Learned DR for the revenue also submitted that assessee`s case was selected for complete scrutiny and not for limited scrutiny, therefore, there is no findings in the assessment order that assessing officer has examined these issues which were raised by the learned PCIT, therefore order passed by the assessing officer is erroneous and prejudicial to the interest of the revenue.

11. We have heard the Learned Counsel appearing on behalf of the respective parties at length. About revision proposed for disallowance u/s. 14A r.w.r. 8D in respect of expenses incurred for earning exempt income, we find that the impugned notice of Id PCIT proposing revision of order u/s. 143(3) of the Act passed for A.Y. 2018-19 that during the year under consideration there are certain investments reflected in the Audited Balance Sheet of the company and the A.O. has failed to make appropriate disallowance u/s. 14A r.w.r 8D for investments that may have yielded exempt income. Hence, the disallowance for same is proposed by way of revision proceedings by Id PCIT. We also note that Id. PCIT proposed to make disallowance of Rs. 35,89,720/- being 1% of Rs. 35,89,72,000/- being annual average of opening and closing balances of investments. However, we find that assessee submitted that during the year under consideration, the assessee has not earned any exempt income and the same is evident from remarks mentioned by the tax auditor against clause 21(h) in the notes to Form 3CA-3CD enclosed as Annexure-C. Hence, in the absence of any exempt income earned during the year under consideration, there is no



question of disallowance of expenditure u/s. 14A of the Act. In this regard, we place reliance on the decision of Pr. CIT v. Oil Industry Development Board [2019] 103 taxmann.com 326/262, Taxman 102 (SC), wherein the Hon'ble Supreme Court confirmed the decision of the Delhi High Court in Oil Industry Development Board's case, wherein it was held that no disallowance u/s. 14A could be made in the absence of any exempt income. Further, the Hon'ble Supreme Court has also dismissed the SLP filed against the order of High Court and upheld the order of High Court in case of Commissioner of Income-tax v. GVK Project & Technical Services Ltd. [2019] 106 taxmann.com 181 (SC)/[2019] 264 Taxman 76 (SC) [03-05-2019], where High Court upheld Tribunal's order holding that in absence of any exempt income reported by assessee, disallowance could not be made under section 14A of the Act. In this connection, reliance is also placed on the following judicial pronouncements wherein the Hon'ble High Courts & Tribunals have held that no disallowance u/s. 14A of the Act is to be done in absence of exempted income:

(i)Principal Commissioner of Income-tax-1, Chandigarh vs. Vardhman Chemtech (P.) Ltd. - [2019] 102 taxmann.com 132 (Punjab & Haryana)

(ii)Principal Commissioner of Income-tax, New Delhi vs. McDonald's India (P.) Ltd. [2019] 101 taxmann.com 86 (Delhi)

(iii)Principal Commissioner of Income-tax-2, vs. Caraf Builders & Constructions (P.) Ltd. - [2019] 101 taxmann.com 167 (Delhi)

(iv)Deputy Commissioner of Income-tax, Ahmedabad vs. Asian Grantio India Ltd - [2020] 113 taxmann.com 445 (Ahmedabad - Trib.)



12. As regards applicability of disallowance u/s. 14A in view of the CBDT Circular No. 05/2014 dated 11/02/2014 even where taxpayer in a particular year has not earned any exempt income from investment, it is submitted by assessee that the said view of the CBDT has been completely negated by the Hon'ble Supreme Court (supra) and various High Courts in the following judicial pronouncements wherein the Hon'ble High Courts have held that disallowance u/s. 14A cannot exceed the exempted income after specifically considering therein the CBDT Circular No. 05/2014 dated 11/02/2014. In this connection, reliance is also placed on the following judicial pronouncements wherein the Hon'ble High Courts have held that no disallowance u/s. 14A is to be done in absence of exempted income after specifically considering therein the CBDT Circular No. 05/2014 dated 11/02/2014:

(i) PCIT vs. IL & FS Energy Development Company Ltd (84 taxmann.com 186)
- Delhi High Court

(ii) PCIT vs. M/s. Vardhman Chemtech Private Limited (102 taxmann.com 132)
- Punjab & Haryana Court

It is the settled position of the law that the CBDT circular cannot override the High Court/Supreme Court decisions.

13. About revision proposed by ld PCIT, for disallowance u/s 36(1)(iii) of the Act for interest in respect of capital borrowed, it is stated in the impugned notice of ld PCIT, proposing revision of order u/s. 143(3) of the Act, passed for A.Y. 2018-19 that during the year under consideration, the company has granted



interest free advances to Agrima Consultants International Ltd and Reeti Investments Private Limited whereas company has borrowed interest bearing funds from banks and thus, it is alleged that borrowed funds have been diverted to non-business uses and accordingly, it is proposed to disallow proportionate interest on interest free loans and advances granted u/s 36(1)(iii) @12.11% calculated on the basis of total finance cost and borrowed funds. However we find that loans and advances given to Agrima Consultants International Ltd and Reeti Investments Private Limited are not given during the year under consideration but were given many years ago. In support of this fact, assessee submitted the following documents:

(i) Audited Balance Sheet showing such loans are also outstanding as on 31.03.2017 (Annexure-F).

(ii) Copy of ledger account of Reeti Investments Private Limited showing the fact that deposit of Rs. 34.40 Lakhs was given before 2003 (Annexure -G).

(iii) Copy of ledger account of Agrima Consultants International Limited enclosed showing that loan of Rs. 178.14 Lakhs was given before 2014 (Annexure-H).

In view of above, the question of diversion of interest-bearing funds of current year as interest free advance or loan does not arise and correspondingly, the question of disallowance of interest shall also not arise.

14. Further, it will also be evident from the Audited Balance Sheet of the company that the company has plenty of own interest free funds in the form of



Share Capital and Reserves & Surplus amounting to Rs. 41,638.78 Lakhs which are more than the loans and deposit amount and it a settled position of the law that the interest free advances, if any, are to be considered as made out of interest free funds and not otherwise. In this regard assessee placed reliance on the judgment in case of Commissioner of Income Tax, Central Circle, Bangalore vs. Brindavan Beverages (P.) Ltd. [2017] 88 taxmann.com 477 (Karnataka) wherein it was held that where Tribunal having found that assessee had sufficient own funds well covering loan and advances made to its directors and sister concern, allowed deduction of interest on loan, no substantial question of law arose out of impugned order. Further, reliance is placed on judgement in case of Commissioner of Income-tax, Central Circle, Chennai vs. VGP Housing (P.) Ltd. [2016] 66 taxmann.com 354 (Madras)/[2014] 368 ITR 565 (Madras) [04-08-2014] wherein it was held that where advance to group companies without interest was made in earlier year and that too out of interest free funds, disallowance of interest expenditure for such advance in subsequent year was not proper and the Hon'ble High Court decided the issue in favour of assessee. Thus, in view of the above, no disallowance u/s. 36(1)(iii) of the Act is applicable to the assessee.

15. In view of the above noted facts of the case and legal position, it can be seen that the assessing officer has not committed any error while passing the assessment order and the issued raised subsequent to passing of order are also devoid of any merits. Therefore, such an order cannot be said to be erroneous and prejudicial to the interests of revenue on merits so as to justify revision action u/s. 263 of the Act. Let us take the guidance of judicial precedents laid down by the Hon'ble Apex Court in Malabar Industries Ltd. vs. CIT [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the



PCIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (supra) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the PCIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law"**. **In the assessee's case under consideration, we find that order passed by the assessing officer is sustainable in Law.** Therefore, we are of the considered opinion that AO's order cannot be termed as *erroneous as well as prejudicial to the interest of the revenue* and therefore, jurisdictional condition precedent as prescribed by



statute for invoking revisional jurisdiction is absent and therefore, we are inclined to quash the impugned order dated 19-03-2024 of the Id. PCIT.

16. In the result, appeal filed by the assessee is allowed.

Order is pronounced in the open court on 08/01/2026

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

**Sd/-
(DR. ARJUN LAL SAINI)
ACCOUNTANT MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 08/01/2026

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Assessee
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

(True Copy)

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS

ITAT, Rajkot