

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

(through web-based video conferencing platform)

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT  
AND MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No. 1115/Ahd/2014  
Assessment Year : 2009-10

Shri Nikul J. Patel, 4A, Ketan Society, Nr. Sardar Patel Colony, Naranpura, Ahmedabad-380013 PAN : AHKPP 5769 Q	Vs	The Commissioner of Income-tax, Ahmedabad-IV, Ahmedabad
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Dhiren Shah, AR
Revenue by :		Shri Sanjay Agarwal, CIT-DR

सुनवाई की तारीख/Date of Hearing : 22/03/2022  
घोषणा की तारीख /Date of Pronouncement: 01/04/2022

**आदेश/O R D E R**

**PER P.M. JAGTAP, VICE-PRESIDENT :**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income-Tax, Ahmedabad-IV, Ahmedabad ("CIT" in short) dated 21.02.2014 passed under Section 263 of the Income-tax Act, 1961 ("the Act" in short).

2. The assessee, in the present case, is an individual who is engaged in the business of excavation contract work of canal and irrigation project. The return of income for the year under consideration was filed by him on 29.09.2008 declaring a loss of Rs.14,75,989/-. In the assessment completed under Section 143(3) of the Act vide an order dated 24.12.2010, the total loss of the assessee was determined by the Assessing Officer at Rs.12,58,729/- after making disallowance on account of certain expenses aggregating to Rs.2,17,260/-. The records of the said assessment came to be examined by the learned CIT and, on such examination, he was of the view that the

assessment order passed by the Assessing Officer under Section 143(3) of the Act suffered from the following errors which were prejudicial to the interest of the Revenue:-

- (i) *On perusal of the assessment record, it is noticed that as per the profit & loss account & balance sheet for the previous year relevant to assessment year filed by you, you have claimed loss on sale of shares amounting to Rs.58,47,211/- in addition to loss on future trading Rs. 50,64,731/- directly debited to the profit & loss account. In this regard, the assessing officer has not verified the eligibility of the said claim as business loss as claimed by you or was in the nature of capital loss or speculation loss which was required to be treated separately from the claim as business loss. The Assessing officer has not verified your claim of loss on future trading on account of transactions in the equities & commodities from the angle of provisions of section 43(5) of the Act & their allowability as business loss.*
- (ii) *On further verification of the assessment records, it is seen that you have also claimed loss in respect of civil contract business as under:*

<i>Opening Stock-of W.I.P as per Schedule 16</i>	<i>- Rs. 3,72,00,700/</i>
<i>Add: Purchases during the year as per Schedule 17</i>	<i>- Rs. 19,30,911/-</i>
<i>Total</i>	<i>- Rs. 3,91,31,611/-</i>

*From the above it is clear that your claims of losses from the share trading & losses in futures trading has been allowed by the assessing Officer without examination and cross verification of the relevant supporting evidences and thereby, allowed your legally and factually incorrect claim. Therefore, the assessment order has been passed on wrong assumption of facts and incorrect application of law by the Assessing Officer, without due application of mind and also without making any inquiry & without verifying the basic details of such losses.*

*Further, you have shown Gross Receipts of Rs.2,91,29,509 on account of Andhra Income Rs.2,00,44,922/- & Earthwork Income Rs.90,84,587/-. However, no corresponding credit has been shown in the Trading account in respect of the balance amount of closing stock of work in progress of the contract value unrealized or for which no bill was raised during the year. Hence, in fact, you have claimed loss on account of contract work amounting to Rs.1,00,02,102/-. It is seen that assessing officer has not called for any details in this regard including details of opening W.I.P, to verify allowability of the said claim of loss.*

(iii) *On perusal of the computation of income filed by you alongwith the Return of Income for the year under consideration, it is seen that you have claimed depreciation of Rs.1,20,89,345/- as per the I.T. Rules and the same has been allowed by the AO without verification of the fact as to whether the said assets including plant and machinery have been used by you for the purpose of your business since prima facie no work has been carried out by you during the year under consideration as is evident from the fact that you have shown receipt of Rs.2,92,19,509/- as against the opening W.I.P. of Rs. 3,72,00,700/- as on 1<sup>st</sup> April, 2008. Hence, the Assessing Officer has allowed your claim for the depreciation without verifying the factual position regarding allowability of your claim of depreciation.*

3. The learned CIT accordingly issued a notice under Section 263 of the Act to the assessee on 10.10.2013 pointing out the above errors and seeking explanation of the assessee as to why the assessment order passed by the Assessing Officer under Section 143(3) of the Act should not be revised by treating the same as erroneous and prejudicial to the interest of the Revenue. In reply, it was submitted by the assessee in respect of first error allegedly pointed out by the learned CIT that the assessee, in his individual capacity, was also engaged in the business of trading in shares and securities and this factual position was duly taken note of by the Assessing Officer in the assessment order itself. It was also submitted that the scrip-wise quantitative details of shares traded by the assessee during the year under consideration were given in the Tax Audit Report and the same were duly available on record when the assessment was completed by the Assessing Officer under Section 143(3) of the Act. It was submitted that even the relevant details regarding the loss on future trading of Rs.50,64,731/- were duly furnished by the assessee and the same were also available before the Assessing Officer when he completed the assessment under Section 143(3) of the Act. The learned CIT, however, found that no inquiry whatsoever was made by the Assessing Officer while allowing the claim of the assessee for loss on sale of shares amounting to Rs.58,47,211/- as well as loss on future trading amounting to Rs.50,64,731/- and since the

claim of the assessee for the said loss was allowed by the Assessing Officer without making any inquiry, he held that there was an error in the order of the Assessing Officer passed under Section 143(3) of the Act which was prejudicial to the interest of the Revenue.

4. As regards the second error allegedly pointed out by the learned CIT in the order of the Assessing Officer passed under Section 143(3) of the Act relating to the understatement of closing WIP, it was contended on behalf of the assessee before the learned CIT that the opening WIP reflected in his balance-sheet pertained to Andhra Project for which the details were never called for by the Assessing Officer. It was contended that the projects undertaken by the assessee in Andhra were stopped during the year under consideration due to disturbance of naxalite activity leaving the assets at the site with no hope to carry on and continue the same. It was contended that the assessee, therefore, did not show any closing WIP as on 31.03.2009 and the income from the said project was booked as and when payments were received against Andhra Project. It was submitted that such payments to the extent of Rs.1,22,97,397/- were received in the previous year relevant to AY 2010-11 and the said amount was declared as income by the assessee for that year. On verification of the relevant details filed by the assessee in this regard, the learned CIT noted that an amount of Rs.74,99,454/- was actually received by the assessee during the year under consideration from two parties namely M/s. Ketan Construction Limited and AMR Construction Limited against the Andhra Project and the same was shown by the assessee as its liability as on 31.03.2009 instead of offering the same to tax as an income of the year under consideration. He noted that the said amount, however, was offered by the assessee only in AY 2010-11 wherein the total amount of Rs.1,22,97,379/- was offered to tax by claiming that the same was actually received against Andhra Project. The learned CIT also noted that as

against the opening WIP of Rs.3,72,00,700/- shown in respect of Andhra Project and further purchase of Rs.19,30,911/- made during the year under consideration, the assessee had declared the income of Rs.2,00,44,922/- only in the year under consideration and the remaining amount of closing WIP was not at all shown by the assessee which ought to have done as per the Mercantile System of Accounting followed by him. He held that the assessee thus had clearly underreported his income from Andhra project by Rs.74,99,454/- being the amount actually received against the said project in the year under consideration and further by understatement of closing WIP to the extent of Rs.1,15,87,235/- (opening WIP Rs.3,72,00,700/- plus purchases Rs.19,30,911/- minus contract income declared in the Profit & Loss A/c Rs.2,00,44,922/- minus underreported contract income of Rs.74,99,454/-).

5. As regards the claim of the assessee for depreciation in respect of block of asset under the head "plant & machinery", the learned CIT noted that the said depreciation to the extent of Rs.17,44,750/- was in respect of "plant and machinery" pertaining to Andhra project. Since as per assessee's own submission, no work was carried out in respect of Andhra project during the year under consideration, the learned CIT held that the claim of the assessee for depreciation on plant and machinery to the extent of Rs.17,44,750/- was wrongly allowed by the Assessing Officer in the assessment completed under Section 143(3) of the Act. Learned CIT further noted from the perusal of the relevant bills that the work carried out by the assessee in respect of earth-work project pertaining to Radhanpur Site involved maintenance work of earth work on canal and labour charges for mixing and conveying of concrete. He held that there was thus no use of plant & machinery by the assessee for earth-work project and the depreciation claimed by the assessee in respect of "plant and machinery"

pertaining to the said project amounting Rs.98,85,362/- was also wrongly allowed by the Assessing Officer in the assessment completed under Section 143(3) of the Act.

6. The learned CIT accordingly held that the order passed by the Assessing Officer under Section 143(3) dated 24.12.2010 suffered from the errors pointed out by him as above and since the same were prejudicial to the interest of the Revenue, he set aside the order passed by the Assessing Officer under Section 143(3) of the Act with a direction to modify the same as under:-

- (i) The Assessing Officer will re-compute assessee's total income for the year under consideration after making addition of Rs.74,99,454/- on account of the contract receipts already received but not accounted for in assessee's books of accounts for the year under consideration and adopting the closing W.I.P. from Andhra Project at Rs.1,15,87,235/- which has not been shown on credit side of Trading and P & L Account.*
- (ii) The Assessing Officer will also verify the genuineness of assessee's claim of purchase of Rs.19,30,911/ incurred for the purpose of its business of contract.*
- (iii) The Assessing Officer will disallow the depreciation of Rs.17,44,750/- in respect of plant and machinery pertaining to Andhra Project and depreciation of Rs.98,85,362/- in respect of plant and machinery pertaining to earth work.*
- (iv) The Assessing Officer will call for and verify transaction wise details of assessee's transactions for purchase and sale of equity shares as well as the transactions in future and options category of equity shares for the year under consideration and compute income / allowable loss from the business of purchase and sale of equity shares and its futures and options, if any.*
- (v) The Assessing Officer will compute the taxable income of the assessee for the year under consideration, after giving effect to the directions in para 7(i) to 7(iii) above.*

Aggrieved by the order of the learned CIT passed under Section 263 of the Act, the assessee has preferred this appeal before the Tribunal.

7. We have heard the arguments of both the sides and also perused the relevant material available on record. As regards the first error allegedly pointed out by the learned CIT in the order passed by the Assessing Officer under Section 143(3) of the Act allowing the claim of the assessee for loss on sale of shares amounting to Rs.58,47,211/- as well as loss on future trading Rs. 50,64,731/-, it is observed that even though the quantitative details of the shares traded by the assessee were reflected in the Audit Report filed by the assessee along with his return of income as pointed out by the learned Counsel for the assessee, there is nothing on record to show that any inquiry whatsoever was made by the Assessing Officer so as to ascertain whether the loss claimed by the assessee on sale of shares was in the nature of capital loss or speculation loss. As found by the learned CIT on examination of the relevant assessment records, the relevant details to ascertain the exact nature of transactions effected by the assessee in shares or future trading were not called for by the Assessing Officer during the course of assessment proceedings and there is nothing brought on record on behalf of the assessee to rebut or controvert this finding of fact specifically recorded by the learned CIT during the course of proceedings under Section 263 of the Act. It is thus clear that the claim of the assessee for loss on sale of shares and loss on future trading was allowed by the Assessing Officer without making the necessary inquiry which was called for in the facts and circumstances of the case and there was an error in the order of the Assessing Officer passed under Section 143(3) of the Act on this aspect of the matter as rightly pointed out by the learned CIT which was prejudicial to the interest of the Revenue.

8. As regards the second error pointed out by the learned CIT regarding understatement of closing WIP shown by the assessee in respect of Andhra Project, it is observed that the opening WIP in respect of Andhra Project as

on 01.04.2008 was Rs.3,72,00,700/- and there were purchases of Rs.19,30,911/- made by the assessee in respect of Andhra Project. Against these two debits appearing in the Trading Account aggregating to Rs.3,91,31,611/-, income from the Andhra Project was credited by the assessee to the Trading Account only to the extent of Rs.2,00,44,922/- claiming the balance as loss. In this regard, the contention raised on behalf of the assessee before the learned CIT as well as before the Tribunal is that there was a disturbance in the area of Andhra Pradesh due to naxalite activity and therefore, the work of the said project was completely stopped leaving the assets at the site with no hope to carry on and continue the same. It is contended that, keeping in view this position, the assessee did not show any closing WIP in respect of Andhra Project as on 31.03.2009. It is observed that there is, however, no documentary evidence brought on record on behalf of the assessee to support and substantiate this contention. Moreover, by assessee's own admission, a sum of Rs.1,22,97,379/- was actually received by him against the work already completed in respect of Andhra Project in the immediately succeeding year, i.e. AY 2010-11, and the same was duly offered to tax in that year. It is thus clear that there was a substantial closing work-in-progress as on 31.03.2009 in respect of work already completed by the assessee against Andhra Project which the assessee had failed to disclose.

9. From the perusal of the details furnished by the assessee regarding the actual amount of Rs.1,22,97,379/- claimed to be recovered in the immediately succeeding year, i.e. AY 2010-11, the learned CIT noted that the same was received from two parties namely M/s. Ketan Construction and M/s. AMR Construction. He also noted that a sum of Rs.74,99,454/- out of the said amount was received by the assessee in the year under consideration and the same was shown as liability by the assessee in the balance-sheet as on 31.03.2009. The learned CIT held that the said amount



represented income of the assessee from Andhra Project for the year under consideration and he accordingly directed the Assessing Officer by his impugned order to make addition to that extent to the income of the assessee for the year under consideration. In this regard, the learned Counsel for the assessee has contended that the said amount received during the year under consideration represented the liability of the assessee and there being nothing to show that the same represented income of the assessee for the year under consideration from Andhra Project, the learned CIT was not justified in treating the same as an income of the assessee for the year under consideration. We are inclined to accept this contention of the learned Counsel for the assessee. Moreover, this amount of Rs.74,99,454/- treated by the learned CIT as an income of the assessee for the year under consideration from Andhra Project has already been included by the assessee in the amount of Rs.1,22,97,379/- declared as his income from Andhra Project in the immediately succeeding year, i.e. AY 2010-11, and the addition of the same again in the year under consideration has clearly resulted in double addition which is not justified. After treating the amount of Rs.74,99,454/- as an income of the assessee for the year under consideration for Andhra Project, the balancing figure of Rs.1,15,87,235/- was treated by the learned CIT as a closing WIP in respect of Andhra Project as on 31.03.2009. Having held that the said addition of Rs.74,99,454/- made in the year under consideration is not sustainable, the balancing figure representing closing WIP in respect of Andhra Project would become Rs.1,90,86,689/- and the amount understated on account of closing WIP in respect of Andhra Project would consequently be increased to that extent. Once this amount is treated as closing WIP of Andhra Project as on 31.03.2009 and added to the total income of the assessee for the year under consideration, it follows that the same would be taken as opening

WIP in respect of Andhra Project for the immediate succeeding year, i.e. AY 2010-11.

10. As regards the third error pointed out by the learned CIT in the order of the Assessing Officer passed under Section 143(3) of the Act in allowing wrongly the claim of the assessee for depreciation of Rs.17,44,750/- and Rs.98,85,362/- in respect of the block of asset of "plant and machinery" pertaining to Andhra Project and Earth-work project, the learned Counsel for the assessee has contended that Earth-work project was continued even in the year under consideration and the receipts generated from the same amounting to Rs.90,84,584/- were duly declared by the assessee in the return of income filed for the year under consideration. It is observed that even the learned CIT in his impugned order has not disputed this position. He however held that only maintenance work was carried out by the assessee on canal and there was also some labour work done by the assessee for mixing and conveying of concrete. According to learned CIT, this work carried out by the assessee pertaining to earth-work project did not involve use of any plant and machinery. We are unable to agree with this stand taken by the learned CIT. As rightly contended by the learned Counsel for the assessee, even the maintenance work and labour work carried out by the assessee in respect of Earth-work project during the year under consideration involved use of plant and machinery and the assumption of the learned CIT, to the contrary, is without any basis. Moreover, as further contended by the learned Counsel for the assessee, the plant and machinery pertaining to Andhra Project as well as Earth-Work Project were kept ready for use by the assessee and, keeping in view the passive use, the assessee was entitled to claim depreciation in respect of the said plant and machinery. It is also pertinent to note here that, as per the concept of block of assets, individual item of plant and machinery loses its identity once it

enters the block and the user condition is not required to be satisfied vis-à-vis every item of plant and machinery for claiming the depreciation in respect of the entire block. In our opinion, the claim of the assessee for depreciation on plant and machinery pertaining to Andhra Project and Earth-work Project thus was rightly allowed by the Assessing Officer in the order passed under Section 143(3) of the Act and there was no error in the said order calling for any revision by the learned CIT under Section 263 of the Act.

11. For the reasons given above, we uphold the impugned order of the learned CIT passed under Section 263 but modify the directions given by him to the extent as stated above.

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

Order pronounced in the open Court on 1<sup>st</sup> April, 2022 at Ahmedabad.

Sd/-

**(MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Ahmedabad, Dated 01/04/2022

*z*

Sd/-

**(P.M. JAGTAP)**  
**VICE-PRESIDENT**

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad