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

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

ITA No. 498/Ahd/2019
निर्धारण वर्ष/**Assessment Year: 2005-06**

MSK Project (India) JV Ltd. (merged with Madhav Infra Projects Ltd), 4, Madhav House, Near Panchratna Building, Subhanpura, Vadodara PAN : AADCM 1157 C	Vs.	ACIT, Circle-4, Baroda
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri S.N. Soparkar, Sr. Advocate & Shri Parin Shah, AR
Revenue by :	Ms. Saumya Pandey Jain, Sr. DR

सुनवाई की तारीख/**Date of Hearing : 17.01.2024**
घोषणा की तारीख **/Date of Pronouncement: 31.01.2024**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against order of the learned Commissioner of Income-tax (Appeals)-III, Baroda [hereinafter referred to as "CIT(A)" for short] dated 09.08.2012 passed under Section 250(6) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2005-06.

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

"1. Ld. CIT (A) erred in law and on facts to hold that no appeal lies against order giving effect to findings of CIT in order passed u/s 263 of the Act.

2. Ld. CIT (A) erred in law and on facts dismissing appeal challenging addition of Rs.9,90,00,052/- whereas Supreme Court awarding Rs. 26.34 lakhs

only means that the appellant was not required to account income as per arbitral award on the mercantile basis.

3. Ld. CIT (A) erred in law and on facts confirming order giving effect without giving adequate opportunity to the appellant to present documentary evidence that no such income accrued to the appellant.

4. Levy of interest u/s 234B of the Act is not justified."

3. The appeal is stated to be barred by limitation by 2359 days. The ld. CIT(A)'s order, against which the present appeal has been filed before us, was passed on 09.08.2012. The assesse was required to file appeal before us within 60 days, i.e. by 08.10.2012. However, the present appeal has been filed before us on 26.03.2019, resulting in delay in filing of the appeal by 2359 days.

4. The ld. Counsel for the assessee has filed an application in writing seeking condonation of delay and has made oral submissions also before us regarding the same.

5. Beginning with pointing out the chronology of events leading to the filing of the present appeal before us, it was pointed out that initially the assessee had filed return of income declaring total income of Rs.(-)48,82,805/- (Loss). The assessment was finalized under Section 143(3) of the Act vide order dated 28.12.2007, accepting the returned income. Subsequently, the ld. Commissioner of Income-tax (ld. CIT in short) on examining the case records noted error in the assessment order which was prejudicial to the interest of the revenue. He noted that the assessee had not accounted for the amount receivable by it from the Government of Rajasthan of Rs.990 lakhs as per the Arbitral Tribunal Award in respect of loss of toll collection in connection with construction of Bharatpur bye pass road. Accordingly, a show-cause notice was issued to the assessee u/s 263 of the Act and the order passed by the ld. CIT on 25.02.2010 directing the Assessing Officer to pass a fresh assessment

order taxing the award on accrual basis in accordance with the Mercantile System of Accounting. Thereafter, the order giving effect to the order of the ld. CIT passed u/s 263 of the Act was passed by the Assessing Officer on 26.02.2010, i.e. the very next day, adding the amount of arbitral award of Rs.990 lakhs to the income of the assessee. Against this order giving effect to the order of the ld. CIT, the assessee filed an appeal on 12.03.2012 before the ld. CIT(A) who dismissed the assessee's appeal holding it non-maintainable since the order passed by the Assessing Officer was simply to give effect to the findings of the ld. CIT and, as per the ld. CIT(A), no appeal lay against such appeal effect order passed by the Assessing Officer. Aggrieved by this order of the ld. CIT(A) dated 09.08.2012, the present appeal has been filed before us after a delay of 2359 days on 26.03.2019.

6. The reasons for the delay were explained and brought out before us in writing vide an application filed by the assessee for seeking condonation of the delay which was filed along with the appeal filed before us in Form No.36. The contents of the same are reproduced hereunder:-

> *"Sub : Application for delay Condonation in filing appeal*
>
> *(1) The appellant MSK Project (India) JV Limited now merged with Madhav Infra Projects Ltd filed return of income for A Y 2005/06 declaring loss of Rs. 48, 82, 805/- that was accepted & assessed u/s 143(3) of the Act.*
>
> *(2) Subsequently in order u/s 263 passed on 25.02.2010 ld. CIT holding order to be erroneous & prejudicial to the interest of revenue directed AO to pass fresh order to include claim receivable of Rs.9,90,00,052/- by the appellant company from Rajasthan Government as taxable income on mercantile basis.*
>
> *(3) That AO in order giving effect to the order u/s 263 of the Act made addition of Rs.9,90,00,052/- being the amount of Arbitral Tribunal Award raised demand of Rs.2,10,58,532/- payable by the appellant.*

(4) That the award of Arbitral Tribunal was set aside by Hon'ble Supreme Court & only an amount of Rs. 26.34 lakhs along with interest was confirmed to be payable to the appellant company.

(5) Although amount of Rs. 26.34 lakhs has been confirmed to be payable by Rajasthan Government by the Supreme Court to the appellant, till date no payment is received by the appellant. The recovery suit is already filed in the district court at Jaipur. As such the matter is yet judicial.

(6) That meanwhile appeal against order giving effect to order u/s 263 of the Act was dismissed by ld. CIT (A) - III, Baroda vide order dated 09.08.2012.

(7) That the appellant filed application u/s 155(16) of the Act on 28/11/2018 before Dy. Commissioner of Income Tax, Central Circle - 1, Vadodara to amend the order giving effect to order u/s 263 of the Act under the developments occurred as stated under Para 4 & 5 after receiving the order u/s 263.

(8) That the appellant while in pursuance of proceedings before Arbitral Tribunal, Rajasthan High Court as well Supreme Court filed application u / s 155 (16) of the Act & was under bona fide belief that amendment will be made, appeal before the Hon'ble ITAT, Ahmedabad remained to be filed within 60 days from receipt of appellate order.

(9) That the communication rejecting application u / s 155 (16) of the Act was received on 16.03.2019, the appellant has immediately approached Advocate to prepare appeal challenging order of ld. CIT (A) dismissing the appeal. Hence appeal could not be filed within 60 days of receipt of the CIT (A) order."

7. Besides, ld. Counsel for the assessee, during the course of hearing before us, filed a chronology of events leading to the filing of the present appeal before us which is reproduced hereunder:-

"LIST OF DATES AND EVENTS

Date	*Event*	*Page No.*
1-12-2003	*Award of the Arbitrator (pg. 130, Rs. 99066 Lacs) Rs.9,90,00,052/-*	*58-163*
17-01-2006	*District Court setting aside the Order*	*164-171*
24-4-2007	*High Court set aside the District Court Order (Amount payable Reduced to Rs. 725.53 Lacs)*	*172-214*
28-12-2007	*Assessment Order passed by AO*	*48-49*
16-11-2009	*Show Cause Notice by CIT under section 263*	*50-51*
7-12-2009	*Reply by the Assessee*	*52*

25-02-2010	*Order passed u der section 263*	*53-56*
26-02-2010	*Order giving effect to the order u/s 263*	*57*
21-7-2011	*Supreme Court setting aside High Court Order*	*215-243*
10-2-2012	*Supplied to Assessee*	
12-3-2012	*Appeal filed before CIT(A)III, Baroda*	
9-8-2012	*Appeal dismissed by CIT(A) III, Baroda*	
8-8-2015	*New Award Arbitration (Rs Crl410.09 -354.75 -- 1055.24 min payable)*	*1-29 (Additional Document)*
8-8-2015	*Application before Hon'ble Sessions Court for Execution of the award*	*30-35(Additional Document)*
17-8-2017	*Section 34 dismissed by the District Court*	*36-79 (Additional Document)*
28-11-2018	*Application made u/s 155(16) to AO*	*244-245*
11-3-2019	*AO dismissed application u/s 155(16)*	*246-247*
18-3-2019	*Appeal filed with CIT(A)*	

8. Referring to both the above, ld. Counsel for the assessee argued for the condonation of the delay on the ground that:-

(i) there was a reasonable cause for the delay;

(ii) there was no gross negligence on the part of the assessee;

(iii) there was no lack of *bona fides* of the assessee and

(iv) the condonation of delay was sought on the ground of advancement of substantial justice.

9. The contention of the ld. Counsel for the assessee with respect to the above was that the award of the Arbitral Tribunal was contested by the Rajasthan Government and had not attained finality with the matter travelling to the Hon'ble High Court who had reduced the quantum of the award and thereafter travelling upto Hon'ble Supreme Court who had ultimately restored the determination of the award back to the Arbitral Tribunal. That the assessee had contended before the ld. CIT in proceedings u/s 263 of the Act that since the award had not attained finality and was in challenge, therefore the same was not offered to tax; and going ahead with this belief,

the assessee had made an application to the Assessing Officer to reduce the quantum of addition in accordance with the provisions of Section 155(16) of the Act after the final award was made by the Arbitral Tribunal in 2015 against which the assessee had sought execution of the award from the Sessions Court and ultimately in 2017 the District Court had dismissed u/s 34. It was contended that only when this application was rejected by the AO in March 2019 and the assessee had exhausted the remedy available to it as per its understanding of the fact situation and the law applicable to it, that the assessee pursued the alternate remedy of appeal against the order passed by the ld. CIT(A) in appeal in the appeal effect order passed by the AO and hence the delay of 2359 days.

10. The contention of the ld. Counsel for the assessee was that there was no gross negligence on the part of the assessee since the assessee maintained that the said receipt was taxable only when the award attained finality and the assessee had followed the course provided in law of filing application to the AO u/s 155(16) of the Act for rectifying the quantum of addition after the award had attained finality in 2015. His contention was that it adequately demonstrated the *bona fides* of the assessee. He contended that the assessee could not be charged with being completely negligent or with deliberate or gross inaction on its part in pursuing or filing the appeal before us. The ld. Counsel for the assessee contended that the assessee was waiting for the ultimate outcome of the arbitral award and had moved to the AO after the same. The ld. Counsel for the assessee further contended that the copy of the arbitral award granting the award of 990 lakhs to the assessee is now being filed as an additional evidence. He contended that, even without admitting the same, a bare perusal would reveal that the award of the arbitrator was made on 01.12.2003. That even as per the findings of the ld. CIT in his order passed u/s 263 of the Act that the award was taxable in the year in which it

was granted, the same was taxable in Assessment Year 2004-05 and not in the impugned Assessment Year i.e. AY 2005-06. That as per the assessee, however, it was taxable in the year when the award attained finality i.e. in the FY 2017-18, pertaining to AY 2018-19. The contention of the ld. Counsel for the assessee was that, in any case, the award was not taxable in the impugned year. That, therefore, if the delay in filing the appeal is not condoned, it would cause grave injustice to the assessee who would be required to pay tax merely for being negligent when admittedly the award or income added by the AO was not taxable in this year. The ld. Counsel for the assessee contended that for the purpose of condonation of delay, equity and justice were juxtaposed against the appeal being barred by limitation and he contended that with the assessee not being negligent ,equity & justice should prevail and the delay be condoned. He referred to various decisions of Hon'ble Apex Court defining the expression "sufficient cause" for condoning delay in Section 5 of the Limitation Act as under:-

> *"14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See Ramlal v. Rewa Coalfields Ltd. [AIR 1962 SC 361 : (1962) 2 SCR 762] , Shakuntala Devi Jain v. Kuntal Kumari [AIR 1969 SC 575 : (1969) 1 SCR 1006] , Concord of India Insurance Co. Ltd. v. Nirmala Devi [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 3 SCR 694] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : (1970) 2 SCR 90] and Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] , etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression "sufficient cause" in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."*

11. He contended that it is clear from the above that the Hon'ble Apex Court has time and again reiterated that until the assessee is found grossly negligent and lacking *bona fides* for the delay, there ought to be a justice oriented approach in the matter of condonation of delay.

12. The ld. DR, on the other hand, contended that the cause adduced by the assessee for the delay is neither sufficient nor reasonable. She vehemently objected to the condonation of the delay pointing out that the assessee woke up to the filing of appeal against the order of the ld. CIT(A) after 7 years only when the AO dismissed its application filed u/s 155(16) of the Act. She contended that there was no reasonable explanation for waiting for 7 years in filing the appeal before the Tribunal. She also pointed out that even otherwise there is no merit in the assessee's appeal since the ld. CIT(A) has rightly pointed out that the AO was required to pass the order as directed by the ld. CIT in his order passed u/s 263 of the Act; that the AO had no choice but to make addition in the impugned year and no appeal lay against such orders passed by the AO giving effect to the order of the ld. CIT. She contended that the ld. CIT(A) has rightly noted that the only remedy available to the assessee was by way of filing appeal against the order of the ld. CIT passed u/s 263 of the Act. She, therefore, stated that no purpose would be served by condoning the delay in filing the appeal since the appeal was rightly held by the ld. CIT(A) to be non-maintainable.

13. We have heard the arguments of both the parties at length and have gone through the facts of the case as pointed out to us from the orders passed by various Revenue authorities leading to the present appeal before us. Considering the facts of the case as pointed to us by both the parties, we find it a fit case for condoning the delay of 2359 days in filing of the present appeal before us. The explanation of the assessee for the delay that it was pursuing

an alternative remedy in law as per its *bona fide* belief appears to ring true to us. Undoubtedly, the ld. CIT in his order passed u/s 263 of the Act had found the amount of arbitral award granted to the assessee of Rs.990 lakhs as taxable on the grant of award. The assessee had pleaded before him that since the award had been contested by the Government of Rajasthan, therefore, until it attained finality the assessee had no right to receive the same. Therefore, it had not offered to tax and also believed the same to be taxable only on the award attaining finality. Harbouring this belief, the facts reveal that the assessee went to the AO in 2018 seeking rectification in terms of provisions of Section 155(16) of the Act when the award finally attained finality in FY 2017-18 on 17.08.2017. It was only when this application of the assessee u/s 155(16) was dismissed by the AO that the assessee finding itself remediless filed the present appeal before us. Besides, the assessee has filed copy of final award by the Arbitral Tribunal granting award of Rs.990 lakhs pointing out that the said order was passed on 01.12.2003. As per the Ld. CIT's finding in the order passed u/s 263 of the Act, the same was taxable in the year of award and therefore the addition pertained to AY 2004-05 while the present assessment year before us is AY 2005-06. We agree with the Ld. Counsel for the assessee that if the delay is not condoned, it may result in gross injustice to the assessee by making an allegedly grossly unjustified addition in the hands of the assessee in the impugned year.

14. We find that even if considering that the course adopted by the assessee on the matter of taxability of award of arbitration was an incorrect course in law, waiting for the final award and then filing an application seeking rectification by the AO u/s 155(16) of the Act , but surely the assessee was proactively pursuing this issue. The assessee, we find, has not been negligent and is neither lacking *bona fides* for explaining the huge delay before us. Therefore, finding sufficient and reasonable cause for delay, we consider it fit

to condone the delay of 2459 days in filing the present appeal before us and entertain the appeal of the assessee.

15. We refer to the following observations of the Hon'ble Supreme court from the decision in the case of Collector Land Acquisition Vs. Mst. Katiji & Others, 1987 AIR 1353 on condonation of delay:

> *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
>
> *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
>
> *3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
>
> *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
>
> *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
>
> *6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."*

16. Similarly, we would like to make reference to authoritative pronouncement of Hon'ble Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy (supra). It reads as under:

> *"Rule of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would*

sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

A court knows that refusal to condone delay would result foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi lain Vs. Kuntal Kumari [AIR 1969 SC 575] and State of West Bengal Vs. The Administrator, Howrah Municipality [AIR 1972 SC 749]. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Could should not forget the opposite party altogether. It must be borne in mind that he is a looser and he too would have incurred quiet a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

17. We do not deem it necessary to re-cite or recapitulate the proposition laid down in other decisions. Suffice to say that the Hon'ble Courts are unanimous in their approach to propound that whenever the reasons assigned by an applicant for explaining the delay, then such reasons are to be construed with a justice oriented approach.

18. In the light of the above, in view of our findings that the assessee had adduced sufficient bonafide cause for the delay, and was neither lax nor

negligent in pursuing its case, we condone the delay in filing the present appeal.

19. Having done so, we now have to adjudicate the correctness of the order of the ld. CIT(A) which is in challenge before us. Since it begins with the order u/s 263 of the Act passed by the ld. CIT who had given direction to the AO to tax the arbitral receipts of Rs.990 lakhs, it is necessary to take note of the contents of his order and the directions given by him to the AO. As noted above, the ld. CIT found that the assessee had not returned to tax the award given to it by the Arbitral Tribunal of Rs.990 lakhs on account of loss of toll collection in connection with the construction of Bharatpur bye pass road. In proceedings u/s 263 of the Act initiated by the ld. CIT noting that the AO had not considered this aspect while accepting the assessee's returned income, the assessee was asked to furnish copy of the Tribunal Award. Further, since the assessee had pleaded that the Government of Rajasthan had gone in appeal against the Tribunal Award, the assessee was also asked to furnish the copy of affidavit and application filed in appeal by the Rajasthan Govt. Since the assessee failed to furnish either of the aforementioned documents, the ld. CIT held that the assessment order was erroneous .Since the AO had failed to make necessary inquiries relating to the issue, he directed the AO to pass a fresh order in accordance with the decision of the Hon'ble Supreme Court in the case of CIT Vs. Gajapathy Naidu, 53 ITR 114 (SC) wherein, he noted that, it was held that in mercantile accounting system when the right to receive accrued to the assessee it ought to be included in his income for that year. His findings in this regard at paragraph No.5 of his order passed u/s 263 of the Act dated 25.02.2010 is as under:-

> *"5. Under the circumstances, the assessing officer is directed to pass a fresh order following the decision of Hon'ble Supreme Court in the case of CIT vs. Gajapathy Naidu, 53 ITR 114 (SC) wherein it is held that in mercantile*

accounting system when the assessee accrued the right to receive, it should be included/accounted for in that particular year."

20. The AO on the very next day i.e. 26.02.2010 passed order giving effect to the order of the ld. CIT passed u/s 263 of the Act adding the amount of arbitral award of Rs.990 lakhs to the income of the assessee. When the assessee filed appeal against this order of the AO, the ld. CIT(A) held the appeal to be non-maintainable since the AO's order was simply to give effect to the findings of the ld. CIT and against which no appeal lay. His findings in this regard at paragraph No.7 of his order is as under:-

"7. I have considered the appellants submissions, AO's observations and the order passed under section 263 by the CIT. From the order of CIT, it is quite evident that he has given a clear direction to the AO to pass a fresh order following the decision of honourable Supreme Court in the case of CIT vs Gajapathy Naidu 53 ITR 114 (SC) wherein it is held that in mercantile accounting system, when the assessee accrued the right to receive, it should be included/accounted for in that particular year. The CIT had asked the appellant to furnish certain documents to ascertain if there was a lack of reasonable certainty as advocated by it. However, despite service of notice, the appellant did not respond and did not furnish requisite details. Besides, the CIT has also given a finding that revenue recognition cannot be deferred till the claim finally gets decided by the final appellate authority. Thus, the order passed by AO is to simply to give effect to these findings of the CIT and it amounts to the modification of the original assessment order passed by the AO by CIT. Under such circumstances, no appeal lies to this office against the order passed by the AO. The issue has to be decided in the appeal, if any, filed by the appellant against the order under section 263 by CIT before Income Tax Appellate Tribunal."

21. Therefore, we find that the ld. CIT(A) dismissed the assessee's appeal as non-maintainable for want of jurisdiction finding that no appeal lay against the order of the AO which simply gave effect to the findings of the ld. CIT.

22. We are not in agreement with the ld. CIT(A). The order of the AO is not a simple order giving effect to the order of the ld. CIT passed u/s 263 of the

Act. The AO was required to apply his mind to the facts of the case and then pass an assessment order on the issue. It is not that the ld. CIT in his order passed u/s 263 of the Act had categorically and specifically held that the arbitral award of Rs.990 lakhs was taxable and be taxed by the AO in the impugned year. What he had held and directed in paragraph No.5 of his order was that the AO was to pass a fresh assessment order **following the decision of the Hon'ble Apex Court in the case of Gajapathy Naidu (supra) which, he noted, held that when the assessee had accrued the right to receive, it should be included or accounted for in that year**. There is no factual finding by the ld. CIT that the amount of arbitral award of Rs.990 lakhs accrued as right to receive to the assessee in the impugned year. The entire order of the ld. CIT does not contain any such finding. In fact, there is no possibility of such finding in the order of the ld. CIT since he has noted in his order that the assessee did not file copy of the arbitral award before him. Therefore, the ld. CIT(A)'s direction to the AO was to subject it to tax in the impugned year, subject to finding the same to have accrued to the assessee in the impugned year in accordance with the decision of the Hon'ble Supreme Court in the case of CIT Vs. Gajapathy Naidu (supra). In terms of this direction of the ld. CIT, the AO was required to examine the facts of the case and thereafter adjudicate upon the taxability of the arbitral award of Rs.990 lakhs. The order passed by the AO, therefore, was not a simple order giving effect to the order of the ld. CIT. He was required to examine the facts of the case and apply the law as laid down in CIT Vs. Gajapathy Naidu (supra) to it while subjecting the arbitral amount to tax. The findings of the ld. CIT(A), therefore, that the order of the AO was to give effect to the findings of the ld. CIT and, therefore, not appealable is incorrect. The assessee, we hold, is well within his rights to have filed an appeal against this order passed by the AO. Even otherwise, it has been held by the Hon'ble Apex Court in the case of Kalyankumar Ray Vs. CIT, [1991] 191 ITR 634 (SC), that an assessment order

comprises the detailed order passed by the AO as well as the computation of income done by him. Therefore, for all purposes, the computation of income by the AO giving effect to the ld. CIT's direction is an assessment order which is appealable. The order passed by the ld. CIT(A), we hold, therefore, holding the assessment order to be not appealable is incorrect in law. Having held so, we deem it fit to restore the issue back to the AO to verify the facts of the case and thereafter pass an order in accordance with the directions of the ld. CIT in his order passed u/s 263 of the Act.

23. In effect, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 31/01/2024 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR) **JUDICIAL MEMBER**	**(ANNAPURNA GUPTA)** **ACCOUNTANT MEMBER**

Ahmedabad; Dated 31/01/2024

*%

आदेश की प्रतिलिपि अग्रेषित/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 प्रतिनिधि, अधिकरण अपीलीय आयकर** , /DR,ITAT, Ahmedabad,
6. **गार्ड फाईल** /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

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