IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: DR. BRR Kumar, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No: 1275/Ahd/2025
Assessment Year: 2020-21

Tourism Corporation of Gujarat Limited Block No 16, 4th Floor, Udhyog Bhavan, Sector 11, Gandhinagar-382017, Gujarat, India **PAN: AAACT7252J** **(Appellant)**	Vs	The PCIT Ahmedabad-3, Ahmedabad **(Respondent)**

Assessee Represented: Shri Sunil Maloo, CA
Revenue Represented: Shri R.P. Rastogi, CIT-DR

Date of hearing : 15-09-2025
Date of pronouncement : 01-10-2025

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 28.03.2025 passed by the Principal Commissioner of Income Tax-3, Ahmedabad arising out of the assessment order passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2020-21.

2. The assessee has raised the following Grounds of Appeal:

1. The PCIT has erred in laws and facts by passing an order u/s 263 on the issue which was not covered in the notice of hearing as issued to the Assessee, resulting into breach of principle of natural justice and mandate of Section 263 of the Act, as the issue discussed in notice was transaction of AY 2017-18, whereas order u/s 263 has been passed for transactions of AY 2020-21.

2. The PCIT has erred in laws and facts by passing an order u/s 263 relying on Explanation 2 to Section 263, which was not covered in the notice of hearing as issued to the Assessee, resulting into breach of principle of natural justice and mandate of Section 263 of the Act.

3. The appellant reserves the right to add, amend, modify, or alter any ground of appeal during the course of the appellate proceedings.

3. The brief The brief facts of the case are that the assessee company filed its original return of income on 31.03.2021 declaring income of Rs. 36,03,62,570 and the assessment under section 143(3) read with section 144B of the Act was completed on 16.09.2022 accepting the returned income. However, on examination of case records, Ld. Pr. CIT noted that the assessee received Government grants during the relevant period which were credited to a deferred Government account instead of being reduced from the cost or written down value of the relevant block of assets; only a small portion of the grants was amortised to profit and loss and offered as income while depreciation was claimed on the full asset value, leading to an excess claim of depreciation. The assessee submitted before Ld. Pr. CIT that its accounting policy of crediting grants to a deferred account and amortising a part each year is consistent and has been followed regularly, and that similar treatment had been accepted in prior years. The assessee relied on principles of consistency and on judicial precedents in support of its approach and submitted that no change was called for and

therefore the Assessing Officer had correctly accepted accounts prepared under the Companies Act. The assessee also pointed out that a portion of grants had been amortised and offered as income and submitted that accounting treatment should be respected.

4. The Principal Commissioner examined the assessee's submissions and the assessment records and observed that after the Finance Act, 2015 amended the definition of "income" and Explanation 10 to section 43(1) and with ICDS-VII in force, Government Grants related to depreciable assets must either be added to income or must reduce the actual cost/WDV of the asset for income-tax purposes. The Principal Commissioner noted that the assessee had an opening grant balance of Rs. 105.46 crore and received further grants during the year of Rs. 7.59 crore, of which only Rs. 3.87 crore (about 3.4% of total grants) had been amortised while the balance remained in the deferred account; because the WDV of the asset block was not reduced by the grant amount the assessee effectively claimed higher depreciation (at least about 10% of the relevant amount). The Principal Commissioner therefore concluded that the Assessing Officer had neither added the grant amount to the taxable income nor disallowed the excess depreciation that flowed from not reducing the asset WDV, and that this omission meant the assessment order failed to address a material point and was thus erroneous and prejudicial to the interests of the Revenue. While addressing the assessee's arguments about consistency and prior acceptance, the Principal Commissioner observed that regular accounting practice under Companies Act or past administrative acceptance does not override

the requirement to compute income correctly under the Income-tax Act; depreciation for tax purposes and accounting depreciation differ and tax adjustments are required where grants affect WDV or income. The Principal Commissioner examined judicial precedents cited and relied upon relevant case law to clarify when revisional jurisdiction under section 263 is permissible, noting the twin requirements that the AO's order be erroneous and that it be prejudicial to Revenue. Applying those tests, the Principal Commissioner found that this was not a mere difference of opinion and the AO had not made the necessary enquiries or recorded any finding on whether the grants should have been added to income or should have reduced the asset cost, and therefore the AO had not applied his mind to this issue. Having considered the matter, the Principal Commissioner held that the correct way to deal with the treatment for the year under consideration was to add the grant received in the year (Rs. 7.59 crore) to the income for tax purposes while allowing a reduction for any amount of that same grant already amortised and offered as income; alternatively, the AO should reduce the actual cost/WDV of the block of assets by the grant as provided in Explanation 10 to section 43(1) and ICDS-VII and then compute depreciation accordingly. Because the AO had neither added the grant to income nor adjusted depreciation or WDV, the assessment order was held to be both erroneous and prejudicial to revenue. The Principal Commissioner therefore set aside the assessment order dated 16.09.2022 under section 263 and directed that the Assessing Officer should make a de novo assessment after giving the assessee full opportunity to produce evidence and make submissions; the assessee was given liberty to

place all relevant material before the AO during the fresh assessment. The Principal Commissioner also directed that the Assessing Officer should verify and reconcile grants, the amortisation already offered, the WDV of the asset block, and the depreciation claimed, carry out any necessary third-party checks or enquiries, and pass a reasoned, speaking order in accordance with law.

5. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee. Before us, the counsel for the assessee submitted that the grant in question had been received by the assessee in assessment year 2017-18 for which assessment order has already been passed accepting the accounting treatment of the assessee. Further, in the subsequent assessments, the position taken by the assessee has also been accepted. Before us, the Counsel for the assessee submitted that that section 263 of the Act can be invoked only when two conditions are satisfied, namely that the order passed by the Assessing Officer is erroneous and that it is prejudicial to the interests of the revenue. It was contended that neither of these conditions is fulfilled in the case of the assessee. The counsel for the assessee submitted that in the relevant year the assessee had only amortised a proportionate amount of the deferred government grant received in earlier years and credited the same to its profit and loss account, offering it for taxation. The method followed was consistent with the accounting treatment adopted in the earlier years. The assessee submitted that the government grant of Rs. 11,96,95,913 was received in financial year 2016-17 and did not

pertain to financial year 2019-20, and therefore had no bearing on the taxable income of A.Y. 2020-21. It was submitted that making any addition in the impugned year would amount to double taxation of income that has already been recognised and offered in preceding years. The assessee further submitted that under section 43(1) read with Explanation 10, a Government grant is to be reduced only from the actual cost of the asset at the time of acquisition. It was submitted that the assets in respect of which grants were received were acquired in FY 2016-17 and accordingly any adjustment to actual cost could only be made in that year. Once the asset forms part of the block of assets, it loses its individual identity and the written down value of the block can only be adjusted in accordance with section 43(6)(c), which permits adjustments only for additions and disposals during the year. It was argued that the Statute does not permit reducing the WDV of an existing block by the amount of Government grant in subsequent years. In summary, the assessee submitted that since the grant in question pertained to financial year 2016-17, no addition can be made in A.Y. 2020-21, particularly as a consistent method of amortisation has been followed and income is being recognised year after year. It was also argued that the provisions of the Act require reduction from actual cost only at the time of acquisition and not subsequently from WDV. Therefore, the assessment order passed under section 143(3) cannot be regarded as erroneous or prejudicial to the interests of the revenue. On this basis, the assessee prayed that the proposed revision under section 263 is liable to be set aside.

6. In response, the Ld. DR placed reliance on the observations made by order passed u/s 263 of the Act.

7. We have heard the rival contentions and perused the material on record. We note at the outset that the controversy involved in the present appeal is squarely covered against the assessee by the decision of this Tribunal in the case of **M/s. S.P. Chips Potato Pvt. Ltd. v. DCIT, ITA No. 548/Ahd/2019**, order dated 29.06.2022. In that case, on a similar set of facts where the Assessing Officer had allowed higher depreciation at 30% on trucks without making specific enquiries to determine whether they were actually used in the business of letting on hire, the Tribunal upheld the revisional order passed under section 263, holding that the assessment was both erroneous and prejudicial to the interests of the Revenue. The Tribunal further noted that an incorrect allowance in an earlier year does not bind the Revenue in subsequent years, relying on Meeraj Estate & Developers v. DCIT [2014] 44 taxmann.com 431 (Agra Trib.), affirmed in Meeraj Estate & Developers v. CIT [2020] 113 taxmann.com 231 (All. HC), and also on the settled principle in Municipal Corporation of City of Thane v. Vidyut Metallics Ltd. [2007] 8 SCC 688, that each assessment year is independent. The Tribunal also referred to CIT v. British Paints India Ltd. (1991) 188 ITR 44 (SC), emphasising the duty of the Assessing Officer to ensure correct computation of taxable income notwithstanding regular accounting practices.

8. In the present case, the Principal Commissioner has specifically recorded three aspects: firstly, that pursuant to the Finance Act,

2015, the definition of "income" in section 2(24) was amended, and Explanation 10 to section 43(1) along with ICDS-VII mandated that Government grants relatable to depreciable assets must either be reduced from actual cost/WDV of the assets or else be taxed as income. It was found that the assessee had an opening deferred grant balance of Rs. 105.46 crore, received a further Rs. 7.59 crore during the year, but amortised only Rs. 3.87 crore while continuing to claim depreciation on the unreduced WDV of the block. This resulted in an effective excess claim of depreciation on the balance grant. Secondly, the rebuttal offered by the assessee was that the assets were acquired in FY 2016-17 and once they entered the block of assets, the WDV could not be reduced in subsequent years under section 43(6)(c). We are unable to accept this contention, since the Principal Commissioner has correctly observed that tax depreciation is governed by the Act and not by accounting treatment, and that the statutory scheme read with ICDS-VII required an adjustment in the relevant year. We find merit in the conclusion of the Principal Commissioner that the Assessing Officer's omission to examine and decide this issue rendered the assessment order both erroneous and prejudicial to the interests of the Revenue. The reliance placed by the assessee on consistency of accounting treatment or on past acceptance of the same by the Department cannot override the statutory mandate, as held by the Hon'ble Supreme Court in CIT v. British Paints India Ltd. (supra). Further, the plea that the matter stands concluded by treatment in earlier years is contrary to the law laid down by the Hon'ble Supreme Court in Municipal Corporation of City of Thane v. Vidyut Metallics Ltd. (supra) and by the Hon'ble Allahabad High Court in

Meeraj Estate & Developers v. CIT (supra). In these circumstances, we are of the considered view that the case of the assessee is squarely covered by the decision in M/s. S.P. Chips Potato Pvt. Ltd. (supra). Following the ratio laid down therein and applying the same reasoning, we hold that the order of the Principal Commissioner passed under section 263 is legally valid and sustainable. The other judicial precedents cited by the counsel for the assessee have been rendered on their own set of facts and do not apply to the assessee's set of facts. Further, from the material placed on record, we observe that the assessee had not made any specific query on this aspect during the course of assessment proceedings as well. Accordingly, we find no infirmity in the order of Ld. Pr. CIT so as to call for any interference.

9. Accordingly, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 01-10-2025

Sd/-	**Sd/-**
(DR. BRR KUMAR)	**(SIDDHARTHA NAUTIYAL)**
VICE PRESIDENT	**JUDICIAL MEMBER**

Ahmedabad : Dated 01/10/2025

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad

6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद