

**IN THE INCOME TAX APPELLATE TRIBUNAL
Kolkata Bench, KOLKATA
(Bench- "C")**

**BEFORE SRI ABY T.VARKEY, JUDICIAL MEMBER AND
DR. A L SAINI, ACCOUNTANT MEMBER**

I.T.A No. 1531/Kol/2016
Assessment Year: 2007-08

Smt. Chandrani Chowdhury [PAN : AFDPC8766M] (Appellant)	-Vs-	A.C.I.T., Cir-52 (Respondent)
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For the Appellant	Sudhir Kumar Seal, Advocate
For the Respondent	Md. Ghyajuddin, JCIT, Sr. DR.
Date of Hearing	19.01.2017
Date of Pronouncement	31.01.2017

ORDER

Per Aby T.Varkey, JM

This is an appeal preferred by the assessee against the order of the CIT(A)-VII, Kolkata, dt. 25.05.2016, for assessment year 2007-08.

2. The main ground raised by the assessee is against the action of the Ld. CIT(A) who relied on the predecessor CIT(A)'s order in order to dismiss the appeal preferred by the assessee.

3. The brief facts of the case is that the assessee filed return of income declaring total income of Rs. 19,90,380/- on 18.10.2006. Later on the scrutiny assessment was completed u/s 143(3) of the Income Tax Act by an order dt.

31.12.2009 on total income of Rs. 1,03,46,630/- wherein additions were made as under :

<i>Net Profit declared by the assessee</i>	<i>Rs.19,90,380/-</i>
<i>Add: on account of bogus purchase</i>	<i>Rs.83,56,250/-</i>
Total Income	Rs.1,03,46,630/-

Aggrieved by the impugned order of the Ld. AO, dt. 31.12.2009, the assessee preferred an appeal before the Ld. CIT(A)-VII, Kolkata.

4. While the appellate proceedings were pending before the Ld. CIT(A)-VII, the CIT-XVIII, Kolkata, exercised his revisional jurisdiction u/s 263 and cancelled the assessment order dt. 31.12.2009 vide order dt. 27.03.2012 and directed the AO to pass a fresh order after examining various issues which he pointed out in his order u/s 263 of the Act.

5. Thereafter, the AO passed the assessment order giving effect to the order made u/s 263 of Ld. CIT and passed a 143(3) order dt. 26.03.2013. In the said order the total income was assessed on a total income of Rs. 1,04,91,630/- and he made the addition on the following two additional items :

<i>Net Profit declared by the assessee</i>	<i>Rs.19,90,380/-</i>
<i>Add: On account of bogus purchases debited into the Trading A/c</i>	<i>Rs. 83,56,250/-</i>
Add: disallowance of Rent	Rs.
1,30,000/-	
Add: disallowance out interest on unsecured loan	Rs.
15,000/-	
Total Taxable Income	Rs. 1,04,91,630/-

Aggrieved the assessee preferred an appeal before the Ld. CIT(A) against the order dt. 26.03.2013 of the AO giving effect to the order u/s 263 of the CIT, which the Ld. CIT(A) has dismissed by the impugned order. Aggrieved by the said order of the Ld. CIT(A), the assessee is before us.

6. We note that there were two separate appeals filed by the assessee against the order of the AO for the assessment year 2007-08. One against the original order dt. 31.12.2009, wherein the AO assessed the total income of Rs.1,03,46,630/- and the second one against the order dt. 26.03.2013 for the assessment year 2007-08 pursuant to the Revisional order passed under Section 263 order of the CIT, wherein the total amount of Rs. 1.04,91,630/- was computed by the AO. We take note that the assessee's first appeal for the assessment year 2007-08, when heard was withdrawn by the assessee, since the first assessment order dt. 31.12.2009 having been cancelled by the Ld. CIT u/s 263 dt. 27.03.2012. We note that the predecessor Ld. CIT(A) taking into consideration the said fact dismissed the first appeal by an order dt. 05.02.2015.

7. When the appeal from the assessment passed in pursuance to the CIT order was preferred for the same assessment year 2007-08 i.e. (from the order of assessment dt. 26.03.2013 pursuant to the Section 263 order of the CIT) the Ld. CIT(A) dismissed the appeal stating that "*the appellant has withdrawn the appeal and the Ld. CIT(A) vide order No. 679/CIT(A)-7/Cir-25/14-15 dt. 05.02.2015 dismissed the appeal and the addition stands confirmed.*" The Ld. CIT(A) has stated that since there were no fresh additions made on account of unaccounted purchases in the order dt. 26.03.2013 and since the ground of appeal were covered by the predecessor CIT(A)'s order dt. 05.02.2015, the second appeal of the assessee is infructuous and so he was pleased to dismiss the appeal.

8. We have heard both the parties and perused the records. We do not subscribe to the views/reasons taken by the Ld. CIT(A) to dismiss the appeal of

the assessee against the assessment order of the AO dt. 26.03.013 which was pursuant to the order of the CIT u/s 263. The Ld. CIT(A) has dismissed the instant appeal of the assessee on the ground that the earlier appeal preferred against the order of the AO which was dt. 31.12.2009 for the same assessment year (first order) has been withdrawn by the assessee, and therefore, it was dismissed and the addition made therein stands confirmed. We fail to understand how the Ld. CIT(A) has come to such a finding which is *per se* erroneous for the simple fact that the first appeal preferred by the assessee was against the order of the AO dt. 31.12.2009 which has been undisputedly cancelled by the Commissioner of Income Tax u/s 263 vide order dt. 27.03.2012, so, in the eyes of law the order dt. 31.12.2009 is *non est*, and, therefore, null. In such a scenario, the first appeal preferred by the assessee against the AO's order dt. 31.12.2009 has become infructuous, so the assessee has rightly withdrawn the appeal because the impugned AO order has been cancelled by the CIT u/s 263 of the Act, so no order subsists for the appeal to survive, so it has been withdrawn and the then CIT(A) dismissed it. By doing so, the assessee's right to appeal against the fresh assessment order of the AO pursuant to the CIT order u/s 263 does not in any manner extinguish the right of the assessee to appeal. Therefore, the Ld. CIT(A)'s finding that by the assessee withdrawing the appeal and the predecessor CIT(A) dismissing the first appeal, the addition stands confirmed is perverse and so needs to be struck down.

9. We note that the Ld. CIT(A) has not appreciated the aforesaid facts carefully and has not decided the issues on merits and, therefore, we are of the considered opinion that the order impugned needs to be set aside and we do so. We remand the matter back to the file of the Ld. CIT(A) to decide the appeal

afresh after hearing the assessee and in accordance to law by adjudicating the appeal by passing a speaking order.

In the result the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 31.01.2017.

Sd/-
[Dr. Arjun Lal Saini]
Accountant Member

Sd/-
[A.T.Varkey]
Judicial Member

Dated : **31.01.2017**

{SC SPS}

Copy of the order forwarded to:

1. Smt. Chandrani Chowdhury, 251B, NSC Bose Road, Naktala, Kolkata-700047.
2. A.C.I.T., Cir-52, Kolkata.
3. CIT(A)- Kolkata.
4. CIT – , Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Asstt.Registrar, ITAT, Kolkata Benches