

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. G.D. AGRAWAL, HON'BLE VICE PRESIDENT
AND
SMT. BEENA A PILLAI, JM**

ITA No. 2174/Del/2012 : Asstt. Year : 2006-07

Mahanagar Telephone Nigam Ltd. 12 th Floor, Tower-1, Jeevan Bharti Bldg., 124, Connaught Circus, New Delhi. AAACM0828R	Vs	CIT Large Taxpayer Unit (LTU) New Delhi.
(APPELLANT)		(RESPONDENT)
PAN No. AFWPC1171P		

**Assessee by : Sh. Vedjain, Adv.
& Sh. Ashish Chadha, CA
Revenue by : Ms. Paramita M. Biswas, CIT DR**

Date of Hearing : 21.03.2016	Date of Pronouncement : 30.03.2016
---	---

ORDER

PER BEENA A PILLAI, J.M.

The present appeal has been filed by the assessee against the order passed by Ld.CIT under section 263 of the Act for assessment year 2006-07 on the following grounds of appeal:

1. *“On the facts and circumstances of the case, the order passed by the ld. CIT u/s 263 of the Act is bad, both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the order passed by the ld. CIT cancelling the assessment order passed by the AO is untenable in the absence of order*

of the AO being erroneous as well as prejudicial to the interest of the Revenue.

- 3. On the facts and circumstances of the case, the order passed by the ld. CIT is bad both in the eye of law and on facts and is liable to be quashed as the same is without jurisdiction as the order of the CIT has merged with the order of the AO and the CIT has no power to revise the order passed by the AO.*
- 4. On the facts and circumstances of the case, the ld. CIT has erred both on facts and in law in ignoring the fact that all the issues raised by him in notice u/s 263 were before the AO and as such the jurisdiction on this issue u/s 263 cannot be assumed.*
- 5. (i) On the facts and circumstances of the case, the ld. CIT has erred both on facts and in law in rejecting the contention of the appellant that the issue of Fringe Benefit Tax on the amount of contribution to Superannuation Fund liable for FBT was before the AO in proceedings u/s 115WG read with Section 115E(3) of the Act and was allowed after application of mind by him as such the same cannot be the matter for reassessment u/s 263 of the Act.*
(ii) On the facts and circumstances of the case, the AO having taken one of the possible views the ld. CIT was not justified in holding the assessment order as erroneous and prejudicial to the interest of the Revenue.
- 6. On the facts and circumstances of the case, the ld. CIT has erred both on facts and in law in ignoring the contention of the appellant that the proceeding u/s 263 cannot be used for substituting option of the AO by that of the CIT.*
- 7. On the facts and circumstances of the case, the ld. CIT has erred both on facts and in law in ignoring the contention that payment made by the appellant is not covered within the meaning of Fringe Benefit u/s 115WB(1)(c) and as such not liable for fringe benefit tax.*
- 8. On the facts and circumstances of the case, the ld. CIT has erred both on facts and in law in invoking revisionary power u/s 263 of the Act despite the fact*

- that even after thorough examination, no specific findings have been given on the issue of how the order is erroneous and prejudicial to the interest of Revenue.*
9. *That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. The assessee filed e-return declaring value of fringe benefits amounting to Rs. 16,60,66,503/- for the year under consideration on 29.10.2006 assessment under section 115WE(3) was made on 11.12.2008 at Rs. 16,60,66,503/-. Subsequently during the scrutiny proceedings under section 143(3) it was observed by the Ld. AO that the value of fringe met benefits amounting to Rs. 322,74,88,883/-escaped assessment within the meaning of section 115WG of the Act. A reassessment order under section 115 WG/115WE (3) of the act was passed on 12.02.2010 data mining total value of fringe benefit at Rs. 3,39,35,55,386/-.

2.1 The Ld. AO proposed revision of the above assessment order under section 263 of the Act on the ground that while completing the above assessment, the value of contributions made to an approved superannuation fund has been erroneously taken at Rs. 3,22,74,88,883/-as against actual contribution of Rs. 4,52,28,99,000/-as reflected in the financial statements forming part of the annual report of the assessee company for the year under consideration.

2.2 Aggrieved by the order of ld.CIT passed under section 263 the assessee is an appeal before us now.

3. At the outset the Ld.AR submits that post filing of the present appeal the assessment was completed by the assessing

officer consequent to the above order passed by this CIT under section 263. The assessee filed an appeal before the Ld.CIT (A) against the reassessment order passed by the Ld. AO. The Ld. CIT(A) dismissed the appeal filed by the assessee. Against this order of the Ld. CIT(A), the assessee came in appeal before the Hon'ble Tribunal in ITA No. 510/DEL/2011. This Hon'ble tribunal wide order dated 26.09.2014 restored the issue of fringe benefit tax to the Ld. AO for *de novo* more consideration. The Ld. AR submitted that assessing officer why its order dated 02.02.2016 has passed the order and accepted the contentions of the assessee. The Ld. AR submits that the present appeal becomes infructuous in view of the order dated 02.02.2016, passed by the assessing officer.

3.1 We have produced the records placed before us and the orders referred to and relied upon by the Ld.AR and have verified the submissions so made by the Ld.AR. In view of the above discussion and the order dated 02.02.2016 passed by the assessing officer the present appeal filed by the assessee stands infructuous. Accordingly the grounds raised by the appeal are dismissed unanswered.

4. In the result, the appeal stands dismissed.

Order pronounced in the open court on 30.03.2016

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

Dated: 30.03.2016

*Kavita Arora

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR