

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 385/Kol/2017  
Assessment Year : 2003-04

Jyoti Mohan Mall  
Kolkata

-vs.-

D.C.I.T., Circle-43,  
Kolkata

[PAN : AEAPM 6914 K]  
(Appellant)

(Respondent)

For the Appellant : Shri B.C.Jain, FCA  
For the Respondent : Shri Niraj Kumar, CIT(DR)

Date of Hearing : 22.05.2017  
Date of Pronouncement : 24.05.2017.

**ORDER**

**Per N.V.Vasudevan, JM**

This is an appeal by the Assessee against the order dated 19.09.2016 of CIT(A)-13, Kolkata, relating to AY 2003-04.

2. There is a delay of about 40 days in filing this appeal by the assessee. Before we go into the reasons for the delay in filing this appeal it is necessary to set out the facts and circumstances under which the present appeal arises for consideration.

3. The Assessee is an individual. An order of assessment was passed u/s 143(3) r.w.s. 153C of the Income Tax Act 1961 (Act) on 31.12.2007 determining the total income of the assessee at Rs.1,55,670/-. This order of the AO was set aside by CIT-XV, Kolkata in exercise of his powers u/s 263 of the Act by an order dated 30.03.2010 with the direction looked into the following issues :-

1. Loss on sale of shares for Rs.38,48,205/-
2. Profit on sale of land for Rs.29,71,130/-
3. Fresh Loan for Rs.25,00,000/-

4. The assessee challenged the order of CIT passed u/s 263 of the Act dated 30.03.2010 before the Hon'ble ITAT in ITA No.819/Kol/2010. When that appeal was pending the AO gave effect to the order of CIT dated 30.03.2010 passed u/s 263 of the Act by passing an order dated 31.12.2010 determining the total income of the assessee at Rs.40,03,883/-. In the said order the AO disallowed a loss of Rs.38,48,213/- on sale of shares. The assessee challenged the aforesaid order of AO dated 31.12.2010 before CIT(A)-13, Kolkata who by the impugned order upheld the order of AO.

5. Aggrieved by the aforesaid order of AO the assessee has preferred the present appeal before the Tribunal.

6. Pending disposal of this appeal, the appeal filed by the assessee challenging the order dated 30.03.2010 passed u/s 263 of the Act in ITA No..819/Kol/2010 was taken up by the Tribunal for hearing and the Tribunal by an order dated 21.12.2016 quashed the order u/s 263 of the Act. In view of the aforesaid order of the Tribunal the entire proceedings pursuant to the order u/s 263 of the Act are liable to be set aside.

7. As far as the delay in filing the present appeal by the assessee is concerned the delay has occurred due to confusion in the mind of the assessee as to whether pursuant to the order of ITAT dated 21.12.2016 he should make a request to the AO to annul his order pursuant to the order u/s 263 of the Act or approach the CIT(A) or Tribunal for the said purpose. On obtaining proper legal advice the assessee has now approached the Tribunal for declaring all proceedings pursuant to order u/s 263 of the Act as infructuous. The delay explained as above in the affidavit filed by the assessee before us has been perused and we are satisfied that there was sufficient cause for the delay in filing the appeal before the Tribunal. Hence the delay in filing the appeal before the Tribunal is condoned.

8. As far as the merits of the appeal is concerned we are of the view that in the light of the order of the tribunal dated 21.12.2016 quashing the order u/s 263 of the Act the

impugned order of CIT(A) as well as order dated 30.03.2010 passed by the AO have no legs to stand and they are therefore annulled.

9. In the result the appeal of the assessee is allowed.

**Order pronounced in the Court on 24.05.2017.**

Sd/-  
[Waseem Ahmed]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 24.05.2017.

[RG PS]

Copy of the order forwarded to:

1. Jyoti Mohan Mall, 216, Mahatma Gandhi Road, Kolkata-700007.
2. D.C.I.T., Circle-43, Kolkata.
3. CIT(A)-13, Kolkata.
4. C.I.T.-15, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
Head Of Office/D.D.O. ITAT, Kolkata Benches