

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “E”, MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 3790/MUM/2017
Assessment Year: 2009-10**

M/s Sprint Advisory Services P. Ltd., Knowledge House, Shyam Nagar, Off Jogeshwari – Vikhroli, Link Road, Jogeshwari (E), Mumbai – 400056 PAN: AAJCS0579E	Vs.	The Pr. C.I.T. – 11, Room No. 417, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Ms. Dinkle Haria (AR)
Revenue by : Shri V. Justin (DR)

Date of Hearing: 07/02/2018
Date of Pronouncement: 07/02/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 31.03.2017 passed by the Principal Commissioner of Income Tax- 11, Mumbai, for the assessment year 2009-10, whereby the Pr. CIT has directed the AO to make *do novo* assessment exercising the jurisdiction u/s 263 of the Income Tax Act, 1961 (for short ‘the Act’).

2. The assessee has challenged the action of the Ld. Pr. Commissioner on the following effective grounds:-

1. “Breach of the principles of natural justice

1.1 *The Learned Principal Commissioner of Income Tax- 11, Mumbai [Ld. CIT], erred in framing the revision order u/s 263 of the Income tax Act, 1961 [“the Act”] by not giving proper, sufficient and effective opportunity of being heard to the Appellant.*

1.2 *It is submitted that in the facts and the circumstances of the case, and in law, the order is required to be held as bad and illegal as the same is passed in breach of the principles of natural justice, as well as with non-application of mind to the facts and the contentions brought on record by the Appellant.*

Without prejudice to the above

2. *Revision illegal*

2.1 *The Ld. CIT erred in passing the order u/s 263 of the Act, revising the assessment order passed by the A.O. u/s 143 (3) r.w.s. 147 of the Act.*

2.2 *It is submitted that in the facts and the circumstances of the case, and in law, the order is bad, illegal and void as necessary pre-conditions for initiating the revision proceeding as well as the completion thereof were not fulfilled.*

2.3 *Without prejudice to the generality of the above, the CIT failed to appreciate that:*

(i) *The assessment order framed was not “erroneous” within the meaning of section 263 of the Act, and*

(ii) *In any case, the assessment order was not “prejudicial to the interest of the revenue” within the meaning of section 263 of the Act.*

2.4 *It is submitted that in the facts and the circumstances of the case, and in law, no revision u/s 263 of the Act was called for.*

Without further prejudice to the above

3. *On Merits*

3.1 *Without prejudice to the above, it is submitted that in the facts and the circumstances of the case, and in law, even*

otherwise and on merits also, no such revision/direction was called for”.

3. At the very outset, the Ld. counsel for the assessee submitted that the in this case, vide order dated 30.03.2017 passed u/s 263 of the Act the Ld. Pr. CIT directed the AO to pass *do novo* assessment order after making further enquiries and verifying the details of the share premium in question order. Now the AO has passed the order under section 143(3) read with section 263 of the Act after conducting further enquiries and accepted the contention of the assessee. Since, the AO has accepted the contention of the assessee, the present appeal has become academic. In view of the aforesaid facts, the Ld. counsel submitted that the assessee may be allowed to withdraw the present appeal. The Ld. counsel has also submitted a written request in this regard.

4. The Ld. departmental representative did not controvert the facts stated by the Ld. counsel for the Assessee. Hence, in view of the fact that the assessee's contentions have been accepted by the AO and the request for withdrawal of the appeal, made by the counsel, we dismiss the present appeal as withdrawn.

In the result, appeal filed by the assessee for assessment year 2009-2010 is dismissed.

Order pronounced in the open court on 7th February, 2018.

Sd/-
(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 07/02/2018

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**