

आयकर अपीलिय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.554/Kol/2015
Assessment Year :2007-08

DCIT Circle-7(1) P-7, Chowringhee Square, 5 th Floor, Room No.15, Kolkata-69	V/s.	M/s C.D. Equisearch Pvt. Ltd., 37, Shakespeare Sarani, Kolkata-17 [PAN No.AABCC 0795 N]
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Md. Usman, CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri D.S. Damle, AR
सुनवाई की तारीख/Date of Hearing	08-05-2018
घोषणा की तारीख/Date of Pronouncement	11-05-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue’s appeal for assessment year 2007-08 arises against the Commissioner of Income Tax (Appeals)-3, Kolkata’s order dated 27.02.2015 in case No.112/CIT(A)-3/Cir-7(1)/14-15(13-14)/Kol, accepting assessee’s rectification, thereby reversing the Assessing Officer’s order dated 28.05.2013, in proceedings u/s 154/263/143(2) of the Income Tax Act, 1961 (in short ‘the Act’).

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in its instant appeal:-

“1]”Whether under the law in the facts and circumstances of the case, was the Ld. CIT(A) correct in allocating the common business expenses with the turnover of each segmental business of the assessee company instead of net income as credited to P&L account?

2]“Whether under the law in the facts and circumstances of the case, was the Ld. CIT(A) correct in considering the proportional allocation on the basis of total sales/turnover of share trading proprietary business instead of the net brokerage as credited to P&L account?”

3]“Whether under the law in the facts and circumstances of the case, was the Ld. CIT(A) correct in allowing the loss on valuation of stock of Mutual Fund thereby resulting diminution in value of Mutual Fund Units in the order u/s 154 of the IT Act, 1961 despite the fact that the diminution in the value of investment in units of MF as on close of the financial year is not allowable as per IT Act as the profit/loss on units of MF arises on redemption of such units only?”

4] “That the appellant craves leave to add, delete, alter, modify or take new grounds of appeal”.

3. It emerges at the outset that the instant lie is emanates from CIT-III Kolkata's order dated 29.03.2012 reversing the regular assessment in question framed in assessee's case on 24.12.2009. A co-ordinate bench affirmed the said revision order in **ITA No.559/Kol/2012** decided on 30.12.2013 as well both parties are *ad idem* during the course of hearing that the instant lie is an off-shoot of the consequential assessment proceedings only. Learned representatives thereafter inform us that the assessee had filed its Miscellaneous Application MA No.13/Kol/2015 before this tribunal. A co-ordinate bench's order dated 06.11.2015 modified its earlier order (supra) and directed the Assessing Officer to consider the issue on merits as per the Hon'ble Delhi High Court's decision in case *CIT vs. DLF Commercial Developers Ltd.*(ITA No.94 of 2013 dated 11.07.2013). We are lastly taken to this tribunal's subsequent common order dated 03.02.2016 as in assessee's appeals in ITA No.356-359/Kol/2015 concluding that all subsequent orders passed in consequence to CIT u/s. 263 directions read with tribunal's order dated 30.03.2013 have no leg to stand therefore. It is evident to us that impugned rectification proceedings relate to said former consequential order dated 28.03.2013 only. We therefore follow the above co-ordinate bench's decision to hold that once the consequential assessment order itself does not

survive, the impugned rectification has no legs to stand. The Revenue's grievance is therefore declined in above terms.

5. This Revenue's appeal is dismissed.

Order pronounced in the open court 11/05/2018

Sd/-

(लेखा सदस्य)

(Dr. A.L. Saini)

(Accountant Member)

Kolkata,

*Dkp, Sr.P.S

दिनांक:- 11/05/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-DCIT, Circle-7(1), P-7, Chowringhee Sq, 5th Fl, Room No.15, Kol-69
2. प्रत्यर्थी/Respondent-M/s C.D. Equisearch Pvt. Ltd., 37, Shakespeare Sarani, Kolkata-69
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

Sd/-

(न्यायिक सदस्य)

(S.S.Godara)

(Judicial Member)

By order/आदेश से,

Sr. Private Secretary, Head of

Office/DDO

आयकर अपीलीय अधिकरण,

कोलकाता ।