

आयकर अपीलीय अधिकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 101/Kol/2017
Assessment Year: 2008-09

Deputy Commissioner of Income-tax, Circle-11(1), Kolkata.	Vs.	M/s. Metro Dairy Ltd. (PAN: AABCM8352K)
Appellant		Respondent

Date of Hearing	11.06.2018
Date of Pronouncement	14.06.2018
For the Appellant	Shri Pinaki Mukherjee, Addl. CIT
For the Respondent	Shri Bikash Chandra, AR

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the revenue is against the order of Ld. CIT(A)-12, Kolkata dated 21.10.2016 for AY 2008-09 on the following grounds:

“1. That on the facts and in the circumstances of the case, Ld. CIT(A) erred in admitting adjustment of grants received from National Dairy Development Board in the fixed asset schedule of the assessee, without calling for a remand report as per provisions of Rule 46A of the I. T. Rules.

2. That on the facts and the circumstances of the case, Ld. CIT(A) erred in admitting fresh evidences in the form of adjustment of grants received from National Dairy Development Board since FY 2001-02, without calling for a remand report as per provisions of Rule 46A of I. T. Rules.”

2. Briefly stated facts as observed by the AO are that in this case assessment order was passed u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) on

29.11.2010 determining total income at Rs.2,03,87,900/-. Subsequently, a Show Cause Notice u/s. 263 of the Act was issued to the assessee vide letter dt. 11.03.2013 stating that the assessment records showed that the assessee had treated Rs.73,34,650/- as deferred income by the assessee company on account of depreciation on assets against grants of NDDB as the same was adjusted in the financial statement. However, depreciation of Rs.1,84,61,661/- was allowed in computation of total income without making any reduction of proportionate income on assets related to grant against NDDB. Further, it was also found that an amount of Rs. 29,83,023/- was calculated as credit in the depreciation account but the same was not adjusted against depreciation debited into the P&L A/c. In view of these facts, the Ld. CIT-III, Kolkata u/s.263 of the Act set aside the assessment order u/s 143(3) passed by AO on 29/11/2010 with specific direction to reframe the assessment order after examining the issue. However, the AO assessed the total income at Rs.2,74,75,210/- against returned income of Rs.1,93,61,560/- u/s. 263/143(3) of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who deleted the addition. Aggrieved, revenue is before us.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has given effect to the revisional order passed by the Ld. CIT u/s. 263 of the Act vide order dated 25.03.2013. We note that the revisional order passed by the Ld. CIT was challenged by the assessee before the Tribunal by preferring an appeal ITA No.1655/Kol/2013 for AY 2008-09 and the Tribunal was pleased to quash the 263 order of the Ld. CIT vide order dated 09.09.2016. Consequently, the AO's order giving effect the 263 order of Ld. CIT is null in the eyes of law. The case of assessee is squarely covered by the legal maxim "*Sublato Fundamento Credit Opus*" meaning in case a foundation is removed, the super structure falls. In *Badrinath Vs. Tamilnad* AIR 2006 SC 3243 wherein the Hon'ble Supreme Court held that once the basis of proceeding is gone, all consequential order and acts would fall on the ground automatically which is applicable to judicial and quasi judicial proceedings. Therefore, since the revisional order passed u/s. 263 order of the Ld. CIT has been quashed by the Tribunal, the AO's order giving effect to the 263 order is '

null' and, therefore is non-est in the eyes of law. Therefore, the appeal of revenue does not survive and is, therefore, dismissed for the reasons discussed above.

4. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 14.06.2018

Sd/-

(A.L. Saini)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 14th June, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-11(1), Kolkata.
2. Respondent – M/s. Metro Dairy Ltd., Sealdah Commercial, 1, Beliaghata Road, 9th floor, Kolkata-700 014.
3. The CIT(A) -12, Kolkata (e-mailed)
4. CIT Kolkata.
5. DR, ITAT, Kolkata. (e-mailed)

/True Copy,

By order,

Sr. Pvt. Secretary