

आयकर अपीलीय अधिकरण "E" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3658/Mum/2016

(निर्धारण वर्ष / Assessment Year : 2009-10)

Tata Steel Limited Bombay House, 24, Homi Mody Street, Fort, Mumbai-400001	बनाम/ v.	Principal CIT 2 Aayakar Bhavan, 5 th floor, R.No. 552, M.K Marg, Mumbai 400020
स्थायी लेखा सं./ PAN : AA ACT2803M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:		Shri. Kirit Kamdar
Revenue by :		Shri R. Manjunatha Swamy

सुनवाई की तारीख / **Date of Hearing** : 09.07.2018

घोषणा की तारीख / **Date of Pronouncement** : 31.07.2018

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 3658/Mum/2016, is directed against revisionary order dated 28.03.2016 passed by learned Principal Commissioner of Income Tax -2, Mumbai (hereinafter called "the Pr. CIT"), for assessment year 2009-10 passed by learned Pr. CIT u/s 263 of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2009-10.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

“ **The grounds set out hereafter are without prejudice to one another.**

GROUNDS		
1.	<i>The Learned Principal Commissioner of Income-tax [“ Ld PCIT”] erred in revising, purportedly under Section 263, the Assessment Order “ u/s.143(3) r.w.s. 144C(13) of the I.T. Act, 1961” of the Learned Assessing Officer [“ Ld AO”].</i>	Rs.118,32,01,904
GROUNDS ON JURIDITIONAL		
2.	<p><u>Without prejudice</u> to the generality of the foregoing, the Ld PCITs Revisional Order is without jurisdiction and illegal, for the following reasons :</p> <p>(i) The initiation of the proceedings under Section 263 was without jurisdiction, inasmuch as that provision, in terms, authorises the authorities specified therein to revise only an “..... order passed by the Assessing Officer” and not an order passed by the Assessing Officer in pursuance of the directions of the Learned Dispute Resolution Panel (“Ld DRP”).</p> <p>(ii) The Assessment Order dated 10th January, 2014 was neither erroneous, nor prejudicial to the interests of the Revenue.</p> <p>(iii) The following determinations made by the Ld PCIT, viz,-</p> <p>(a) that a reduction of capital is one which has the effect of “reducing the face value of shares to NIL” and</p> <p>(b) that the cancellation of the shares held by the assessee in Tata Teleservices Ltd (“TTSL”) in terms of the Scheme of Arrangement and Restructuring was “not a case of reduction of capital”, are erroneous in law.</p> <p>(iv) The determination of the Ld PCIT, viz, that “since shares were annulled the assessee was deprived of all rights including the right to receive consideration”, is erroneous in law.</p> <p>(v) The following determinations made by the Ld PCIT, viz,-</p> <p>(a) that “(i)n case of effaced capital</p>	Rs.118,32,01,904

	<p>asset the consideration received or accrued will be 'nil' (non existing consideration)",</p> <p>(b) that no consideration was receivable by the assessee from TTSL inasmuch as "the balance sheet of TTSL is shrunk by reduction of book loss and unabsorbed depreciation on asset side and share capital on the liability side" and</p> <p>(c) that, "therefore, computation provisionsu/s 48 of the Act fail", are erroneous in law.</p> <p>(v) The fact that the particulars of the Capital Gains made by the Assessee (which included the Long-term Capital Loss of f 118.32 Cr aforesaid) were –</p> <p>(a) not only requisitioned by the Ld AO [vide his requisitions under Section 142(1) dated 20th July, 2012 and 8th August, 2012],</p> <p>(b) but that such particulars were furnished by the Assessee to the Ld AO [vide "Annexure - 1" to the Assessee's letter dated 11th February, 2013 to the Ld AO],</p> <p>makes it abundantly clear that the Assessee's claim for set-off of the the loss of Rs. 118.32 Cr was duly verified by the Ld AO and such claim was allowed by him consciously, advisedly and deliberately.</p> <p>(vi) In any event, since a regular assessment had been made under Section 143(3) and that, too, in pursuance of the directions of the DRP, a presumption arises that the assessment order has been made upon application of mind [CIT v Honda Siel Power Products Ltd [2011 333 ITR 547 (Del)]. Accordingly, the Ld AO having, after application of mind, taken one of two views available to him, his assessment order cannot be said to be erroneous and much less prejudicial to the interests of the revenue within the meaning of Section</p>	
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	263, and any attempt by the Commissioner to revise such an order under Section 263 would be without jurisdiction.	
GROUND ON MERITS		
3.	The cancellation during the year under consideration, of the shares held by the Assessee in TTSL, in pursuance of the Delhi High Court approved Scheme of Arrangement and Restructuring, had resulted in the extinguishment of the Assessee's rights in those shares within the meaning of sub-clause (ii) of Section 2(47); hence such cancellation constitutes a "transfer" in terms of Section 2(47). Consequently, the loss of Rs. 118.32 Cr arising from such cancellation constitutes profits and gains (ie, loss) arising from the transfer of a capital asset, within the meaning of Section 45(1) and accordingly, the Assessee is entitled, in terms of Section 70(1), to have the amount of such loss set off against any other Long-term Capital Gains.	Rs.118,32,01,904
3.1	Without prejudice to the foregoing, the Assessee submits that, if the loss on the cancellation of the shares is not allowed in the year in which such cancellation took place, ie, in the year under consideration, such loss will never be allowed to the Assessee, for the reason that the gain or loss on the transfer of the remaining shares of TTSL will be assessed in the year of their transfer with reference to the cost of acquisition of those remaining shares and not with reference to the cost of all the Assessee's shares in TTSL (ie, including the cancelled shares). The Assessee, therefore, further submits that the loss of Rs 118.32 Cr is allowable, and ought to be allowed, in the year under consideration.”	

3. The assessee has also raised additional grounds of appeal which are reproduced as hereunder:-

“Cost of acquisition of shares

4. **Without prejudice** to the grounds raised in the appeal filed on 26 May 2016 and in the alternate, in case Ground No 3 of the appeal is not allowed, the cost of acquisition of shares of Tata Teleservices Limited remaining with the Appellant post cancellation, should be taken with

*reference to the cost of original shares (pre-cancellation) acquired by the Appellant.
The Appellant craves leave to add, alter, delete or modify all or any of the grounds of appeal.”*

4. This appeal is filed by the assessee against revisionary order dated 28.03.2016 passed by learned Pr. CIT u/s 263 of the 1961 Act wherein it has, inter-alia, raised jurisdictional issue which is purely a legal issue which goes to the root of the matter that learned Principal CIT is not empowered u/s 263 of the 1961 Act to revise an assessment order which was passed by AO u/s 143(3) r.w.s. 144C(13) of the 1961 Act in pursuance to the direction of the Ld. DRP. The contentions and objections as are raised by learned counsel for the assessee that an assessment order passed by AO u/s 143(3) r.w.s. 144C(13) of the 1961 Act is in pursuance to directions of learned DRP which in itself is a body consisting of collegiums of 3 Senior Judicial Functionaries of the Revenue and hence learned Pr. CIT cannot sit on judgment of collegiums of three senior functionaries of Revenue which are not below the rank of Commissioner of Income-tax. It's also contended by learned counsel for the assessee that an assessment order passed by AO u/s. 143(3) is appealable before learned CIT(A) u/s. 246A(1)(a) of the 1961 Act, while an assessment order passed by the AO in pursuance to directions of learned DRP is appealable directly before Hon'ble ITAT u/s. 253(1)(d) of the 1961 Act. It is also contended that the Revenue is not entitled to appeal against an assessment order passed by the AO u/s 143(3) r.w.s. 144C(13) of the 1961 Act keeping in view omission of provisions of Section 253(2A) of the 1961 Act by Finance Act, 2016 w.e.f. 01-06-2016, while the Revenue under the earlier scheme of the Act prior to aforesaid omission by Finance Act, 2016 w.e.f. 01-06-2016 could have filed an appeal before Hon'ble tribunal u/s. 253(2A) of the 1961 Act against an assessment order passed by the AO u/s 143(3) r.w.s. 144C(13) of the 1961 Act in pursuance to directions of the DRP. Thus on this jurisdictional ground raised by the assessee as to powers of learned Pr. CIT to exercise its revisionary powers u/s 263 against an assessment order passed by the AO u/s 143(3) r.w.s. 144C(13) of the 1961 Act, it is contended by learned counsel for the assessee that the said grounds and contentions were duly taken before the learned Pr. CIT in the course of proceedings u/s. 263 of the Act and it is contended that learned Principal CIT erred in not disposing of the said jurisdictional issue which goes to root of the matter. Our

attention was drawn to revisionary order dated 28.03.2016 passed by learned Pr. CIT u/s 263 of the 1961 Act. Thus it is submitted by Ld. Counsel for the assessee that the matter need to be resorted to the file of learned Principal CIT for re-adjudication of the entire issue including jurisdictional issue which is purely a legal issue going to root of the matter after considering the submissions of the assessee. The Ld. CIT DR also submitted that matter can be resorted to the file of learned Principal CIT for re-adjudication of the entire issue's including jurisdictional issue raised by the assessee as to the powers of learned Pr. CIT to pass revisionary orders u/s 263 of the 1961 Act revising an assessment framed by the AO u/s 143(3) r.w.s. 144C(13) of the 1961 Act, in accordance with law. Thus in nutshell both the parties have agreed and conceded that in view of non-disposal of aforesaid jurisdictional issue by learned Pr. CIT which is purely legal issue which goes to the root of the matter as to whether learned Principal CIT is competent and empowered to invoke its revisionary powers within provisions of Section 263 with respect to the assessment order of the AO which is passed u/s 143(3) r.w.s. 144C(13) of the 1961 Act in pursuance of direction issues by learned DRP .Several other contentions were also raised in grounds of appeal on merits but keeping in view the jurisdictional issue involved in this appeal which were raised before learned Principal CIT and which was not disposed of by learned Principal CIT in its revisionary order dated 28.03.2016 passed u/s. 263 of the 1961 Act , we consider it appropriate and deem fit to restore this matter back to the file of learned Principal CIT for disposal of this jurisdictional ground which is a legal ground as to competence of learned Pr. CIT to revise an assessment order passed by the AO u/s 143(3) r.w.s. 144C(13) in pursuance to directions given by learned DRP and which in our considered view goes to the root of the matter , along with all other grounds raised by the assessee to decide de-novo in proceedings u/s. 263 more so when both the parties have also agreed and conceded that this matter needs be restored to the file of learned Principal CIT for disposal of the jurisdictional ground and other grounds as the said jurisdictional issue despite being raised by the assessee before learned Pr. CIT in proceedings conducted u/s 263 was not decided by learned Pr. CIT vide its order dated 28.03.2016 passed u/s 263 of the 1961 Act. All the contentions are left open and we clarify that we have not commented on the merits of the issues. The learned Pr. CIT shall decide all

issues afresh after considering submissions of the assessee, Needless to sat proper and adequate opportunity of being heard shall be provided by learned Pr. CIT in denovo proceedings u/s 263 of the 1961 Act and all evidences / contentions submitted by the assessee in its defence w.r.t. all issues shall be admitted by learned Pr. CIT and decided on merits in accordance with law. We order accordingly.

5. In the result , appeal of the assessee is allowed for statistical purposes.

order pronounced in the open court on 31.07.2018
आदेश की घोषणा खुले न्यायालय में दिनांक: 31.07.2018 को की गई ।

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Mumbai, dated: 31.07.2018

Nishant Verma
Sr. Private Secretary

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER
DY/ASST. REGISTRAR
ITAT, MUMBAI