

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'D' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Vice-President (KZ)
and Shri A.T. Varkey, Judicial Member**

**I.T.A. No. 734/KOL/2018
Assessment Year: 2008-2009**

***Haldia Petrochemicals Limited,.....Appellant
Bengal Eco Intelligent Park (Techna),
Tower-1, Block EM, Plot No. 3, Sector-V,
Salt Lake, Kolkata-700 091
[PAN: AAGCB 2001 F]
-Vs.-***

***Deputy Commissioner of Income Tax,.....Respondent
Circle-7(1), Kolkata,
P-7, Chowringhee Square, Aayakar Bhawan,
Kolkata-700 069***

Appearances by:

*Shri H. Chakravorty, A.R., for the Appellant
Shri Sankar Halder, JCIT, Sr. D.R, for the Respondent*

Date of concluding the hearing : January 08, 2019
Date of pronouncing the order : January 18, 2019

O R D E R

Per Shri P.M. Jagtap, Vice-President (KZ):-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 16.02.2018, whereby he dismissed the appeal of the assessee by treating the same as infructuous.

2. The assessee in the present case is a company, which is engaged in the business of manufacturing generation of power and energy. In the assessment originally completed under section 143(3) vide an order

dated 30.12.2010, the total income of the assessee was determined by the Assessing Officer at Rs.1,66,02,472/-. The said assessment was set aside by the concerned Id. CIT vide an order passed under section 263 dated 28.03.2013 with a direction to the Assessing Officer to make the assessment afresh as per the directions given in the order under section 263. In pursuance to the direction given by the Id. CIT under section 263, a fresh assessment was made by the Assessing Officer under section 143(3) read with section 263 vide an order dated 03.03.2014 determining the total income of the assessee at Rs.7,29,85,626/-.

3. Against the order passed by the Assessing Officer under section 143(3) read with section 263, an appeal was filed by the assessee before the Id. CIT(Appeals). Meanwhile the appeal filed by the assessee against the order of the Id. CIT dated 28.03.2013 passed under section 263 came to be decided by the Tribunal vide its order dated 10.06.2016 passed in ITA No. 1743/KOL/2013 whereby the order passed under section 263 was quashed by the Tribunal. When this position was brought to the notice of the Id. CIT(Appeals) by the assessee, the Id. CIT(Appeals) treated the appeal filed by the assessee before him as infructuous and dismissed the same. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. As rightly contended by the Id. Counsel for the assessee, as a result of quashing of the order of the Id. CIT passed under section 263 by the Tribunal, the consequential order passed by the Assessing Officer under section 143(3) read with section 263 had become *non-est* in the eyes of law and the Id. CIT(Appeals) ought to have cancelled the said assessment allowing the appeal of the assessee instead of dismissing the same. We accordingly modify the impugned order of the Id. CIT(Appeals) to this effect and cancel the assessment made by the

Assessing Officer under section 143(3) read with section 263 of the Act vide an order dated 03.03.2014.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on January 18th, 2019.

Sd/-
(A.T. Varkey)
Judicial Member

Sd/-
(P.M. Jagtap)
Vice-President (KZ)

Kolkata, the 18th day of January, 2019

- Copies to :*
- (1) ***Haldia Petrochemicals Limited,
Bengal Eco Intelligent Park (Techna),
Tower-1, Block EM, Plot No. 3, Sector-V,
Salt Lake, Kolkata-700 091***
 - (2) ***Deputy Commissioner of Income Tax,
Circle-7(1), Kolkata,
P-7, Chowringhee Square, Aayakar Bhawan,
Kolkata-700 069***
 - (3) ***Commissioner of Income Tax (Appeals)-4, Kolkata,***
 - (4) ***Commissioner of Income Tax- ,***
 - (5) ***The Departmental Representative***
 - (6) ***Guard File***

By order

***Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata***

Laha/Sr. P.S.