

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B': NEW DELHI)**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA Nos:- 2605 & 2606/Del/2018
(Assessment Year: 2013-14)**

M/s Durgesh Autofin Pvt. Ltd., C/o Shri Pankaj Kumar, Director S/o Late Shri Tejpal Singh, Mandi Kotla Near Nehru Murti, Chandpur, Bijnore.	Vs.	Asst. Commissioner of Income Tax, Circle – (1), Meerut Road, Muzaffarnagar-251002.
PAN No: AACCD0768P		
APPELLANT		RESPONDENT

Assessee by : Shri Vivek Bansal, Adv.
Revenue by : Ms. Nidhi Srivastava, CIT(DR)

ORDER

PER BENCH

ITA No. 2605/Del/2018 has been filed by the Assessee against the order dated 30.03.2018 of Learned Commissioner of Income Tax (Appeals), Muzaffarnagar, ["Ld. CIT(A)", for short] in Appeal No. -1722-1249-1160-516 and ITA No. 2606/Del/2018 has also been filed by the Assessee against separate order dated 30.03.2018 of Ld. CIT(A), Muzaffarnagar in Appeal No. 5920-6403-1140-117. For the sake of convenience and brevity these two appeals filed by Assessee in Income Tax Appellate Tribunal ("ITAT", for short)

are being disposed off by way of this consolidated order. The grounds of appeals are as under:

ITA No.- 2605/Del/2018

- "1. *That under the facts and circumstances of the case, Ld. CIT(A) has erred in law as much as in fact in dismissing the appeal filed by the Assessee, contesting the additions made in the assessment order passed u/s 143(3) of the Act, on the ground that the assessment order dated 29-03-2016 was set aside by the Pr. CIT Muzaffarnagar vide his order dated 13-03-2018 passed u/s 263 of the Act. While dismissing the appeal, Ld. CIT(A) has failed to appreciate that the appeal filed by assessee was already finally heard by Ld. CIT(A) on 09-01-2018 i.e. much before the date on which the revision proceedings were started by Pr. CIT Muzaffarnagar vide show-cause notice dated 22-01-2018.*
2. *The order passed by CIT(A) is invalid as he did not follow CBDT's instruction no. F. No. DGIT (Vig.)/HQ/SI/Appeals/2017-18/9959 dated 08-03-2018, according to which the order was required to be passed within 15 days of the last date of hearing.*
3. *That Ld. CIT(A) has failed to appreciate that the order passed by Pr. CIT Muzaffarnagar u/s 263 is invalid in the eyes of law. In any case, Ld. CIT(A) was required to give reasonable opportunity of hearing to the assessee before dismissing the appeal. In absence of such opportunity of hearing the order passed by CIT(A) is vitiated in law.*
4. *Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.*
5. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law."*

ITA No. 2606/Del/2018

- "1. *That under the facts and circumstances of the case, Ld. CIT(A) has erred in law as much as in fact in dismissing the appeal filed by the Assessee, contesting the levy of penalty of Rs. 33,60,500/- u/s 271D of the Act, on the ground that the assessment order dated 29-03-2016 was set aside by the Pr. CIT Muzaffarnagar vide his order dated 13-03-2018 passed u/s 263 of the Act.*

While dismissing the appeal, Ld. CIT(A) has failed to appreciate that the appeal filed by the assessee was already finally heard by CIT(A) on 09-01-2018 i.e. much before the date on which the revision proceedings were started by Pr. CIT Muzaffarnagar vide show-cause notice dated 22-01-2018.

2. *The order passed by CIT(A) is invalid as he did not follow CBDT's instructions no. F. No. DGIT (Vig.)/HQ/SI/Appeals/2017-18/9959 dated 08-03-2018, according to which the order was required to be passed within 15 days of the last days of hearing.*
3. *That Ld. CIT(A) has failed to appreciate that the order passed by Pr. CIT Muzaffarnagar u/s 263 is invalid in the eyes of law. In any case, Ld. CIT(A) was required to give reasonable opportunity of hearing to the assessee before dismissing the appeal. In absence of such opportunity of hearing the order passed by CIT(A) is vitiated in law.*
4. *Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.*
5. *The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal at any time before or at the time of hearing of the appeal, so as to enable the Hon'ble Tribunal to decide this appeal according to law."*

(2) The Assessment Order U/s 143(3) was passed on 29.03.2016 wherein the following additions were made:

Rejection of Books of Accounts u/s 145(3) Loss disallowed	Rs. 2,17,09,248
Addition u/s 68	Rs. 3,77,000
Addition u/s 41(1)	Rs. 3,88,79,832
Disallowance of claim as to capital expenditure	Rs. 1,14,775

(2.1) The Assessing Officer ("AO", for short), in paragraph 4 of the Assessment Order, taking notice of the audit report, also took the view that there was violation of Section 269SS of Income Tax Act, 1961 ("I.T. Act", for short) on the part of the assessee, for which, according to the AO, penalty proceeding U/s 271D of I.T. Act were required to be initiated.

Additional CIT, Range-1, Muzaffarnagar levied penalty amounting to Rs. 33,60,500/- U/s 271D of I.T. Act, vide order dated 05/12/2016.

(2.2) The assessee filed aforesaid Appeal No. 1722-1249-1160-516 before the Ld. CIT(A) against aforesaid Assessment order dated 29.03.2016. The assessee also filed separate appeal vide Appeal No. 5920-6403-1140-117 before the Ld. CIT(A) against aforesaid order dated 30.03.2018 passed U/s 271D of I.T. Act.

(2.3) In the meantime, Ld. Principal Commissioner of Income Tax, Muzaffarnagar ("Pr. CIT", for short) passed order dated 13.03.2018 U/s 263 of I.T. Act whereunder she set aside the aforesaid Assessment Order dated 29.03.2016 and directed the AO to pass fresh Assessment Order in accordance with law. The Ld. CIT(A) took notice of the aforesaid order dated 13.03.2018 of the Ld. Pr. CIT passed U/s 263 of I.T. Act; and vide separate impugned orders dated 30.03.2018 in Appeal Nos. 1722-1249-1160-516 and 5920-6403-1140-11; dismissed the appeals filed by the assessee. Relevant portions of the aforesaid impugned orders of CIT(A), each dated 30.03.2018, are reproduced as under:

"Relevant portion of order of Ld. CIT(A) in aforesaid Appeal No.-

1722-1249-1160-516

4. The appellant has made written submissions which are placed on record. It is gathered that the assessment order passed by the AO u/s 143(3) of the Act dated 29-03-2016 has been set aside by the Principal Commissioner of Income –tax, Muzaffarnagar vide order dated 13-03-2018 u/s 263 of the Act with the direction to pass the fresh assessment order in accordance with the provisions of the law. Thus, it is noted that the grounds of appeal raised by the appellant as above have become infructuous as the assessment order from which the same emanates does not exist as on date. Therefore, without going into merits of the submission of the appellant made during the appellate proceedings, the grounds of appeal as

reproduced above are dismissed as the same have lost their relevant in view of the above facts.

"Relevant portion of order of Ld. CIT(A) in aforesaid Appeal No.- 5920-6403-1140-11;

4. The appellant has made written submissions which are placed on record. It is gathered that the assessment order passed by the AO u/s 143(3) of the Act dated 29-03-2016 has been set aside by the Principal Commissioner of Income –tax, Muzaffarnagar vide order dated 13-03-2018 u/s 263 of the Act with the direction to pass the fresh assessment order in accordance with the provisions of the law. Thus, it is noted that the grounds of appeal raised by the appellant as above have become infructuous as the penalty order u/s 271D of the Act is based upon the assessment order (supra) which does not exist as on dated. Therefore, without going into merits of the submission of the appellant made during the appellate proceedings, the grounds of appeal as reproduced above are dismissed as the same have lost their relevant in view of the above facts."

(2.4) The perusal of the aforesaid impugned orders, each dated 30.03.2018, passed by the Ld. CIT(A), relevant portions of which have been reproduced already in foregoing paragraph **(2.3)** of this order; shows that the Ld. CIT(A) dismissed the appeals of the assessee without adjudicating the disputed issues on merits, on the ground that the appeals had become infructuous after the aforesaid order dated 13.03.2018 of the Ld. Pr. CIT passed U/s 263 of I.T. Act wherein the Ld. Pr. CIT had set aside the aforesaid Assessment order dated 29.03.2016. The present appeals before us were filed by the Assessee against these aforesaid separate orders of the Ld. CIT(A), each dated 30.03.2018.

(2.5) subsequently, the assessee filed appeal in ITAT, vide ITA No.- 2539/Del/2018 against the aforesaid order dated 13.03.2018 of Ld. Pr. CIT. Vide order dated 09.10.2018 in ITA No.-2539/Del/2018 for the Assessment Year 2013-14, Co-ordinate Bench of ITAT, Delhi quashed the aforesaid order dated 13.03.2018 of Ld. Pr. CIT and allowed assessee's appeal.

(3) At the time of hearing before us, the Ld. Counsel for assessee submitted that the Ld. CIT(A) had dismissed the appeals of the assessee without adjudicating the disputed issues on merits, on the ground that the appeals had become infructuous after the aforesaid order dated 13.03.2018 of the Ld. Pr. CIT passed U/s 263 of I.T. Act wherein the Ld. Pr. CIT had set aside the aforesaid Assessment order dated 29.03.2016. However, the Ld. Counsel for assessee submitted, now that the aforesaid order dated 13.03.2018 of the Ld. Pr. CIT passed U/s 263 of I.T. Act has been quashed by ITAT vide aforesaid order dated 09.10.2018; the impugned orders of the Ld. CIT(A) should be set aside with the direction to pass fresh orders on merits of the issues in dispute in the appeals filed by the assessee before CIT(A) in Appeal Nos.- 1722-1249-1160-516 and 5920-6403-1140-11. The Ld. CIT(DR) appearing for Revenue agreed with this submission of the Ld. Counsel for assessee.

(3.1) We have heard both sides patiently. We have perused the materials available on record carefully. Both sides agree that the aforesaid order dated 13.03.2018 of the Ld. Pr. CIT passed U/s 263 of I.T. Act having been quashed by ITAT vide aforesaid order dated 09.10.2018; the impugned orders of the Ld. CIT(A) should be set aside with the direction to pass fresh orders on merits of the issues in dispute in the appeals filed by the assessee before CIT(A) in aforesaid Appeal Nos.- 1722-1249-1160-516 and 5920-6403-1140-11. We find that the aforesaid order dated 13.03.2018 of Ld. Pr. CIT [on the basis of which the Ld. CIT(A) treated the assessee's appeals as infructuous and dismissed assessee's appeals without adjudicating disputed issues on merits] does not survive as on date, having been quashed by ITAT vide aforesaid order dated 09.10.2018. Therefore, in fitness of things, as

both sides agree, we set aside the impugned orders of the Ld. CIT(A) with the direction to the Ld. CIT(A) to pass fresh orders on issues in dispute in the appeals filed by the assessee vide aforesaid Appeal Nos.- 1722-1249-1160-516 and 5920-6403-1140-11.

(4) In the result, both the appeals of the assessee are partly allowed for statistical purpose.

Order pronounced in the Open Court on 08th day of March, 2019.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 08.03.2019
(Pooja)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	Direct on computer
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	