

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "C", KOLKATA**

**BEFORE SH. P.M.JAGTAP, VICE PRESIDENT &
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1452/KOL/2017
(ASSESSMENT YEAR-2010-11)**

Dipak Kumar Dey, C/o-S.N.Ghosh & Associates, Advocates, "Seben Brothers Lodge", P.O.-Buroshibtala, P.S.-Chinsurah, Distt.-Hooghly, PIN-712105. PAN-ACRPD8980B	vs	CIT, Aayakar Bhawan Dakshin, 2, Gariahat Road (South), Kolkata- 700068.
(Appellant)		(Respondent)
Appellant by	Sh.Somnath Ghosh, Adv.	
Respondent by	Dr.P.K.Srihari, CIT DR	
Date of Hearing	28.01.2019	
Date of Pronouncement	27.03.2019	

ORDER

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

This appeal filed by the assessee against the order dated 08.03.2017 passed by Pr. CIT-9, Kolkata for AY 2010-11 u/s 143(3) of the Income Tax Act, 1961 (in short "Act").

2. The contention of the Ld.AR is that the Pr.CIT-9, Kolkata sought to revise the assessment order dated 28.01.2016 passed u/s 143(3)/263 of the Act which is no more in existence in view of the order passed by this Tribunal which is placed at page 10 of the Paper Book and argued that Pr.CIT sought to revise the order which is more in existence in the eyes of law and the order passed by Pr.CIT dated 08.03.2017 which is impugned before this Tribunal by assessee requires no order as is became infructuous. Ld.AR prayed to dismiss the appeal as infructuous.

3. The Ld.DR did not dispute the same but however, contented that there was no details submitted by the assessee in respect of payments exceeding Rs.20,0000/- on a day which is in contravention of the provision

of section 40A(3) of the Act totalling to Rs.1,16,80,000/- and he vehemently contended that there was no details submitted in respect of these cash payments excluding Rs.20,000/- before the AO nor in the revisional proceedings. He contended the fact which was not submitted before this Tribunal while passing the order dated 08.11.2017 as well as on 08.09.2017 which are placed at pages 10 & 12 respectively in the Paper Book. He supported the order passed by the Pr.CIT-9, Kolkata which is impugned before us.

4. We find this Tribunal passed an order dated 08.09.2017 at page 12 wherein the impugned order was passed by the CIT u/s 263 of the Act. The Co-ordinate Bench, it appears from the record that the issue in respect of cash payments above exceeded Rs.20,000/- was considered and held the cash payment made by the assessee to the Territorial Licensed Agent of the West Bengal Excise Department is held to be covered by the decision of Hon'ble High Court of Calcutta in the case of *CIT vs Crescent Export Syndicate*, ITA No.202 of 2008 order dated 30.07.2008 for the proposition that when the genuineness of the purchase was not disputed, the disallowance u/s 40A(3) of the Act cannot be made. Again, the Pr.CIT exercised his jurisdiction u/s 263 and held that giving effect of AO u/s 143(3)/263 is erroneous which is also held to be quashed by this Tribunal at page 10 of Paper Book. Therefore, the contention of the Ld.DR, the said details of cash payments were neither before the AO nor before Pr.CIT in the proceedings, is untenable. Therefore, we find force in the arguments of the Ld. AR that the impugned order dated 08.03.2017 passed u/s 263 of the Act, is liable to be dismissed and infructuous. Therefore, taking into consideration the facts and circumstances of the case and the submissions of the Ld.AR & Ld.DR and the order placed at page 10 & 12 of the Paper Book, we hold that the issue raised in this appeal by the assessee requires no adjudication, hence grounds raised by the assessee became academic. Thus, the appeal of the assessee is infructuous and it is dismissed.

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

Order pronounced in the open court on 27.03.2019.

Sd/-

**(P.M.JAGTAP)
VICE PRESIDENT**

Sd/-

**(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER**

Date:- 27.03.2019

Amit Kumar

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1. Appellant- Dipak Kumar Dey, C/o-S.N.Ghosh & Associates, Advocates, "Seben Brothers Lodge", P.O.-Buroshibtala, P.S.-Chinsurah, Distt.-Hooghly, PIN-712105.
2. Respondent- CIT, Aayakar Bhawan Dakshin, 2, Gariahat Road (South), Kolkata-700068.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

**AR/H.O.O
ITAT, KOLKATA**