

**IN THE INCOME TAX APPELLATE TRIBUNAL "E"  
BENCH, MUMBAI**

**BEFORE HON'BLE SH. SANDEEP GOSAIN, JM &  
HON'BLE SH. RAMIT KOCHAR, AM**

आयकरअपीलसं./ I.T.A. No. 2466 & 2467/Mum/2018  
(निर्धारणवर्ष / Assessment Year: 2011-12 & 2012-13)

Tata Steel Ltd. Bombay House, 24, Homi Mody Street, Fort, Mumbai-400 001	<b>बनाम/ Vs.</b>	PCIT -2, 5 <sup>th</sup> floor, R. No. 552, Aayakar Bhavan, M. K. Road, Mumbai-400 020.
स्थायीलेखासं ./जीआइआरसं ./PAN No. AA ACT2803M		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकीओरसे/ <b>Appellant by</b>	:	Shri Raj Kapadia, AR Ms. Anjana Thakkar, DR
प्रत्यर्थीकीओरसे/ <b>Respondent by</b>	:	Mr Manjunath Swamy, CIT-DR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	28.03.2019
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	29.03.2019

आदेश / ORDER

**Per Sandeep Gosain, Judicial Member:**

The present two Appeals filed by the assessee are against the order of Ld. PCIT – 2, Mumbai dated 22.03.18 & 23.03.18 for AY 2011-12 & 2012-13 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

**I.T.A. No. 2466/Mum/2018 (AY 2011-12)**

3. First of all we take up assessee's appeal in I.T.A. No. 2466/Mum/2018 (AY 2011-12).

4. At the very outset, Ld. AR appearing on behalf of the assessee submitted that the order of initiation of proceedings u/s 263 of the Act passed by Ld. PCIT is without jurisdiction, therefore assessee has raised ground no. 2 of appeal on account of challenging the jurisdiction of Ld. PCIT in passing the impugned order. It was further submitted that this ground is squarely covered by the order of Hon'ble ITAT in ITA No. 3658/Mum/2016 for AY 2009-10 in *assessee's own case*, wherein the identical ground raising jurisdictional legal issue is also raised in the present appeal has already been considered and

decided by setting aside to file of learned PCIT for deciding afresh.

5. On the other hand, Ld. DR fairly agreed to the contention of Ld. AR that the legal jurisdictional issue is to be restored to the file of learned PCIT for deciding afresh .

Thus, in nut-shell both the learned counsel for the assessee and learned CIT-DR has agreed and conceded that since facts in these appeals are identical as were in AY 2009-10 so far as legal jurisdictional issue is concerned, the similar directions are to be issued by ITAT by restoring it to learned PCIT for deciding the said jurisdictional issue.

6. Since ground no. 2 of the appeal challenges the jurisdiction of Ld. PCIT in passing the impugned order, therefore we have decided to deal with the said ground firstly.

7. We have heard the counsels for both the parties and we have also perused the material placed on record as well as the

orders passed by revenue authorities. We find that the identical ground has already been decided by the Coordinate Bench of ITAT in ITA No. 3658/Mum/2016 for AY 2009-10 in assessee's own case. The operative portion of the order of ITAT is contained in para no. 4 to 5, which is reproduced below:-

*“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 an 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 the 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 readjudication 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 say 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.”*

8. After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and Hon'ble ITAT as mentioned above, we find that the identical issue has already been decided by the ITAT in ITA No. 3658/Mum/2016 for AY 2009-10 in assessee's own case. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT and in order to maintain judicial consistency, we apply the same findings in the present case which are applicable *mutatis mutandis* in the present case and restore the issues back to file of learned PCIT for deciding afresh with similar directions as were given by ITAT for AY 2009-10.

9. Therefore, we also restore the matter back to the file of Ld. PCIT for deciding issues afresh after considering the submissions of the assessee, with similar directions as were given by ITAT for AY 2009-10. It is needless here to mention that proper and adequate opportunity of being heard shall be provided by Ld. Pr. CIT in denovo proceedings u/s 263 of the Act and all evidences /contentions submitted by the assessee in its defence w.r.t. all issues shall be admitted by Ld. PCIT and to be decided on merits in accordance with law. We order accordingly. With these directions, this ground of appeal raised by the assessee is **allowed for statistical purposes.**

10. Since we have restored the matter back to the file of PCIT for deciding afresh as per similar directions of the ITAT for AY 2009-10, therefore all the other grounds raised before us accordingly disposed off.

**ITA No. 2467/Mum/2018 (AY 2012-13)**

11. Now we take up assessee's appeals in *ITA No. 2467/Mum/2018 (AY 2012-13)*. Since we have already decided the similar grounds of appeal in *ITA No. 2466/Mum/2018 (AY*

2011-12). Therefore, following our own decision in *ITA No. 2466/Mum/2018*, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable *mutatis mutandis*.

12. In the net result, both the appeals filed by the assessee stands **allowed for statistical purposes** with no order as to cost.

*Order pronounced in the open court on 29<sup>th</sup> March, 2019.*

Sd/-  
(Ramit Kochar )  
लेखासदस्य / Accountant Member  
मुंबई Mumbai; दिनांक Dated : 29.03.2019  
Sr.PS. Dhananjay

Sd/-  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार**  
(Dy./Asstt.Registrar)  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**