

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "D", MUMBAI**

**BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3655/MUM/2017  
Assessment Year: 2007-08**

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|---|------------|---|
| The DCIT, Cent. Cir-6(4),<br>R. No. 1925, 19 <sup>th</sup> Floor,<br>Air India Building,<br>Nariman Point,<br>Mumbai - 400021 | <b>Vs.</b> | M/s Mumbai SEZ Limited,<br>1 <sup>st</sup> Floor, Jai Centre,<br>34 P D Mello Road, Masjid,<br>Mumbai - 400009<br>PAN: AABCG2739C |
| <b>(Appellant)</b>  |            | <b>(Respondent)</b>   |

Revenue by : Shri D.G. Pansari (DR)

Assessee by : Shri Gautam Thacker &  
Shri Ramesh Jain (ARs)

Date of Hearing: 19/02/2019  
Date of Pronouncement: 26/04/2019

**ORDER**

**PER RAM LAL NEGI, JM**

This appeal has been filed by the revenue against the order dated 16.02.2017 passed by the Commissioner of Income Tax (Appeals)-54 (for short 'the CIT(A), Mumbai, for the assessment year 2007-08, whereby the Ld. CIT(A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) r.w.s 263 of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee company engaged in the business of setting up and operate infrastructure facilities, filed its return of income for the assessment year under consideration declaring the total income of Rs. 3,06,61,438/-. The assessment was completed u/s 143 (3) of the Act and the AO determined the taxable income of the assessee at Rs. 44,20,28,420/-.

3. Subsequently, the CIT Central, vide order dated 30.03.2012 passed u/s 263, set aside the assessment and directed the AO to re-examine the following issues and passed order afresh:

- a) *Examine and decide amount of expenses disallowable under rule 8D(i), 8D(ii) and under rule 8D(iii) of income tax rules and will decide as such disallowable expenses can be allowed as deduction or can be capitalized towards work-in-progress.*
- b) *Examine whether social welfare expenses are incurred wholly and exclusively for the purpose of business and whether these expenses can be capitalized towards work-in-progress.*
- c) *Examine what made the assessee to borrow Rs. 185.00 crore from Banks when these funds were not immediately required by the assessee and will also examine how it can be said that the decision of the assessee to give Rs. 1505.56 crore out of these fund to M/s DIHL is decision taken on account of commercial expediency. He will examine whether interest expenses borne by the assessee on borrowed funds given to M/s DIHL can be capitalized towards work-in-progress in the case of the assessee.”*

4. In compliance thereof, the AO issued notices u/s 143 (2) and 142 (1) of the Act. In response to the said notices, the authorized representative of the assessee appeared before the AO and filed written submissions. The AO after hearing the assessee reduced the capital work-in-progress holding that the assessee has wrongly capitalized an amount of Rs. 73,14,200/- towards social welfare expenses, Rs. 1,79,24,895/- disallowance u/s 14A and Rs. 12,62,19,359/- differential rate of interest. The AO accordingly determined the total income of the assessee at Rs. 44,11,71,913/-. The assessee challenged the assessment order passed by the AO u/s 143 (3) read with section 263 of the Act before the Ld. CIT (A), who after hearing the assessee partly allowed the appeal. However, confirmed the action of the AO in making disallowance to the extent of Rs. 96,03,789/- u/s 14A read with rule 8D, upheld the action of AO to disallow social welfare expenditure and further confirmed the action of AO in

disallowing the capitalization of differential interest to the extent of Rs. 12,62,19,359/-

5. The revenue has challenged the impugned order passed by the Ld. CIT (A) on the following effective ground:-

*“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding the suo moto disallowance made by the assessee u/s 14A as sufficient while the Assessing Officer has recorded his satisfaction after giving opportunity to the assessee for applying rule 8D for computation of disallowance.”*

6. The Ld. Departmental Representative (DR) fairly admitted that the Tribunal has set aside the order passed by the Ld. CIT u/s 263 of the Act directing the AO to re-examine the issues in question.

7. At the outset, the Ld. counsel for the assessee submitted that the ‘B’ Bench of the Mumbai Tribunal has allowed the appeal filed by the assessee against the order passed by the CIT u/s 263 of the Act, in assessee’s appeal ITA No 3429/Mum/2012 for the assessment year under consideration. Since, the Tribunal has set aside the order passed by the CIT directing the AO to re-examine the issue regarding i) capitalizing the disallowance under rule 8D, ii) social welfare expenses and iii) interest expenses borne by the assessee on borrowed funds, the assessment order passed u/s 143 (3) read with section 263 of the Act relating to the said issues, the present grounds of appeal do not survive.

8. We have perused the material on record. As pointed out by the Ld. counsel for the assessee, the coordinate Bench has set aside the order passed by the Ld. CIT u/s 263 of the Act, directing the AO to re-examine the three issues discussed above, the order passed by the AO u/s 143 (3) read with section 263 of the Act has become infructuous. Since, the order against which the assessee has filed the present appeal has become infructuous, the grounds

of appeal raised by the assessee do not survive. Hence, we dismiss the appeal of the revenue as not pressed.

In the result, appeal filed by the revenue for assessment year 2007-2008 is dismissed.

Order pronounced in the open court on 26<sup>th</sup>.April, 2019.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 26/04/2019

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai