

-आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ- अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH 'A'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER**

*आयकर अपील सं./ ITA No.554/Ahd/2018*  
**[Asstt.Year: 2011-12]**

Inox Leisure Ltd. 2 <sup>nd</sup> Floor, ABS Towers Old Padra Road Baroda.	Vs.	DCIT, Cir.1(1)(1) Vadodaras.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Soparkar, AR
Revenue by :	Shri Surendrakumar, CIT-DR

*सुनवाई की तारीख/Date of Hearing* : 06/08/2019

*घोषणा की तारीख/Date of Pronouncement:* 07/08/2019

**आदेश/ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-I, Vadodara dated 22.1.2018 passed for Asstt.Year 2011-12.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming the disallowance of Rs.1,76,86,000/- which was made by the AO under section 14A r.w. Rule 8 of the Income Tax Act, 1961/Rules 1962.

In the next ground of appeal, it has been pleaded that the Id.CIT(A) has erred in confirming the addition of Rs.7,70,75,000/- disallowed by the AO under section 14A r.w. Rule 8D for the purpose of computing book profit under section 115JB of the Act.

3. The Id.counsel for the assessee at the very outset submitted that the impugned assessment order was passed in pursuance of the order of the CIT passed under section 263 of the Act. That order of the Id.CIT has been quashed by the ITAT in ITA No.847/Ahd/2016, hence, the very jurisdiction to pass the present assessment order has been vacated and consequently it is not sustainable. If the assessment order is not sustainable, then the appeal of the assessee deserves to be allowed. He placed on record copy of the Tribunal's order dated 13.2.2018 passed in ITA No.847/Ahd/2016. The Id.DR was unable to controvert this contention of the Id.counsel for the assessee.

4. Brief facts of the case are that the assessee has filed its return of income on 29.9.2011 declaring total loss under normal provisions of the Act at Rs.7,88,09,637/- and computed book profit under section 115JB at Rs.9,86,67,830/-. The assessment order was passed under section 143(3) on 18.3.2014 determining total income under normal provision of the Act at NIL after setting off of brought forward loss to the extent of Rs.8,89,21,638/-. The Id.CIT-1, Baroda took cognizance under section 263 of the Act and passed an order on 15.2.2016. The Id.CIT(A) has set aside the assessment order and directed the AO to pass *de novo* order after due verifications for making appropriate additions/disallowance. This order of the Id.Commissioner dated 15.2.2016 passed under

section 263 of the Act was challenged before the ITAT in ITA No.847/Ahd/2016. The appeal of the assessee was allowed and order of the Id.Commissioner was quashed. The finding of the Tribunal reads as under:

*"3. The ld.counsel for the assessee at the very outset submitted that there was no exempt income in the hands of the assessee. It has challenged the addition made under section 14A under the regular provision in appeal bearing no.3330/Ahd/2015. After putting reliance upon the decision of the Hon'ble Gujarat High Court in the case of Corretch Energy Ltd., 372 ITR 97, ITAT deleted the addition vide order dated 5.1.2018. Since no additions are available for the purpose of section 14A, therefore, there could not any adjustment in the book profit. Hence, there could not be any action under section 263.*

*4. On the other hand, the ld.DR contended that the ld.Pr.Commissioner has examined the record and formed an opinion that the AO did not investigate this issue, hence, his order was erroneous and rightly termed so by the ld.Pr.Commissioner.*

*5. On due consideration of the facts and circumstances, we are of the opinion that action under section 263 could be taken when twin conditions viz. erroneous proceedings before the AO and prejudice caused to the Revenue are fulfilled. In the present case, for the sake of arguments, even the assessment order is considered as erroneous there will be no prejudice caused to the Revenue because ultimately no disallowance is being upheld under section 14A which can be adjusted in the book profit. Therefore, 263-order is not sustainable in law. Accordingly, we allow appeal of the assessee and quash order of Ld.Pr.Commissioner passed under section 263 of the Act.*

*6. In the result, appeal of the assessee is allowed."*

5. In pursuance of CIT's order dated 15.2.2016 present assessment order was passed on 9.11.2016 under section 143(3) r.w. section 263 r.w. section 153(3) of the Act. Appeal against this assessment order has been decided by way of impugned order

dated 22.1.12018. It is pertinent to observe that jurisdiction in the AO to pass the impugned assessment order was infused by virtue of the order of the Id.Commissioner passed under section 263. The order of the Id.Commissioner has already been quashed and vacated. Therefore, there is nothing which has been given effect by the AO. Consequently, his order deserves to be vacated and all proceedings thereafter would become redundant. In view of the above discussion, we allow the appeal of the assessee and quash the impugned order of the Id.CIT(A) dated 22.1.2018 and order of the AO dated 9.11.2016; both the orders are quashed.

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

Order pronounced in the Court on 7<sup>th</sup> August, 2019.

Sd/-  
(PRADIPKUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER