

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
I.T.A. No. 1575/DEL/2017 (A.Y. 2010-11)**

Delhi Iron & Steel Co. Ltd. 601, DISCO Compound, G.T. Road, Ghaziabad PAN : AAACD5262G (APPELLANT)	Vs.	DCIT Circle-1 Ghaziabad (RESPONDENT)
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Appellant by	Sh. Anoop Sharma, Sanjay Parashar, CAs
Respondent by	Sh. Surendra Meena, Sr.DR

Date of Hearing	08.08.2019
Date of Pronouncement	27.08.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 31.12.2016 passed by CIT(A)-Ghaziabad for assessment year 2010-11.

2. Return declaring a loss of Rs. 5,71,76,265/- was filed on 27.09.2010. Based on information received from Director (I&C-I) Mumbai regarding Tax Evasion by the assessee, the Assessing Officer initiated action u/s 147 by issuing a notice u/s 148 on 27.03.2015. In response to the said notice, the assessee filed written submissions and computation of income. The Assessing Officer completed assessment under Section 143(3)/148 making an addition of Rs. 2,18,33,713/- treating the business loss on share trading claimed by the assessee as fictitious a total loss of Rs. 3,37,96,595/- after detailed

investigation holding that the same is fictitious business loss based on accommodation entries received by the assessee.

3. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT (A) dismissed the appeal on the ground that the assessee did not want to contest the appeal and thereby rejecting the appeal as well as the application filed u/s 264 of the Act.

4. The Ld. AR submitted that the CIT(A) has not given an opportunity of hearing to the assessee which is evident from the order of the CIT(A). The Ld. AR further submitted that the CIT(A) did not consider the application of the withdrawal filed by the assessee before passing the order of the dismissal. The Ld. AR further submitted that the CIT(A) ignored the fact that by not allowing the assessee to withdraw the appeal filed before CIT(A), the same resulted in rejection of request application filed u/s 264 of the Act on technical grounds, as application u/s 264 of the Act cannot be considered in the circumstances when the appeal was already decided on merits and the assessee was left with no option but to surrender their right of pursuing the application filed u/s 264 of the Act before the Principal Commissioner of Income Tax, Ghaziabad. Thus, the Ld. AR submitted that the matter may be remanded back to the file of the CIT(A) and the same may be decided on merit.

5. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

6. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that before the Pr. CIT-Ghaziabad, the revision application u/s 264 of the Act was pending. the CIT(A) ignored the fact that by not allowing the assessee to withdraw the appeal filed before CIT(A), the same resulted in rejection of request application filed u/s 264 of the Act on technical grounds, as application u/s 264 of the Act cannot be considered in the circumstances when the appeal was already decided on merits and the assessee was left with no option but to surrender their right of

pursuing the application filed u/s 264 of the Act before the Principal Commissioner of Income Tax, Ghaziabad. Despite knowing this fact, the CIT(A) appeal has not allowed the assessee to withdraw the appeal after the decision on the application u/s 264 of the Act. Therefore, it will be appropriate to remand back this matter to the file of the CIT(A) for giving the fresh hearing to the assessee and deciding the issues involved in the appeal on merit. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice. The appeal is partly allowed for statistical purpose.

7. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on 27th August, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 27/08/2019

Binita

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	.08.2019
Date on which the typed draft is placed before the dictating Member	.08.2019
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	