

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH MUMBAI  
BEFORE G. MANJUNATHA, ACCOUNTANT MEMBER  
&  
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.22/Mum/2017  
(Assessment Year :2009-10)**

Saigal Sea Trade B-203, Neelam Centre, Hind Cycle Road Worli, Mumbai-400 030	Vs.	ACIT-21(1) Piramal Chambers Lalbaug, Parel Mumbai-400 020
<b>PAN/GIR No.AAIFS6920K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	V.Vinod Kumar
Assessee by	Jitendra Motwani & Ms. Vidushi Maheshwari & Madhav Pandhya
<b>Date of Hearing</b>	<b>03/10/2019</b>
<b>Date of Pronouncement</b>	<b>15/10/2019</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against, the order of the Commissioner of Income Tax (Appeals)-33, Mumbai, dated 27/10/2016 and it pertains to Assessment Year 2009-10.

2. The assessee has raised the following grounds of appeal:-

*1. The Commissioner of Income Tax(Appeals) - 33, Mumbai [hereinafter referred to as 'the CIT(A)'] erred in confirming the disallowance of Rs.23,27,500/- being commission paid to Ms. Nivedita Singh in the course of carrying on its business activity.*

*The Appellant submits that on the facts and circumstance of the case, the AO ought to have allowed commission as deductible revenue expenditure.*

*2. The CIT(A) erred in confirming the action of AO in holding that expenses of Rs.14,60,680/- debited to Legal & Professional expenses towards fees paid for interior design and supervision fees for Repairs/Renovation work is capital in nature eligible for depreciation.*

*The Appellant submits that the said interior design and supervision fees paid is a deductible revenue expenditure incurred in the course of carrying on business and shall be allowed in full.*

3. The brief facts of the case are that the assessee is a partnership firm engaged in the business of commission agent for cargo handling to foreign shipping companies, filed its return of income for AY 2009-10 on 30/09/2009, declaring total income of Rs. 46,09,61,366/-. The assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 30/11/2011 determining the total income at Rs. 46,24,13,780/-. Thereafter the Ld.CIT revised assessment order passed by the Ld. AO u/s 263 of the I.T.Act, 1961 and restored the assessment to the file of the AO to examine the issue of commission payment to M/s Niveditha Singh and legal & professional expenses debited into profit and loss account, in respect of interior design and repairs and renovation works. The assessee has challenged the order of the Ld.CIT passed u/s 263 of the I.T.Act, 1961, dated 13/01/2014, before the ITAT, Mumbai. Meanwhile, the Ld. AO has passed consequential assessment order u/s 143(3) r.w.s. 263 of the I.T.Act, 1961 on 31/03/2015 and determined total income of Rs. 46,60,55,720/- by making additions towards commission paid to Ms. Niveditha Singh and expenditure incurred under the head legal and professional expenses, as per the directions of the Ld.CIT. The assessee has challenged the order of the Ld. AO passed u/s 143(3) r.w.s. 263 before the first appellate authority, but could not succeed. The Ld. CIT(A) for the detailed reasons recorded in his appellate order confirmed additions made by the AO towards commission payment to Niveditha Singh and legal and professional charges

incurred towards repair and renovation works. The assessee has carried matter in further appeal before the ITAT and said appeal is pending for disposal in ITA.No. 22/Mum/2017. Thereafter, the Tribunal has disposed of appeal filed by the assessee against order of the Ld.CIT passed u/s.263 of the I.T.Act, 1961 in ITA.No. 2511/Mum/2014 and upheld the order passed by the Ld.CIT u/s 263 of the I.T.Act, 1961, however restored the appeal to the file of the AO to adjudicate the issues afresh in light of various evidences filed by the assessee. Thereafter, the Ld. AO, consequent to the directions of the ITAT taken up assessment proceedings and issued notices u/s 142(1) and called upon the assessee to file necessary evidences in respect of issues taken up by the Ld.CIT in u/s 263 proceedings.

4. We have heard both the parties and perused the material available on record. The solitary issue that arises for our consideration in the given facts and circumstances of this case is whether the appeal filed by the assessee against order of the Ld.CIT(A)-33, Mumbai is maintainable in view of the fact that consequential proceedings, pursuant to order u/s 263 passed by the Ld.CIT is pending before the Ld. AO for disposal. We find that there shall not be two proceedings, except otherwise provided in the Act, in respect of reassessment or revision proceedings u/s 263. In this case, whether right or wrong, there are two parallel proceedings are pending before various authorities, including the ITAT on similar issues. The assessee has challenged consequential order passed by the AO pursuant to directions of the Ld.CIT u/s 263 before the Tribunal, but the Tribunal has restored the issue back to the file of the AO in appeal filed by the assessee against order of the Ld.CIT u/s 263 of the Act. Under these facts and circumstances, we are of the

considered view that the appeal filed by the assessee against consequential order passed by the AO in pursuant to order u/s 263 becomes infructuous, because the same issues are pending before the Ld. AO for adjudication in pursuant to directions of the ITAT. Therefore, we are of the considered view that appeal filed by the assessee against order of the Ld. AO /s 143(3) r.w.s. 263 is not maintainable and accordingly, the same is dismissed as infructuous. However, we left open all options to both sides to contest on two issues taken up by the Ld.CIT in 263 proceedings, in consequential proceedings before the Ld. AO pursuant to direction of the ITAT. We, further make it clear that the Ld. AO shall not enforce demand created, in the order passed in pursuant to directions of the Ld.CIT u/s 263 of the I.T.Act, 1961, till such time he passes fresh assessment order in pursuant to directions of the ITAT.

5. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on this 15/10/2019

**Sd/-**  
**( RAM LAL NEGI )**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15 /10/2019  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.

4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**