

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

**ITA Nos. 1841 & 1842/Mum/2019**  
**(Assessment Years: 2011-12 & 2012-13)**

DCIT, Circle-4(2)(2) Room No.640, 6 <sup>th</sup> Floor Aaykar Bhawan M.K.Road Mumbai-400 020	Vs.	JBF Industries Ltd. 8 <sup>th</sup> Floor Express Towers Nariman Point Mumbai-400 021
		<b>PAN/GIR No.AAACJ2575J</b>
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri K. Shivaram, Sr.counsel-AR
Revenue by	Shri Chaudhari Arun Kumar Singh, DR
<b>Date of Hearing</b>	<b>16/03/2020</b>
<b>Date of Pronouncement</b>	<b>20/05/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA, Accountant Member:**

These two appeals filed by the revenue are directed against separate, but identical orders of the Ld. Commissioner of Income tax (Appeals)-9, Mumbai, both dated 28/01/2019 for the Asst.Years 2011-12 and 2012-13. Since, facts are identical and issues are common for the sake of convenience, these appeals were heard together and are disposed-off by this consolidated order.

2. The revenue has more or less raised common grounds of appeal for both Asst.Years. Therefore, for the sake of brevity, grounds of appeal filed for AY 2011-12 are reproduced as under:-

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the claim of business loss on currency swap."*
2. *"The Ld.CIT(A) has erred in not considering the following judgments*
  - (a) *The decision of Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v. Commissioner of Income-tax [2000] 109 Taxman 66 (SC)*
  - (b) *The decision of Hon'ble Bombay High Court in the case of Commissioner of Income-tax, Nagpur z'.Ballarpur Industries Ltd.\* [2017] 85 taxmann.com 10 (Bombay),*
  - (c) *The decision of Hon'ble IT AT, Hyderabad in the case of Gati Ltd.??.* *Assistant Commissioner of Income-tax, Circle- 2 (2)**and has treated the order passed u/s 263 of the I.T.Act, 1961 as invalid and thereby the assessment order."*
3. *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

3. The brief facts of the case are that the assessee company is engaged in the business of manufacturing and trading of POY, Polyester chips and PTY. The assessee has filed its return of income for AY 2011-12 on 25/11/2011, declaring total income of Rs.149,25,68,140/-. The assessee has, subsequently filed revised return of income on 29/03/2013, declaring total income at Rs.142,58,31,400/-. The case was selected for scrutiny and draft assessment order u/s 144C(3) r.w.s. 143(3) of the I.T.Act, 1961 was passed on 19/03/2015, determining the total income of Rs.175,87,36,460/-. The assessee had filed objections against the draft assessment order before DRP-1, Mumbai. The final assessment order has been passed on 29/01/2016 u/s 143(3) r.w.s. 144C of the I.T.Act, 1961 and determined total income at Rs.173,93,44,920/-. Subsequently, the PCIT-4, Mumbai, vide order u/s 263 of the I.T.Act, 1961, dated 24/03/2017 has invoked revisional jurisdiction u/s 263 of the I.T.Act, 1961 and has set aside the assessment order with certain directions. The assessee has challenged the order passed by the Ld.PCIT u/s 263 of the Act, before the ITAT. The ITAT, Mumbai 'F' Bench in ITA

No.701/Mum/2018, vide order dated 16/11/2018 has set aside 263 order passed by the Ld.PCIT and restored the assessment order passed by the Ld. AO. Meanwhile, the Ld. AO has passed order u/s 143(3) r.w.s. 263 of the I.T.Act, 1961, dated 17/09/2018 and determined total income at Rs.258,02,80,760/-. The assessee challenged the order before the first appellate authority. The Ld.CIT(A) for the detailed reasons recorded in his appellate order dated 28/01/2019 has deleted additions made by the Ld. AO on the basis of directions of the Ld.PCIT-4, Mumbai in pursuance of order passed u/s 263 of the I.T.Act, 1961, on the ground that once, the 263 order passed by the Ld.PCIT has been quashed, then the assessment order passed by the Ld. AO u/s 143(3) r.w.s. 263 of the I.T.Act, 1961, no longer survives. Aggrieved by the Ld.CIT(A) order, the revenue is in appeal before us.

4. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. At the time of hearing, the Ld. AR for the assessee, as well as the Ld. DR has fairly agreed that the appeal filed by the revenue is not maintainable, because the Ld.CIT(A) has deleted additions made by the Ld. AO, on the basis of 263 order passed by the Ld.PCIT, but the u/s 263 order passed by the Ld.PCIT has been set aside by the ITAT. Therefore, once, revisional order passed by the Ld.PCIT has been set aside by the ITAT, then any consequential order passed by the Ld. AO u/s 143(3) r.w.s. 263 of the I.T.Act, 1961, no longer survives. We find that the ITAT 'F' bench, Mumbai in ITA No. 701/Mum/2018, vide order 16/11/2018 has set aside order passed by the Ld.PCIT u/s 263 of the I.T.Act, 1961. Further, once order passed by the Ld.PCIT u/s 263 of the Act, has been set aside, then

the assessment order passed by the Ld. AO pursuant to directions of the Ld.PCIT, u/s 143(3) r.w.s. 263 of the I.T.Act, 1961, no longer survives. The Ld.CIT(A) after considering relevant facts has rightly deleted additions made by the Ld. AO. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismiss appeal filed by the revenue.

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

**ITA No.1842/Mum/2019**

6. The facts and issues involved in this appeal filed by the revenue are identical to the facts and issues, which we had considered in ITA No.1841/Mum/2019 for AY 2011-12. The reasons given by us in preceding paragraph shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons given in ITA No.1841/Mum/2019, we dismiss appeal filed by the revenue for AY 2012-13

7. In the result, appeal filed by the revenue for AY 2011-12 & 2012-13 are dismissed.

Order pronounced in the open court on this 20/05/2020

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

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

Mumbai; Dated: 20/05/2020

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