

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B' BENCH, KOLKATA
[Virtual Court Hearing]**

**Before Shri P.M. Jagtap, Vice-President &
Shri A.T. Varkey, J.M.**

**I.T.A. No. 1866/KOL/2019
Assessment Year: 2007-2008**

Assistant Commissioner of Income Tax,.....Appellant
Circle-2(1), Kolkata,
Room No. 23, 7th Floor, Aayakar Bhawan,
P-7, Chowringhee Square, 4th Floor,
Kolkata-700069

-Vs.-

M/s. Bata India Limited,.....Respondent
6A, S.N. Banerjee Road,
Kolkata-700013
[PAN: AABCB1043Q]

Appearances by:

Shri Ranu Biswas, Addl. CIT, D.R., for the Appellant
Shri Sujoy Sen, A.R., for the Respondent

Date of concluding the hearing : October 14, 2020

Date of pronouncing the order : October 29, 2020

O R D E R

Per Shri P.M. Jagtap, Vice-President:-

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-10, Kolkata dated 02.04.2019 on the following grounds:-

- (1) *Whether in the facts and circumstances of the case and in law the Id. CIT(A) was justified in deleting the addition of Rs.4,49,94,844/- on account of 'excess discount disallowed' by quashing the order u/s 263/154/263/143(4) without going through merit of the case?*
- (2) *Whether in the facts and circumstances of the case and in law the Id. CIT(A) was justified in quashing the consequential order u/s 263/154/263/143(3) passed by the AO pursuant to the direction given by the Id. Pr. CIT in its order u/s 263 of the I.T. Act?*
- (3) *Whether in the facts and circumstances of the case and in law the Id. CIT(A) was justified in quashing the*

consequential order u/s 263/154/263/143(3) without appreciating the fact that order passed by the Hon'ble ITAT, Kolkata against the order u/s 263 of the I.T. Act is under challenge before the Hon'ble High Court, Kolkata?

2. At the outset, it is noted that there is a delay of 30 days on the part of the Revenue in filing this appeal before the Tribunal. In this regard, an application filed by the Revenue seeking condonation of the said delay is placed on record and keeping in view the reasons given therein, we are satisfied that there was a sufficient cause for the delay of 30 days on the part of the Revenue in filing this appeal before the Tribunal. Even the Id. Ld. Counsel for the assessee has not raised any objection in this regard. The delay of 30 days on the part of the Revenue in filing this appeal before the Tribunal is accordingly condoned and the appeal of the Revenue is being disposed of on merit.

3. The assessee in the present case is a Company, which is engaged in the business of manufacturing and sales of footwear and accessories. The return of income for the year under consideration was filed by it on 31.10.2007 declaring total income of Rs.28,26,30,219/-. In the assessment originally completed under section 143(3) of the Act vide an order dated 28.12.2010, the total income of the assessee was determined by the Assessing Officer at Rs.66,48,81,000/-. The said order was subsequently set aside by the concerned Id. CIT vide an order dated 28.03.2014 passed under section 263 and the fresh assessment was made by the Assessing Officer under section 143(3) read with section 263 vide an order dated 28.03.2016. Thereafter the said order was rectified by the Assessing Officer vide an order dated 15.07.2014 passed under section 154/143(3)/263 of the Act determining the income of the assessee from long-term capital gain at Rs.47,76,79,800/-. Thereafter another order was passed by the concerned Id. Principal CIT under section 263 on 28.03.2016 with a direction to the Assessing Officer to make a fresh assessment on the limited issue of capital gain. Accordingly a fresh assessment was passed by the Assessing Officer under section

263/154/263/143(3) of the Act vide an order dated 27.12.2016 determining the long-term capital gain chargeable to tax in the hands of the assessee at Rs.52,26,74,400/-.

4. Against the order passed by the Assessing Officer under section 263/154/263/143(3) of the Act, an appeal was preferred by the assessee before the Id. CIT(Appeals). Meanwhile the appeal filed by the assessee against the second order passed under section 263 on 28.03.2016 came to be disposed of by the Tribunal whereby the order dated 28.03.2016 passed by the Id. CIT under section 263 was quashed by the Tribunal vide order dated 03.05.2017 passed in ITA No.753/KOL/2016. Taking note of the said order of the Tribunal dated 03.05.2017, the Id. CIT(Appeals) held vide his appellate order dated 02.04.2017 that the entire proceedings emanating from the order of the Id. Principal CIT dated 28.03.2016 passed under section 263 including the consequential order passed by the Assessing Officer dated 27.12.2016 as well as the appeal filed by the assessee against the said order have become infructuous having no legs to stand. Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, both the orders passed by the Id. Principal CIT under section 263 in the present case on 15.03.2013 and 28.03.2016 have already been quashed by the Tribunal vide its common order dated 03.05.2017 (supra) and even the assessment order passed by the Assessing Officer under section 143(3) read with section 263 on 28.03.2015 has been cancelled by the Tribunal holding the same as infructuous vide an order dated 12.10.2018 passed in ITA No. 2542/KOL/2017. Although the Id. D.R. has submitted that the order of the Tribunal dated 03.05.2017 (supra) quashing both the orders passed by the Id. Principal CIT under section 263 has been challenged by the

Revenue in an appeal filed before the Hon'ble Calcutta High Court, he has not been able to bring anything on record to show that the said order of the Tribunal dated 03.05.2017 has been reversed or disturbed by the Hon'ble Jurisdictional High Court. The position at this point of time thus is that the order passed by the Id. Principal CIT dated 28.03.2016 under section 263 stands cancelled by the Tribunal and consequently the proceedings emanating from the said order including the consequential order dated 27.12.2016 passed by the Assessing Officer as well as the appeals arising from the said order of the Assessing Officer have become infructuous as rightly held by the Id. CIT(Appeals) vide his impugned order. We, therefore, find no infirmity in the impugned order of the Id. CIT(Appeals) and upholding the same, we dismiss the appeal filed by the Revenue.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on October 29, 2020.

**Sd/-
(A.T. Varkey)
Judicial Member**

**Sd/-
(P.M. Jagtap)
Vice-President**

Kolkata, the 29th day of October, 2020

- Copies to :*
- (1) ***Assistant Commissioner of Income Tax,
Circle-2(1), Kolkata,
Room No. 23, 7th Floor, Aayakar Bhawan,
P-7, Chowringhee Square, 4th Floor, Kolkata-700069***
 - (2) ***M/s. Bata India Limited,
6A, S.N. Banerjee Road, Kolkata-700013***
 - (3) *Commissioner of Income Tax (Appeals)-10, Kolkata;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

*By order
Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.