

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

**BEFORE SHRI O. P. KANT, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 6407/DEL/2017 (A.Y 2011-12)  
(THROUGH VIDEO CONFERENCING)**

Addl. CIT Special Range-3 New Delhi  <b>(APPELLANT)</b>	Vs	Delhi Airport Metro Express 2 <sup>nd</sup> Floor, C-Wing, Maharaja Ranjit Singh Marg, Reliance Centre, New Delhi AAACD8459R  <b>(RESPONDENT)</b>
---	----	--

<b>Appellant by</b>	<b>Ms. Nidhi Srivastava, CIT, DR</b>
<b>Respondent by</b>	<b>None</b>

<b>Date of Hearing</b>	<b>16.03.2021</b>
<b>Date of Pronouncement</b>	<b>16.03.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against order dated 14/07/2017 passed by CIT (A)-3, Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

*“1. The Ld.CIT(A) erred in law and on the facts of the case in deleting the addition of Rs. 1,02,81,12,336/- after allowing amortization of expenses on the cost of Airport Metro Express Project at Rs. 9,48,62,111/- made by the A.O on account of disallowance of depreciation.”*

3. The assessee company is engaged in the business of Metro Rail Operation. The assessee company e-filed its return of income on 28/09/2011 declaring loss of Rs.127,65,56,278/- which was subsequently revised on 28/03/2013 declaring loss of Rs.131,11,92,502/-. The assessment u/s 143(3) was completed at return loss vide assessment order dated 31/12/2013. The assessee company was served with a notice by Principal Commissioner of Income Tax for initiation of revision proceedings u/s 263 of the Income Tax Act, 1961 to revise the assessment order passed by the Assessing Officer u/s 143(3). Order u/s 263 dated 30/03/2016 was passed by Principal Commissioner of Income Tax to set aside the order passed by the Assessing Officer u/s 143(3) and directed the Assessing Officer to pass fresh assessment order after affording an opportunity of being heard to the assessee. The Assessing Officer passed order u/s 263 read with Section 143(3) dated 26/12/2016 at an assessed loss of Rs. 28,30,80,170/- after disallowing claim of depreciation amounting to Rs.112,29,74,447/- and instead amortized the entire expenditure incurred by the assessee on acquisition of assets of Airport Metro Express Project evenly over the period of concessionaire Agreement of 30 years. In the meanwhile, the Tribunal has quashed/set aside the order of the Principal Commissioner of Income Tax passed u/s 263 for Assessment Year 2011-12 vide order dated 12/01/2017.

4. Being aggrieved by the assessment order dated 26/12/2016, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) erred in law in deleting the addition of Rs.102,81,12,336/- after allowing amortization of expenses on the cost of Airport Metro Express Project at Rs.9,48,62,111/- made by the Assessing Officer on account of disallowance of depreciation. Thus, the Ld. DR relied upon the assessment order.

6. None appeared on behalf of the assessee at the time of hearing despite giving notice, hence we are taking the submissions made by the assessee before the CIT(A) as submissions before us.

7. We have heard the Ld. DR and perused the material available on record. It is pertinent to note that the Tribunal has quashed the order of the Principal Commissioner of Income Tax passed u/s 263 of the Act vide order dated 12/1/2017 in ITA No. 2183/Del/2016 and thus, the order u/s 143(3) dated 26/12/2016 does not survive as this assessment order is the offshoot of order u/s 263 was quashed. Hence, the CIT(A) has rightly allowed the appeal of the assessee. There is not merit in Revenue's appeal, hence, the appeal of the Revenue is dismissed.

8. In result, the appeal of the Revenue is dismissed.

**Order pronounced in the Open Court in presence of Ld. DR on this 16<sup>th</sup> Day of March, 2021**

**Sd/-**

**(O. P. KANT)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated : 16 /03/2021

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

