

आयकर अपीलीय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Hon’ble Vice-President and Shri A.T. Varkey, Hon’ble Judicial Member]

I.T.A. No. 344/Kol/2018
Assessment Year: 2008-09

M/s. Prime Dealcom Pvt. Ltd. [PAN: AAACP 5048 G]	Vs.	ITO, Ward - 5(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	17.08.2021
Date of Pronouncement	19.08.2021
For the Appellant	Shri Sunil Surana, AR
For the Respondent	Shri T.P. Singh, CIT, DR

ORDER

Per Shri A.T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(A)-10, Kolkata dated 25.11.2017 for assessment year 2008-09.

2. At the outset the Ld. A.R. of the assessee Shri Sunil Surana submitted that the assessment order which is under challenge was framed by the AO pursuant to the revisional order passed by Ld. CIT, Kolkata-II u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) on 25.03.2014. According to the Ld. AR, the said order of the Ld. CIT dated 25.03.2014 has been set aside by the Tribunal in ITA No. 353/Kol/2015 by order dated 18.05.2018. Therefore, the AO’s order passed pursuant to the Ld. CIT order dated 25.03.2014 need to be cancelled and consequently appeal to be allowed.

3. Per contra, the Ld. D.R could not controvert this submission of the Ld. AR.

4. We have heard both the parties and perused the records. We note that the assessee had challenged the Ld. CIT-II’s order passed u/s 263 of the Act dated 25.03.2014 before this Tribunal; and the Tribunal vide an order dated 18.05.2018 (supra) was pleased to set aside the order of the Ld. CIT-II dated 25.03.2014 and restored the same back in the file of

the Ld. CIT-II for fresh adjudication u/s 263 of the Act. The relevant portion of the order passed by the Tribunal in ITA No. 353/Kol/2015 dated 18.05.2018 is as under:

“6. Heard both the parties, perused the record and the material as available before on us. We find force in the submissions of the ld.AR that the amendment to provision of section 68 of the Act in question was inserted through the Finance Act, 2012, which came into force w.e.f. 1-4-2012. Admittedly, the impugned order of the CIT was passed u/s. 263 of the Act relating to A.Y 2008-09. We find that the CIT under 263 proceedings by invoking the amended provisions of section 68 of the Act directed the AO to examine the genuineness of source of capital, change of directorship and source of realization from liquidation of assets as shown in the balance sheet and to pass a speaking order by providing sufficient opportunity to assessee. The contention of ld. AR before us is that the amended provisions of section 68 of the Act cannot be made applicable to the A.Y under consideration as the amendments of said section came into force by the Finance Act, 2012, w.e.f 1-4-2012. We further find that there was no representation on behalf of assessee before the CIT under 263 proceedings. Therefore, taking into consideration the facts and circumstances of the case, issues involved in the appeal, submissions of the ld. AR and in the interest of natural justice, we deem it fit and proper to remand the matter to the file of CIT to consider the same and to pass a fresh order as per law, after giving the assessee adequate opportunity of hearing to assessee. Grounds raised by the assessee are allowed for statistical purpose.”

5. From a perusal of the aforesaid order, it is clear that the Tribunal vide order dated 18.05.2018 has set aside the CIT-II order dated 25.03.2014 for A.Y. 2008-09. We note from the perusal of the para 2 of the assessment order framed by the AO dated 19.03.2015 that the AO had given effect to the order of the CIT-II dated 25.03.2014 passed u/s 263 of the Act. Therefore, since the AO's re-assessment order dated 19.03.2015 is emanating from the order of the CIT-II order dated 25.03.2014 which has been set aside by the aforesaid order of this Tribunal dated 18.05.2018, the foundation on which the AO has framed the re-assessment order dated 19.03.2015 should consequently fall. Therefore, we set aside the order of the Ld. CIT(A) and cancel the re-assessment order of the AO dated 19.03.2015.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 19th August, 2021.

Sd/-

(P.M. Jagtap)
Vice-President

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 19th August, 2021

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Prime Dealcom Pvt. Ltd., 255, Canal Street, Shreebhumi Brijdham Housing Complex, Kolkata – 700 048.
2. Respondent – ITO, Ward – 5(2), Kolkata
3. The CIT(A)- Kolkata (sent through e-mail)
4. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
