

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 3263/Del/2018  
(for Assessment Year : 2006-07)

M/s. Prosperous Buildcon Pvt. Ltd., 306-308, Square One, C-2, District Centre, Saket New Delhi-110 017  PAN No. AADCP 4389 H <b>(APPELLANT)</b>	Vs.	ITO Ward-20(2), New Delhi    <b>(RESPONDENT)</b>
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Assessee by	Shri Saurav Sood, C.A.
Revenue by	Shri Sanjay Tripathi, Sr. D.R.

Date of hearing:	25.01.2022
Date of Pronouncement:	25.01.2022

**ORDER**

**PER AMIT SHUKLA, JM :**

This appeal filed by the assessee is directed against the order dated 21.02.2018 passed by the Commissioner of Income Tax (Appeals)-7, New Delhi relating to Assessment Year 2006-07.

2. Revenue has raised the following grounds of appeals:

**“Ground No. 1:**

*The Learned Commissioner of Income Tax, Appeal-7, New Delhi (hereinafter referred to as "CIT(A) has erred in law and in the fact in passing the order dated 21<sup>st</sup> February 2018 under section 250(6) of the Income Tax Act,1961 (hereinafter referred to as 'The Act').*

**Ground No. 2:**

*The Ld. CIT(A) has erred in rejecting the condonation of delay in filing Appeal by the Appellant merely on arbitrary basis. There was an inadvertent delay of 82 days. The rejection of the same was made at back of appellant without giving proper reasonable opportunity.*

**Ground No. 3:**

*The Ld. CIT(A) has erred in not appreciating the decision passed by Hon'ble ITAT, New Delhi wherein order passed u/s 263 of the Act, in case of appellant only has been quashed. Accordingly, the assessment order passed u/s 143(3) pursuant to order u/s 263 is not sustainable and void ab initio. The Hon'ble ITAT has pronounced such order on 01.11.2017 which was provided to Ld. CIT(A) during the proceedings, however he failed to consider the same.*

**Ground No. 4:**

*The appellant craves leave to add, amend, alter or omit any of the above grounds of appeal as the circumstances may warrant.”*

3. Before us, at the outset, Learned AR submitted that the present appeal is consequent out of the directions given by Ld. PCIT-7, New Delhi, u/s 263 of the Act for A.Y. 2006-07. He submitted that consequent to the directions u/s 263 of PCIT, AO has passed the impugned order u/s 143(3)/263 vide order dated 21.02.2018. He submitted that against the order passed by PCIT

u/s 263, assessee had carried the matter before the Tribunal and the Hon'ble Tribunal vide order dated 01.11.2017 in ITA No.2648/Del/2016 had quashed the order passed by PCIT u/s 263 of the Act. He placed on the record the copy of the aforesaid order. In such circumstances, he submitted that the present appeal be decided accordingly.

4. Learned DR did not controvert the submissions made by Learned AR but however submitted that against the order passed by Hon'ble Tribunal, whereby Hon'ble ITAT has quashed the order of PCIT passed u/s 263 of the Act, Revenue has preferred appeal before the Hon'ble High Court and the matter is yet to be decided. He therefore, submitted that till the disposal of the matter by Hon'ble High Court, the disposal of present appeal be kept in abeyance.

5. We have heard the rival submission and perused the material on record. It is an undisputed fact that the present appeal is a consequential to the order passed by AO u/s 143(3) read with section 263 of the Act. It is also a fact that the Coordinate Bench of Tribunal vide order dated 01.11.2017 in ITA No. 2648/Del/2016 has held that PCIT had no jurisdiction or power to invoke provision of section 263 of the Act on the facts and circumstances of the case and accordingly it quashed the order passed u/s 263 of the Act. Since the order passed u/s 263 of the Act itself has been quashed, the present appeal arising out

of the consequential order passed by AO u/s 143(3) r.w.s. 263 of the Act becomes infructuous. We accordingly dismiss the appeal being infructuous.

**6. In the result, appeal of the assessee is dismissed.**

**Order pronounced in the open court on 25.01.2022, immediately after conclusion of the hearing of the matter in virtual mode.**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

Date:- 25.01.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI