

IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH, MUMBAI

**BEFORE SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.3682/Mum/2019
(Assessment Year :2012-13)**

M/s. Cox & Kings Limited Turner Morrison Building 16, Bank Street Fort, Mumbai- 400 001	Vs.	Pr. Commissioner of Income Tax Range-1 Mumbai
PAN/GIR No.AAACC1921B		
(Appellant)	..	(Respondent)

Assessee by	Shri None
Revenue by	Shri Rakesh Garg
Date of Hearing	13/04/2022
Date of Pronouncement	29/ 04/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3682/Mum/2019 for A.Y.2012-13 preferred by the order against the revision order of the Id. Pr. Commissioner of Income Tax (Appeals)-1, Mumbai u/s.263 of the Act dated 29/03/2019 for A.Y.2012-13.

2. The assessee has raised the following grounds:-

“Based on the facts and circumstances of the case and in law, Cox & Kings Limited ('CKL' or 'Appellant'), respectfully craves leave to prefer an appeal against the order dated 29 March 2019 passed by the Hon'ble Pr. Commissioner of Income Tax - 1 ('PCIT) (received by the Appellant on 2

April 2019) under Section 263 of the Income-tax Act, 1961 ('Act') on the following grounds which are separate and without prejudice to each other:

On the facts and in the circumstances of the case and in law, the Hon'ble PCIT has:

1. *erred in initiating revision proceedings under Section 263 of the Act and setting aside the order passed by the learned Assessing Officer ('learned AO') under Section 143(3) read with Section 144C(3) of the Act, without appreciating that proceedings under Section 263 cannot be invoked unless the conjunctive conditions that assessment order passed is erroneous in law as well as prejudicial to the interests of the revenue, are satisfied;*

2. *erred in initiating revision proceedings under Section 263 of the Act, without appreciating that the assessment order passed by the learned AO is after making proper enquiries and analysis as regards the year of taxability of CRS commission income and thus not erroneous in law;*

3. *erred in initiating revision proceedings under Section 263 of the Act disregarding the fact that the assessment order is not prejudicial to the interest of the Revenue as the Revenue has not suffered any loss of income, since the corporate tax rates in AY 2012-13 and AY 2013-14 were the same;*

4. *erred in initiating revision proceedings under Section 263 of the Act, based on mere difference of opinion between the learned AO and Hon'ble CIT, without appreciating that this cannot be a ground for initiation of revision proceedings;*

5. *erred in passing the revisionary order under Section 263 of the Act since the order passed by the learned AO under Section 144C(13) read with Section 143(3) of the Act for the subject AY is not an order exclusively passed by him, but passed by him under Section 144C(13) of the Act in conformity with the directions issued by the Hon'ble Dispute Resolution Panel under Section 144C(5) of the Act, and hence, cannot be revised under Section 263 of the Act; and*

6. *erred in holding that the Appellant has without any cogent reasoning deferred / postponed the booking of CRS commission income without appreciating the fact that the right to receive such income was quantified and crystallized only after the Appellant entered into an agreement with Interglobe Technology Quotient Pvt Ltd ('Interglobe') on 25 May 2012 post finalisation of accounts of the Appellant on 15 May 2012.*

Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the learned AO to decide this appeal according to law.

3. None appeared on behalf of the assessee. At the outset, we find that assessee's case has been referred to Hon'ble National Company Law Tribunal (NCLT) for Insolvency Resolution Process and an Interim Resolution Professional (IRP) has been appointed in the assessee company. We find that the Registry had issued notice to Id. IRP and the same is duly served on him. But we find that the Id. IRP had not impleaded himself in the instant case before us by filing a revised Form No.36. The Form No.36 available in our record is the one signed by the erstwhile Director of the assessee company. As per Section 14 of the Insolvency and Bankruptcy Code, 2016, no proceedings shall remain pending with any Court or Tribunal, once the Insolvency Resolution Proceedings had been initiated on a Corporate Debtor. It is not in dispute that the assessee company is a Corporate Debtor.

4. In view of the above, we deem it fit and appropriate to dismiss the appeal of the assessee as not maintainable with a liberty given to Id. IRP to prefer Miscellaneous Application, if so desired, after the completion of Insolvency Resolution Process, in which event, this appeal shall be restored.

5. In the result, appeal of the assessee is dismissed as not maintainable.

Order pronounced on 29/04 /2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 29/ 04 /2022
KARUNA, 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.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai