

Hindustan Development Finance Corporation Ltd.

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "H", MUMBAI

BEFORE SHRI ABY T. VARKEY (JUDICIAL MEMBER)

AND

SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.2415/Mum/2021

(Assessment year : 2008-09)

ACIT (1)(1) 579, Aayakar Bhavan, M.K. Road Mumbai-400 020	vs	Hindustan Development Finance Corporation Ltd, 169, Backbay Reclamation, Roman House, H T Parekh Marg, Churchgate, Mumbai-400 020 PAN : AAACH0997E
APPELLANT		RESPONDENT

Assessee represented by	Shri Prakash Chougule
Department represented by	Shri Dharm Veer Singh, (CIT – DR)

Date of hearing	04/05/2022
Date of pronouncement	20/05/2022

O R D E R

Per: Aby T. Varkey (JM):

This is an appeal preferred by the Revenue, against the order of Ld.CIT(A)-2, Mumbai dated 11/10/2019 for assessment year 2008-09.

2. The sole ground of appeal of the Revenue is against the action of the Ld.CIT(Appeals) -2 dated 11.10.2019 for A.Y.2008-09 where by quashing the re-assessment order dated 21.03.2014 under section 143(3) read with section 263 of the Income-tax Act, 1962 (hereinafter the Act).

3. The relevant facts are that the assessee company is engaged in the business of housing finance. Assessment under section 143(3) of the Act was completed on 10/12/2010 assessing total income at Rs.3,108.00 crores. Thereafter, Learned Commissioner of Income-tax-1, Mumbai (hereinafter Ld. CIT-1) on in Feb, 2013 invoked his revisional jurisdiction under section 263 of the Act and a show cause notice was accordingly issued to the assessee; and after hearing the assessee, the Ld.CIT was pleased hold that the assessment order passed by the Assessing Officer under section 143(3) of the Act dated 12/10/2010 was erroneous insofar as prejudicial to the interest of the revenue and accordingly, the assessment order was set aside on 22.03.2013 with a direction to the Assessing Officer to allow the correct deduction under section 36(1)(viii) of the Act after examining the issues raised by him thoroughly and taking into consideration the facts that interest received by the assessee under the scheme of securitization of debts is within the scope of long term period involved in earning the said interest. Aggrieved, by the action of the Ld. CIT dated 22.03.2013, the assessee preferred an appeal before this Tribunal wherein the Tribunal was pleased to set aside the revisional order of the Ld. CIT-1 dated 22/03/2013 passed under section 263 of the Act vide order dated 12/06/2019(ITA No.3928/Mum/2013).

4. Meanwhile, the Assessing Officer had already given effect to the Ld. Commissioner's order (CIT-1, Mumbai revisional order dated 22/03/2013) vide re-assessment order dated 21/03/2014. The giving effect re-assessment order of the Assessing Officer dated 21/03/2014 was challenged by the assessee before the Ld.CIT(A), who has passed the impugned order dated 11/10/2019 by noting that the Tribunal had already set aside the Ld. Commissioner's revisional order passed under section 263 of the Act by holding as under: -

"5. I have considered the AO's order, submissions made by the appellant and the order of ITAT, Mumbai dated 12.06.2019 in ITA No.3928/Mum/2013 for A.Y. 2008-09. In the said order, it has been held by the Hon'ble ITAT as under :

"We thus hold that the action of Commissioner in invoking section 263 of the Act in respect of deduction u/s.36(1)(viii) of the Act on interest income from PTC-B investment securitization and interest income from securitized debts was without jurisdiction as the assessment order on this issue had already been merged with the order of CIT(A) dated 08.02.2012, much therefore the issue of show cause notice by the Commissioner on 25/02/2013 to assume jurisdiction u/s.263 of the Act. Therefore, the order of Commissioner dated 22.03.2013 is liable to be set aside. We hold so."

The order of the CIT u/s.263 dated 22.03.2013 has been set aside. Since the order u/s.263 dated 22.03.2013, on the basis of which order u/s. 143(3) rws 263 has been passed by the AO on 21.03.2014, has been set aside, the said assessment order cannot survive. Accordingly, order u/s. 143(3) rws 263 dated 21.03.2014 is hereby quashed. Since the assessment order dated 21.03.2014 does not survive, the grounds taken by the appellant are not adjudicated as the said issues have become academic in nature."

5. We note that since the Assessing Officer's re-assessment order dated 21/03/2014 was pursuant to the Ld. Commissioner's revisional order dated

22/03/2013 passed under section 263 of the Act, which in turn, has been set aside by this Tribunal vide order dated 12/06/2019, the very edifice of the AO's re-assessment itself goes and therefore AO's action of framing the re-assessment for A.Y.2008-09 itself is 'null' in the eyes of law. Therefore, the Ld.CIT(A) has rightly quashed the re-assessment order of AO dated 21/03/2014. We note that the impugned action of the Ld.CIT(A) is squarely covered by the legal maxim "*sublato fundamento credit/opus*" meaning, in case a foundation is removed, the super structure falls. In *Badrinath vs Tamilnadu* AIR 2000 SC 3243, the Hon'ble Supreme Court has held that once the basis of proceeding is gone, all consequential orders and acts would fall on the ground automatically, which principle is applicable to judicial and quasi judicial proceedings. On the same ratio, the impugned action of the Ld.CIT(A) is confirmed and the Revenue's appeal is dismissed.

6. In the result, appeal is dismissed.

Order pronounced in the open court on 20th May, 2022.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER
Mumbai, Dt : 20th May, 2022
Pavanan

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai