

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.4629/Del./2019
(ASSESSMENT YEAR : 2006-07)**

Dwarkadhis Buildwell Pvt. Ltd.,
C/o Shri N.K. Jain, Advocate,
Naya Bazar,
Bhiwani – 127 021 (Haryana).

vs. DCIT, Central Circle,
Karnal.

(PAN : AACCD1951E)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
REVENUE BY : Shri Sumit Kumar Verma, Sr. DR

Date of Hearing : 20.09.2022
Date of Order : 22.09.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of the Id.
CIT (Appeals)-3, Gurgaon dated 20.03.2019 for the assessment year
2006-07.

2. Grounds of appeal taken by the assessee read as under :-

“1. In the facts of the case Id. CIT (A) erred in confirming the addition of RS.7,10,00,000/- as share application money taken from various companies.

2. That the ld. CIT (A) has gone wrong in confirming the addition of Rs.15,97,500/- on account of alleged commission @ 2.25% of total share application money of Rs.7,10,00,000/-.

3. That the Ld. CIT (A) has gone wrong in adjudicating the appeal even when the main issue regarding legality of order u/s 263 passed by the CIT, Hisar which goes to root of the cause was still pending before the Hon'ble ITAT, Delhi. Without such order of the ITAT, the CIT (A) was not justified in law deciding the appeal under reference even recording a finding that the order u/s 263 can't be adjudicated by the appellate authority under reference. The order is therefore liable to be cancelled.

4. That the Ld. CIT (A) has erred in law in dismissing the ground number 3 relating to charging of interest u/s 234B of the Act, 1961. For which there was no specific order by AA in his assessment order dt. 31.03.2015.

3. At the outset in this case, ld. Counsel of the assessee submitted that the ld. CIT (A)'s order has been passed pursuant to an assessment order which was framed pursuant to direction of ld. CIT under section 263 of the Income-tax Act, 1961 (for short 'the Act'). Ld. Counsel of the assessee stated that the said order of ld. CIT u/s 263(1) was adjudicated by the ITAT in ITA No.3097/Del/2014 for AY 2006-07 vide order dated 01.07.2019. In the said order, ITAT had held that order of ld. CIT passed u/s 263 of the Act was liable to be quashed and concluded as under :-

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“27.Therefore, in view of our discussion in the preceding paragraphs the order of the AO in the instant case cannot be held as erroneous. Since for invoking jurisdiction u/s. 263 the twin conditions i.e. order must be erroneous and the order must be prejudicial to the interest of revenue must be

fulfilled and since, we have held that the order is not erroneous, therefore, the twin conditions are not satisfied. Therefore, the Ld. CIT in our opinion could not have invoked jurisdiction u/s. 263 of the IT Act. We, therefore, Page | 28 set aside the order of the CIT passed u/s. 263 of the IT Act and the grounds raised by the assessee are allowed.”

4. Ld. DR for the Revenue did not dispute this proposition that the assessment order in the present case is pursuant to the order passed u/s 263 of the Act which was quashed by the ITAT.

5. Hence, in the light of the fact that this appeal is arising out of section 263 revisionary order which has been quashed by the ITAT, the same cannot survive. Accordingly, we hold that assessee's appeal is liable to be dismissed as infructuous.

6. In the result, the appeal of the assessee is dismissed as infructuous.

Order pronounced in the open court on this day 22nd of September, 2022.

**Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated the 22nd day of September, 2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-3, Gurgaon.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**