

**IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1295/Mum/2022  
(Assessment Year: 2013-14)

Jt. CIT (OSD), Central Circle-1(4), Mumbai	Vs.	M/s. Grasim Industries Limited (Successor to Aditya Birla Nuvo Ltd.) A-Wing, 2 <sup>nd</sup> Floor, Aditya Birla Centre, S. K. Ahire Marg, Worli, Mumbai-400 030
PAN/GIR No. AAACG 4464 B		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Ronak G. Doshi
<b>Respondent by</b>	:	Shri Kailash Kanojia

<b>Date of Hearing</b>	:	22.08.2022
<b>Date of Pronouncement</b>	:	17.11.2022

**ORDER**

**Per Kavitha Rajagopal, J. M.:**

This appeal has been filed by the Revenue as against the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short)-47, Mumbai, passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2013-14.

2. The Revenue has challenged the appeal on the ground of quashing of the order passed u/s.263 of the Act by the Id. CIT(A) by relying on the decision of the co-ordinate bench in the assessee’s case for A.Y. 2013-14 in ITA No. 1964 of 2019. The Revenue has also challenged the order of the Id. CIT(A) which has relied on the decision of the co-

ordinate bench, pertaining to the transaction which is not a transfer within the meaning of provisions of section 47 of the Act, wherein the impugned transaction does not satisfy the mandatory condition of the charging provisions of section 47 of the Act.

3. The brief facts are that the assessee company M/s. Aditya Birla Housing Finance Limited (ABHFL) got amalgamated with Grasim Industries Ltd. w.e.f. 01.07.2017, filed its return of income dated 28.11.2013, declaring total income at Rs.302,54,18,801/-, after claiming deduction under Chapter VIA of the Act, amounting to Rs.109,94,47,513/-. The assessee company filed its revised return of income dated 30.03.2015, declaring total income of Rs.283,15,81,630/- after claiming deduction under Chapter 6A of the Act, amounting to Rs.109,94,47,573/-. The assessee's case was selected for scrutiny and assessment order u/s.143(3) r.w.s 144C(3) of the Act dated 09.03.2017 was passed, determining the total income at Rs.366,01,24,600/- under the normal provisions of the Act as against the return income of Rs.283,15,81,630/-. It is observed that the A.O. has allowed long term capital loss (LTCL), amounting to Rs.267,17,80,899/- for set off in subsequent years. It is observed that the Id. Principal Commissioner of Income Tax ('Id. PCIT' for short) in order to revise the order passed by the A.O. issued show cause notice dated 06.03.2019, on the ground that the assessment order was erroneous and prejudicial to the interest of the Revenue on the fact that the transaction of sale of shares of Aditya Birla Minacs Worldwide Ltd. (ABMWL) to ABNL IT & ITES Ltd was not looked into by the A.O. by not applying his mind and thereby allowing carry forward loss of Rs.267,07,81,942/-. It is observed that the Id. PCIT remanded the matter to the A.O. to verify the legal tenability of the Special Purpose Vehicle (SPV) created on 21.03.2013,

the source of evidences of SPV to acquire the shares of ABMWL, the valuation of shares of ABNL IT & ITES Limited and sale of shares on 14.03.2013 vide the ld. PCIT's order dated 27.03.2019. The ld. AO passed the assessment order u/s.143(3) r.w.s. 263 of the Act dated 21.12.2019, wherein the claim of LTCL on sale of equity shares of ABNL was disallowed. Parallely, the assessee company was in appeal before the co-ordinate bench in ITA No. 1964/Mum/2019 as against the order u/s. 263. The co-ordinate bench has quashed the order passed by the ld. Pr. CIT u/s.263 of the Act on the following grounds:

- (i) *Adequate enquiries were carried out by the A.O. in the original assessment proceedings*
- (ii) *A possible view has been taken by the A.O. on the issue of LTCL on the facts of the*
- (iii) *The revision proceedings u/s. 263 of the Act had been apparently triggered only based on borrowed satisfaction i.e., Audit Objection and not based on independent application of mind by the ld. PCIT.*

4. Following the above decision of the co-ordinate bench in quashing the order u/s. 263, the ld. CIT(A) directed the A.O. to allow the claim of the assessee, pertaining to LTCL of Rs.267,17,80,899/- for the impugned year and also to carry forward all these losses in subsequent years.

5. Aggrieved by the said order, the Revenue is in appeal before us.

6. The ld. Departmental Representative (ld. DR for short) for the Revenue contended that the order passed by the Tribunal quashing the order u/s. 263 was based on technical grounds and was not decided on merits of the case. The ld. DR further contended that the order of the ld. Pr. CIT was a speaking order and not based on borrowed satisfaction as

alleged by the assessee. The Id. DR further contended that the Id. Pr. CIT has very well applied his mind and had sufficient evidence on record to show that the assessment order is erroneous and prejudicial to the interest of the Revenue. The Id. AR further to this contended that the Revenue has got a substantial case on merits. The Id. AR, on the other hand, controverted the same and relied on the decision of the Id. CIT(A) in allowing the claim of the assessee as per the decision of the Tribunal.

7. Having heard both the rival submissions and perused the materials on record, it is observed that the Id. CIT(A) has allowed the claim of the assessee, pertaining to LTCL amounting to Rs.267,17,81,942/- which is to be carry forward for set off in subsequent years. It is pertinent to point out that the Id. CIT(A) has passed the impugned order by placing reliance on the decision of the co-ordinate bench in ITA No. 1964/Mum/2019, pertaining to A.Y. 2013-14, which has quashed the order passed u/s. 263 on the ground that the assessment order passed u/s.143(3) was made after elaborate enquiry conducted by the A.O. based on which a possible view was taken, wherein the A.O. has stated that there was no misrepresentation of the facts by the assessee. Further, the co-ordinate bench had held that the assessee has furnished all evidences and that section 263 proceeding was only based on borrowed satisfaction, i.e., audit objection and not on independent application of mind by the Id. Pr. CIT. The co-ordinate bench has also placed its reliance on the show cause notice issued by the Id. PCIT, wherein it has emphasized the fact that the language used by the Revenue audit party in it is audit objection was also the same as that which reflected in the show cause notice issued by Id. PCIT u/s.263 of the Act.

8. In the present case, the Id. CIT(A) has held that on quashing of the order passed u/s.263 by the Id. PCIT, the assessment order u/s.143(3) r.w.s. 263 fails to survive on its own. On this ground, the Id. CIT(A) has allowed the impugned claim of the assessee.

9. From the above observations, we are of the considered view that there is no infirmity in the order passed by the Id. CIT(A) in allowing the claim of the assessee as per the decision of the co-ordinate bench, quashing the order passed u/s. 263 and the subsequent assessment order u/s.143(3) r.w.s. 263 fails to have a legal sanctity. We thereby uphold the order of the Id. CIT(A).

10. In the result, the appeal filed by the Revenue is dismissed.

*Order pronounced in the open court on 17.11.2022.*

Sd/-

Sd/-

(Om Prakash Kant)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 17.11.2022

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai