

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 387/KOL/2022
Assessment Year: 2013-2014**

***Assistant Commissioner of Income Tax,.....Appellant
Circle-27(1), Haldia,
Aayakar Bhawan, Haldia,
Basudevpur, Khanjanchak,
Purba Medinipur-721602***

-Vs.-

***M/s. Progressive Endeavours Pvt. Ltd.,.....Respondent
City Centre, Debhog, Haldia,
Dist. Purba Medinipur-721657
[PAN: AACCP8437F]***

Appearances by:

*Shri G.H. Sema, CIT(DR), appeared on behalf of the
Revenue*

Shri K.M. Roy, C.A., appeared on behalf of the assessee

Date of concluding the hearing : January 16, 2023

Date of pronouncing the order : January 18, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 29.03.2022 passed for A.Y. 2013-14.

2. The Registry has pointed out that appeal is time barred by 37 days. Shri Tridip Kumar Munsi, ACIT, Circle-27(1), Haldia has filed an affidavit explaining the delay in filing the appeal. He has reproduced the chronology of events in his affidavit demonstrating as to how internal correspondence has made the appeal time barred. After going through the explanation of the Revenue, more particularly the affidavit of the ld. ACIT, we condone the delay and proceed to decide the appeal.

3. Ld. Counsel for the assessee, at the very outset, submitted that return of declaring total income of Rs.2,56,12,300/- was filed on 28.09.2013 and assessment order under section 143(3) was passed on 11.01.2016. Thereafter the ld. Commissioner took cognizance under section 263 of the Income Tax Act. He passed an order under section 263 on 26.03.2018 vide which he set aside the assessment order with a direction to frame the fresh assessment order after providing due opportunity of hearing to the assessee. The ld. Assessing Officer has passed the fresh assessment order on 28.12.2018 under section 143(3) read with section 263. Dissatisfied with this assessment order, the assessee carried the matter in appeal before the ld. CIT(Appeals) and by way of the present impugned order, ld. CIT(Appeals) has allowed the appeal of the assessee.

4. The ld. Counsel further submitted that the order of the ld. Commissioner passed under section 263 was challenged by the assessee in appeal before the Tribunal. The appeal of the assessee was allowed by the Tribunal vide its order dated

08.05.2019. This revisionary order was quashed and assessment order passed under section 143(3) earlier was revived. Therefore, after this order of the Tribunal, the whole proceeding in pursuance of 263 order dated 26.03.2018 becomes redundant. He placed on record copy of the Tribunal's order in ITA No.1074/KOL/2018.

5. The ld. D.R., on the other hand, was unable to controvert this fact.

6. On due consideration of the above, we are of the view that once the very foundation to pass the fresh assessment order in pursuance of 263 has extinguished by elimination of 263 order by the Tribunal in the above appeal of the assessee, therefore, the assessment order in itself dated 28.12.2018 is to be construed as nullity without jurisdiction. It deserves to be quashed. Anyway ld. CIT(Appeals) has deleted the disallowance made by the ld. Assessing Officer. Accordingly statistically we term this appeal as dismissed.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18th January, 2023.

Sd/-

(Girish Agrawal)

Accountant Member

Sd/-

(Rajpal Yadav)

Vice-President (KZ)

Kolkata, the 18th day of January, 2023

Copies to : (1) **Assistant Commissioner of Income Tax,
Circle-27(1), Haldia,
Aayakar Bhawan, Haldia,
Basudevpur, Khanjanchak,
Purba Medinipur-721602**

(2) **M/s. Progressive Endeavours Pvt. Ltd.,
City Centre, Debhog, Haldia,
Dist. Purba Medinipur-721657**

(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC),
Delhi;

(4) *Commissioner of Income Tax- ;*

(5) *The Departmental Representative*

(6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.