

आयकर अपीलीय अधिकरण  
कोलकाता 'ए' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
डॉ. मनीष बोर्ड, लेखा सदस्य  
के समक्ष

**Before  
SRI SANJAY GARG, JUDICIAL MEMBER  
&  
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 522/KOL/2022  
Assessment Year: 2012-13**

***DCIT, CC-2(2), Kolkata.....Appellant***

***Vs.***

***M/s. MBL Infrastructures Ltd.....Respondent  
[PAN: AACCM 0564 C]***

**Appearances by:**

*Sh. S.K. Tulsian, Adv., appeared on behalf of the Assessee.*

*Sh. Subhrajyoti Bhattacharjee, CIT(D/R), appeared on behalf of the Revenue.*

Date of concluding the hearing : January 24<sup>th</sup>, 2023

Date of pronouncing the order : February 06<sup>th</sup>, 2023

**ORDER**

**Per Manish Borad, Accountant Member:**

This appeal filed by the Revenue pertaining to the Assessment Year (in short "AY") 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-20, Kolkata [in

short ld. "CIT(A)"] dated 24.08.2021 arising out of the assessment order framed u/s 143(3)/263 of the Act dated 27.12.2017.

2. Registry has informed that the appeal is time barred by 316 days. Condonation application has been filed by the Revenue. Perusal of the same shows that the delay was on account of COVID-19 restrictions. We, therefore, in view of the judgment of The Hon'ble Supreme Court vide *Miscellaneous Application No. 21 of 2022* find that the limitation period in filing appeal between 15.03.2020 till 28.02.2022 has been excluded for calculating the limitation period. Since the period of limitation in the case of the Revenue falls during this period, the same deserves to be extended and we, therefore, condone the delay of 316 days and admit the appeal for adjudication.

3. The Revenue is in appeal before the Tribunal raising the following grounds:

*"1. That on the facts of the case and in law, Ld. CIT(A) has erred in allowing assessee's appeal on account of the Hon'ble ITAT setting aside PCIT's order u/s. 263 whereas the matter being subjudice as the Hon'ble ITAT decision has not attained finality.*

*2. That the department craves leave to add, Alter or modify any grounds of appeal in the course of appellate proceedings."*

4. At the outset, ld. Counsel for the assessee submitted that the instant appeal at the instance of the Revenue deserves to be dismissed since the impugned order before ld. CIT(A) i.e. the assessment order u/s 143(3) r.w.s. 263 of the Act is not operative because the revisionary proceedings u/s 263 of the Act were quashed by the Hon'ble Tribunal vide order dated 22.10.2020 and,

therefore, all the proceedings carried out after the passing of revisionary order dated 20.03.2017 have become infructuous.

5. On the other hand, ld. D/R failed to controvert the contention made by ld. Counsel for the assessee.

6. We have heard rival contentions and perused the records placed before us. Revenue's common grievance is that ld. CIT(A) erred in allowing assessee's appeal on account of the decision of this Tribunal in ITA No. 427/Kol/2018 dated 22.10.2020 setting aside the Pr. CIT's order u/s 263 of the Act dated 20.03.2017.

7. We find that the original assessment proceedings were carried out u/s 143(3) of the Act which completed on 30.03.2015 and the same were subject matter of the proceedings carried out u/s 263 of the Act wherein ld. Pr. CIT vide order dated 20.03.2017 set aside the assessment order u/s 143(3) of the Act and directed ld. AO to reframe it in light of the directions given in this order u/s 263 of the Act. In compliance thereto, ld. AO carried out the assessment proceedings u/s 143(3) r.w.s. 263 of the Act making addition in the hands of the assessee. Order of ld. AO challenged before ld. CIT(A) and the assessee succeeded and now, Revenue has challenged the order of ld. CIT(A).

8. As far as revisionary proceedings u/s 263 of the Act are concerned, the same were challenged by the assessee before this Tribunal and vide order dated 22.10.2020, the revisionary proceedings were quashed and the assessment order u/s 143(3) of the Act dated 30.03.2015 has been restored.

9. Under these given circumstances of the case, since revisionary proceedings u/s 263 of the Act vide order dated 20.03.2017 have been quashed by this Tribunal and its decision has further been confirmed by the Hon'ble Jurisdictional High Court vide order dated 12.09.2022 in *ITAT/125/2022*, all the proceedings carried out in pursuance to the revisionary proceedings u/s 263 of the Act have become infructuous and fail to survive. We, therefore, fail to find any infirmity in the finding of ld. CIT(A) holding the assessment proceedings u/s 143(3) r.w.s. 263 of the Act as infructuous. Thus, all the grounds of appeal raised by the Revenue are dismissed.

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

***Kolkata, the 06<sup>th</sup> February, 2023***

*Sd/-*  
[Sanjay Garg]  
Judicial Member

*Sd/-*  
[Manish Borad]  
Accountant Member

Dated: 06.02.2023

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

- 1. DCIT, CC-2(2), Kolkata.**
- 2. M/s. MBL Infrastructures Ltd., 1<sup>st</sup> Floor, Divine Bliss, Judges Court Road, Alipore, Kolkata- 700 027.**
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata