

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

डॉ. मनीष बोराड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष

Before

**DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

**I.T.A. No.: 264/KOL/2023
Assessment Year: 2014-15**

ITO, Ward-11(1), Kolkata.....Appellant

Vs.

***Reposit Finco Pvt. Ltd.....Respondent
[PAN: AABCR 2209 N]***

Appearances by:

Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Sh. Abhishek Bansal, A/R, appeared on behalf of the Assessee.

Date of concluding the hearing : May 15th, 2023

Date of pronouncing the order : May 24th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short 'AY') 2014-15 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Id. "CIT(A)"] dated 16.02.2023 which is arising out of the

assessment order framed u/s 263 read with 143(3) of the Act dated 11.11.2019.

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

“1. “Whether on the facts and in the circumstances of the case and in law, the CIT(A) has erred in not adjudicating the issue of the case and allowed the appeal of the assessee in the light of the decision of the Hon'ble ITAT in respect of the order u/s 263 dated 21.02.2019. The Hon'ble ITAT has restored the matter to the file of Pr.CIT-2, Kolkata for reconstruction and not quashed/invalidated the order u/s 263 dated 21.02.2019. Hence sustainability of the order u/s 263 dated 21.02.2019 has not attained its finality. Under these circumstances decision of the CIT(A) in favour of the assessee considering the order u/s 143(3)/263 as infructuous suffers from perversity.”

2. “The case falls under exceptional clause as specified by the CBDT vide circular No. 23/2019, [O.M dated 16.09.2019 & vide F. No 279/Misc/M-93/2018-ITJ(Pt)] since there is an audit objection in this case in the light of the fact that the assessee had claimed bogus short term capital loss in the guise of transactions/trading in a penny stock namely Unno Industries Ltd (Script Coded 519273) during the relevant year. Hence the case despite having tax effect below the monetary limit specified by the CBDT for filing appeal before the tribunal is eligible to contest on merit before tribunal”.

3. “That the appellant craves to add, alter modify or abrogate any or all of the grounds of appeal at the time of hearing”.”

3. At the outset, ld. Counsel for the assessee submitted that the instant appeal of the Revenue deserves to be dismissed as infructuous as it is arising out of the order u/s 143(3) r.w.s. 263 of the Act dated 11.11.2019 and the order u/s 263 of the Act dated 21.02.2019 already stands set aside for afresh adjudication by the Hon'ble Tribunal vide order dated 26.10.2021.

4. On the other hand, ld. D/R though supported the grounds raised by the Revenue but could not controvert the submissions made by ld. Counsel for the assessee.

5. We have heard rival contentions and perused the records placed before us., In the instant appeal Revenue is aggrieved with the relief granted by ld. CIT(A) treating the order framed u/s 143(3) r.w.s. 263 of the Act dated 11.11.2019 as infructuous observing as follows:

“I have gone through the order of the Hon’ble ITAT ‘B’ Bench, Kolkata and the submission of the appellant. Since, the revision order u/s. 263 dated 21-02-2019 for A.Y. 2014-15 has been set aside by the Hon’ble ITAT ‘B’ Bench, Kolkata vide order in ITA No. 1089/Kol/2019 dated 26-10-2021, the consequential order u/s. 143(3) r.w.s. 263 dated 11-11-2019 is became infructuous. Therefore, all the grounds of appeal are allowed”

6. We observe that in the case of the assessee for AY 2014-15 revisionary order passed on 21.02.2019 by ld. Pr. CIT-4, Kolkata setting aside the assessment order and directing it to be framed as per the directions given in the order u/s 263 of the Act. In compliance thereto, ld. AO carried out the assessment proceedings and assessment u/s 143(3) r.w.s. 263 of the Act were completed on 11.11.2019 after making addition u/s 68 of the Act at Rs. 244,63,518/-. The assessee challenged the said addition before ld. CIT(A). In the meantime, the assessee challenged the revisionary order dated 21.02.2019 before this Tribunal and vide *ITA No. 1089/KOL/2019* dated 26.10.2021 this Tribunal has set aside the order of ld. Pr. CIT dated 21.02.2019 and restored the matter to ld. Pr. CIT for decision afresh.

7. Since the order of Id. Pr. CIT dated 21.02.2019 has been set aside by this Tribunal, consequently all the proceedings carried out subsequent to the order u/s 263 of the Act dated 21.02.2019 have become infructuous including the assessment order u/s 143(3) r.w.s. 263 of the Act dated 11.11.2019.

8. Therefore, since the assessment order dated 11.11.2019 for AY 2014-15 which is the subject matter of the impugned order has become infructuous, Id. CIT(A) has rightly allowed the appeal of the assessee. Thus, in view of the above discussion, we fail to find any merit in the instant appeal of the Revenue and the same is dismissed as infructuous. Therefore, grounds of appeal raised by the Revenue are dismissed.

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

Kolkata, the 24th May, 2023.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Manish Borad]
Accountant Member

Dated: 24.05.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. ITO, Ward-11(1), Kolkata.**
- 2. Reposit Finco Pvt. Ltd., 3rd Floor, Room No. 2, The Regency, 6, Hunger Ford Street, Minto Park, Kolkata-700 017.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata