

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2298/Del/2022
Assessment Year: 2013-14

DCIT Circle-4(2) New Delhi	Vs	M/s. Container Corporation of India Ltd. Concor Bhawan,C-3 Mathura Road, Sarita Vihar, New Delhi-110076 PAN No.AAACC1205A
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. T. James Singson, CIT DR
Respondent by	Sh. S. Krishnan, Advocate Sh. V. Rajakumar, Advocate

Date of hearing:	12/07/2023
Date of Pronouncement:	12/07/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order dated 22.07.2022 by NFAC Delhi pertaining to A.Y.2013-14.

2. The grievance of the revenue read as under :-

1. *Whether on the facts and circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition on account of Served From India Scheme Scrips amounting to Rs.149,63,00,000/-.*

2. *Whether on the facts and circumstances of the case and in law the ld. CIT(A) has erred in deleting the addition on account of SFIS Scrip since the same is in nature of revenue receipts utilized by assessee to run the business more profitably.*

3. *The appellant craves leave for reserving the right to amend, modify alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

Total Tax effect of above grounds Rs.50,85,92,370/-

3. On perusal of the record show that the assessment has been framed pursuant to the order dated 28.03.2018 passed by the Pr. CIT-2, Delhi framed u/s. 263 of the Act.

4. We find that this Tribunal in ITA No.3932/Del/2018 has quashed the order of the Pr. CIT framed u/s. 263 of the Act. The relevant findings read s under :-

“24. In the instant case, undisputedly, the Assessing Officer through its notice dated 04-09-2015 issued u/s 142(1) of the act, in addition to other queries, raised specific query to the Assessee qua treatment of closing balance of Rs.138.01 on account of “Served From India Scheme” (SFIS) of the Govt. of India as to why the aforesaid amount not be added to the Assessee's income being a Revenue receipt, which was also specifically replied by the assessee vide its para. No.6 of the reply dated 13.10.2015, The Asseeee also demonstrated the features of the SFIS and/or purposes for which the scheme was introduced by the Govt, of India and on consideration of the Claim, Reply, Documents and features of SFIS

(refer pages no. 17-18 & 30-35 of PB of Assessee) and while also following the principle of consistency, which was accepted by the Revenue for several preceding years, the assessing officer had taken the possible view' qua treatment of SFIS and accepted the claim of the Assessee, hence it cannot be said he has not made any enquiry/verification and not considered the feature of the scheme in the light of the purpose test as per the ratio of the judgment of the Apex Court in CIT Vs Room Sugars & Chemicals Ltd. (2008) 306 ITR page 392 and completed the assessment by merely placing the submissions of the assessee without looking complete facts and SFIS documents. Further It cannot be said that the treatment of the "SFIS" by the Assessing Officer was without making proper and appropriate enquiries/verifications and therefore resulted into substantial loss to the Revenue. In the instant case, the Assessing Officer has taken a possible view and allowed the claim of the Assessee. As it is well settled that when an ITO adopted one of the courses permissible in law, may be the same has resulted in loss of revenue or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue, therefore in view of the dictum of Apex Court laid down in Malabar Industries India Ltd. Vs CIT (supra), to the effect that the Commissioner while exercising revision power u/s 263 of the Act, cannot substitute his own view contrary to the possible view taken by the Assessing officer, unless the view taken by the Income Tax Officer is unsustainable in law. In the instant case, the assessing officer has taken a plausible view which is sustainable in law, hence the assessment order passed by the Assessing Officer can not be held as erroneous and prejudicial to the interest of the revenue. Accordingly the order passed u/s. 263 of the Act by the Ld. Pr. CIT is liable to be quashed.

25. In the result, appeal of the Assessee stands allowed and

consequently the order impugned herein passed u/s.263 of the Act by the Pr. CIT-2, Delhi, is quashed.”

5. Since the very basis has been removed the super structure must fall. The appeal of the revenue is dismissed.
6. Decision announced in the open court on 12.07.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .07.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi