

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D" NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No.1695/Del/2022

निर्धारणवर्ष/Assessment Year:2017-18

Sapien Funds Ltd., 3 <sup>rd</sup> Floor, 355, NEX, Rue du Savoir, Cybercity, Ebene 72201, Foreign, Mauritius.	बनाम Vs.	DCIT Circle 3(1)(2), International Taxation, New Delhi.
PAN No. AAWCS2495N		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	S/Sh. Salil Kapoor, Adv. Vibhu Jain, Adv. Sumit Lalchandani, Adv. Utkarsa Gupta, Advocate
राजस्वकीओरसे /Revenue by	Shri Vizay B. Vasanta, CIT DR

सुनवाईकीतारीख/ Date of hearing:	27.09.2023
उद्घोषणाकीतारीख/Pronouncement on	06.10 .2023

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order passed by the Deputy Commissioner of Income Tax, Circle 3(1)(2), International

Taxation, New Delhi u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961.

2. The Ld. Counsel for the assessee, at the outset, submits that order passed by the Ld.CIT, International Taxation u/s 263 of the Act has been quashed by the Tribunal in ITA No.976/Del/2022 dated 08.06.2023, therefore, the consequential assessment made u/s 143(3) r.w.s. 263 of the Act on 23.06.2022 by the Assessing Officer (AO) has no legs to stand.

3. Heard rival contentions. On perusal of the record placed before us, we noticed that the assessee filed appeal before the Tribunal against the assessment order passed by the Assessing Officer u/s 143(3) r.w.s. 263 of the Act dated 22.06.2022 by the DCIT, Circle 3(1)(2), International Taxation, New Delhi for giving effect to the order of the Ld.CIT, International Taxation passed u/s 263 of the Act. We observe that Section 253(1) of the Act enumerates the various orders passed by the income-tax authorities which are appellable to the Tribunal. The orders enumerated in Clauses (a) to (f) of Sub-section (1) of Section 253 of the Act does not contain an order passed by Assessing Officer in pursuance to order of the Commissioner under

Section 263 of the Act. In the circumstances, the appeal of the assessee is not maintainable before the Tribunal.

4. In the course of hearing on a query from the Bench to the Ld. Counsel as to how an appeal against the order passed by the Assessing Officer u/s 143(3) for giving effect to the order passed by the CIT(International Taxation) under Section 263 of the Act lies before the Tribunal the Ld. Counsel for the assessee submits that the assessee preferred appeal before the Tribunal as per the instructions of the Deputy Commissioner of Income Tax, Circle 3(1)(2) , International Taxation in point no.6 of the notice of demand issued u/s 156 of the Act wherein it is stated that assessee may present appeal before ITAT in Form No.36. The Ld. Counsel for the assessee further submits that the window for filing appeal before the CIT(Appeals) is not enabled by the Department for filing appeal before the CIT(A) by the Assessee and, therefore, the present appeal has been filed before the Tribunal.

5. We observe from the notice of demand issued u/s 156 of the Act by the DCIT, Circle 3(1)(2), International Taxation, New Delhi dated 23.06.2022 that the AO stated that if the assessee intends to file an appeal against the order passed by him the assessee may present an appeal under part B of chapter XX of the I.T. Act before

Income Tax Appellate Tribunal within 60 days of the receipt of the order, in Form No.36. It is the contention of the Ld. Counsel for the assessee that the window for filing appeal before the Ld.CIT(Appeals) was not enabled so as to file an appeal by the assessee and, therefore, as instructed in the demand notice an appeal was preferred before the Tribunal directly by the assessee. Having regard to the relevant statutory provision, which we have referred to earlier, point no.6 of the notice of demand u/s 156 of the Act advising the assessee to file an appeal before the Tribunal in Form No.36 is wrong and misconceived. Moreover, in view of the explicit provisions of Section 246A, an appeal against the order passed u/s 143(3) of the Act lies before the CIT(Appeals). Thus, the captioned appeal is dismissed as non-maintainable.

6. However, before parting, we deem it fit and proper to direct the Assessing Officer to rectify the notice of demand under Section 156 of the Act dated 23.06.2022 inasmuch as point no.6 thereof be made consistent to the statutory provisions. The aforesaid direction is being made solely with the object of mitigating the hardship that the taxpayer would face inasmuch as on one hand, the appeal against the impugned order is not legally permissible directly before the Tribunal and, on the other hand, point no.6 of the notice of demand

under Section 156 dated 23.06.2022 as is presently worded would not permit the assessee to file appeal before the CIT(A), which, otherwise, it is entitled to do in view of the explicit provisions of Section 246A(1)(a) of the Act.

7. In the result, appeal of the assessee is dismissed for statistical purpose with the above observations.

Order pronounced in the open court on 06.10.2023

**Sd/-  
(G.S. PANNU)  
PRESIDENT**

**Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER**

Dated: 06.10.2023

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT  
(DR)/Guard file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**