

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

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
DR. BRR KUMAR, ACCOUNTANT MEMBER**

**ITA No. 2103/Del/2022
Assessment Year: 2017-18**

Vossloh Cogifer SA,
Unit 5, 12th Floor Eros Corporate
Tower, HehruPlace, New Delhi.
PAN: AACCV8605R
(Appellant)

Versus DCIT, Circle 3(1)(1),
International Taxation,
Delhi.
(Respondent)

Assessee by : Sh. Anuj Tiwari, C.A.
Revenue by : Sh. Vizay B. Vasanta, CIT-DR

Date of hearing : 18.10.2023
Date of pronouncement: 30.10.2023

ORDER

Captioned appeal by the assessee is against order dated 28.06.2022 passed under section 263 read with section 143(3) of the Income-tax Act, 1961, pertaining to assessment year 2017-18.

2. The grounds raised by the assessee are as under :

- i. "The Ld. AO has erred in law and on facts by passing the order redundantly without conducting any inquiry and verification required before passing an order u/s 143(3) of the Act and without application of mind.

- ii. That the Ld. AO has erred in law and on facts by passing the order u/s 143(3) r.w.s 263 without providing opportunity of being heard.
- iii. The Ld. AO has erred in law and on facts in passing the order u/s 143(3) r.w.s 263 to disallow the expenses charged to the P & L a/c on account of claim raised by supplier for non-availability of claim of deemed export benefit.
- iv. The Ld. AO has erred in law and on facts in deciding that the expenses charged to P&L a/c is contingent in nature.
- v. The Ld. AO has erred in law and on facts in determining the demand without allowing credit of carry forward losses.”

3. We have heard Shri Anuj Tiwari, CA, learned Authorised Representative of assessee and Shri Vizay B. Vasanta, learned CIT-DR.

4. As could be seen from the memorandum of appeal and grounds raised, the present appeal has been filed before the Tribunal directly challenging the assessment order passed under section 263 read with section 143(3) of the Act. As per section 253 of the Act, this is not an appealable order before the Tribunal, as the assessee has a remedy of filing the appeal before Commissioner of Income-tax (Appeals). When this fact was brought to the notice of learned Authorized Representative, he submitted, since, the assessment

order was passed in pursuance to an order passed under section 263 of the Act, the assessee has preferred the present appeal under a misconception. However, he submitted, the assessee may be granted opportunity to file the appeal before the appropriate forum and the delay, which may arise in filing the appeal, may be condoned.

5. Learned Departmental Representative submitted, the appeal is not maintainable before the Tribunal, hence, has to be dismissed.

6. Having considered rival submissions, we are of the considered opinion that the present appeal is not maintainable, as the assessment order under challenge in the present appeal is not an appealable order, against which, the assessee can directly come to the Tribunal. Therefore, we have no hesitation in dismissing the appeal as not maintainable. However, considering the fact that the assessee has filed the appeal before a wrong forum under a *bona fide* misconception, we grant liberty to the assessee to file the appeal before Commissioner (Appeals). Considering the fact that while filing the appeal before Commissioner (Appeals), there may be issue of limitation, we request the Commissioner (Appeals) to consider

assessee's case sympathetically and condone the delay, as it is for *bona fide* reasons and decide the appeal on merits.

7. In the result, appeal is dismissed.

Order pronounced in the open court on 30/10/2023.

Sd/-

(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 30.10.2023

*aks/-