IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 994/Bang/2023
Assessment Year : 2008-09

The Deputy Commissioner of Income Tax, Circle – 2(1)(1), Bangalore.	**Vs.**	M/s. Canara Bank, FM Wing, Head Office, 112 JC Road, Bangalore – 560 002. **PAN: AAACC6106G**
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Ananthan S & Smt. Lalitha Rameswaran, Advocates
Revenue by	:	Shri D.K. Mishra, CIT DR

Date of Hearing	:	24-01-2024
Date of Pronouncement	:	30-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal by revenue arises out of order dated 11/10/2023 passed by NFAC, Delhi for A.Y. 2008-09 on following grounds of appeal:

10	Grounds of Appeal	Tax effect relating to each ground of appeal (see note below)
1	i. The Ld. CIT(A) has erred in law by deleting disallowance of Rs.13,89,86,741/- made by the A.O. towards Logo Expenses. ii. Whether in the facts and circumstances of the case, the Ld. CIT(A) is correct in not appreciating the fact that both the revision orders passed by the Ld. CIT(LTU) u/s 263 of the Income Tax Act, 1961 are the outcome of two different proceedings and hence order of the Hon'ble ITAT in setting aside of first order passed u/s 263 does not make second 263 order as null and void.	47241593
2	iii. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in following the Hon'ble Supreme Court order passed in the case of CIT Vs Finlay Mills Ltd (1951) 20 ITR 475 (SC) which dealt with the Income-Tax Act, 1961 which existed prior to the insertion of definition of intangible assets under Section 32 w.e.f. 01/04/1999. iv. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in not following the provisions of the Section 32(1)(ii) which clearly classifies Trademark as an intangible asset.	0
	Total Tax Effect	Rs. 4,72,41,593

2. Brief facts of the case are as follows:

2.1 The Assessment u/s 143(3) was completed on 19/11/2010. A revision u/s 263 was initiated by Ld.CIT and an order dated 22/03/2013 was passed u/s 263 (first 263 order). The Ld.CIT directed the Assessing Officer to disallow the logo development expenses and treat the same as Capital Expenditure. The learned Assessing Officer while giving effect to the above said first 263 order, restricted the disallowance at Rs.90,000/-. The Ld.AO passed the OGE dated 28.06.2016.

2.2 In the meantime, the Assessee preferred an appeal before this *Tribunal* against the first 263 order dated 22.03.2013 in *ITA No. 743/B/2013.* During the pendency of appeal before this *Tribunal,* the Ld.CIT passed another order u/s 263 dated 29/03/2016 (second 263 order) against the OGE dated 28/06/2013 directing the Assessing Officer to disallow the entire amount of logo expenses claimed by the Assessee.

2.3 Subsequently, the Assessing Officer passed order u/s 143(3) r.w.s 263 on 30/06/2016 disallowing the entire logo expenses to the tune of Rs. 13,89,86,741/-.

2.4 It is submitted that as the assessee filed appeal before this *Tribunal* against the first 263 order, it did not file any other appeal against the second 263 order, which was an order passed against the OGE to the first 263 order.

2.5 This *Tribunal* vide order dated 06/11/2017 allowed the appeal of the Assessee and set aside the first 263 order dated 22.03.2013. However, the Ld.AO while passing OGE to the order of this *Tribunal* allowed only a sum of Rs.78,750/-. The Ld.AO held that in the OGE giving effect to the first 263 order, only Rs. 90,000/- was added. He also observed that, the Assessee did not file any appeal against the second 263 order, in terms of which, sum of Rs.13,89,86,741/- was disallowed in the OGE dated 30/06/2016 and therefore no further relief can be granted to the assessee.

2.6 It is submitted that the Assessee had challenged the first 263 order before this *Tribunal* which was pending on the date of passing of second 263 order. It is submitted that the outcome of the entire proceedings was dependent on the decision of this *Tribunal* against the first 263 order, due to this reason, the Assessee did not file any appeal against the second 263 order, which was more consequential by nature.

2.7 It is submitted that this *Tribunal* on 06/11/2017 passed order allowing the appeal of the assessee and setting aside the first 263 order. This order was further upheld by the *Hon'ble Karnataka High Court* by dismissing the appeal filed by the Department against the order dated 06.11.2017 passed by this *Tribunal.*

2.8 The Ld.AR thus submitted that the present appeal thus becomes infructuous as it is the outcome of the second 263 order that does not have any legs to stand in the eyes of law.

3. On the contrary, the Ld.DR relied on the orders passed by the authorities below.
We have perused the submissions advanced by both sides in the light of records placed before us.

4. We note that the disallowance of logo expenses to the tune of Rs.13,89,86,741/- by the Ld.AO vide his order u/s. 143(3) r.w.s. 263, dated 30.06.2016 is an order giving effect to the order of Ld.CIT dated 29.03.2016 (2nd 263 order) which is based on first 263 order passed by Ld.PCIT dated 22.03.2013.

Admittedly, this *Tribunal* vide order dated 06.11.2017 quashed the first 263 order that was passed on 22.03.2013.

5. The first 263 order that is held to be bad in law by this *Tribunal* has been subsequently upheld by *Hon'ble Karnataka High Court* in *ITA No. 346/2018* vide order dated *10/02/2023* wherein the departmental appeal was dismissed.

6. We further note that as the appeal was pending before this *Tribunal* against the 263 order, another proceedings under 263 was initiated and an order was passed on 29.03.2016 directing the Ld.AO to disallow the entire amount of logo expenses claimed by the assessee. At this juncture, it is pertinent to note that the second order passed u/s. 263 is on the identical issue that was considered in the first 263 order.

7. On the above facts, in our opinion as the first order u/s. 263 was held to be not in conformity with the law and has been quashed and set aside, and on the same issue another 263 proceedings cannot be initiated directing the Ld.AO to disallow in toto. Such an order of the Ld.PCIT cannot be considered to be within the requirements of provisions of section 263. Further on perusal of the order of *Hon'ble High Court* in revenue's appeal, there is a clear direction to allow the claim by relying on the decision of *Hon'ble Supreme Court* in case of *CIT vs. Finlay Mills Ltd.* reported in *(1951) 20 ITR 475.*

8. This aspect can be analysed in another way by holding that a 263 petition cannot be initiated merely because the Ld.PCIT is of the opinion to disallow the entire amount as against partial relief. As the initial action is held to be not in conformity with law, all the subsequent and consequential proceedings fall through for the reason that illegality strikes at the root of the entire event. This has been very well expressed under the common law doctrine "*subla fundamento cadit opus*" which in common man's language means, the foundation being removed the superstructure falls.

9. On the first principles, the section 263 initiated is bad in law and we do not find any infirmity in the view taken by the Ld.CIT(A) in deleting the disallowance made on account of logo expenses on merit of the case as well as the view expressed in para 5.5. This view is in conformity with the view of *Hon'ble High Court* vide order dated 10.02.2023.

Accordingly, the grounds raised by the revenue stands dismissed.

In the result, the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 30th January, 2024.

Sd/-	Sd/-
(CHANDRA POOJARI)	(BEENA PILLAI)
Accountant Member	Judicial Member

Bangalore,
Dated, the 30th January, 2024.

/MS /
Copy to:

1. Appellant	2. Respondent
3. CIT	4. DR, ITAT, Bangalore
5. Guard file	6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore