

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.8002/Del/2019
Assessment Year: 2011-12

JSD Steel Pvt. Ltd. (Formerly CBS Steel Pvt. Ltd. SB Garg & Co. CAs 20/17, Shakti Nagar, New Delhi PAN No.AACCC7004P	Vs.	ACIT Circle – 5 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Sachin Kumar, CA Sh. Achin Garg, Advocate
Respondent by	Mr. Waseem Arshad, CIT(DR)

Date of hearing:	12/02/2024
Date of Pronouncement:	14/02/2024

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)- 2, New Delhi dated 29.07.2019 pertaining to A.Y. 2011-12.

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

1. *The Id. Commissioner of Income Tax (Appeals) - 2, New Delhi [hereafter the CIT(A)] failed to provide proper opportunity of hearing.*

2. *The impugned order by the Id. CIT(A) is in violation of the Board's Instruction No. 20/2013 dated 23-12-2003 reiterated on 19-06-2015 vide F.No.279/Misc 53/2003-ITJ, as the appeal was purportedly heard on 08-07-2019 and the impugned order was passed on 29-07- 2019.*

3. *The assessment order is invalid, inter alia, because the initiation of proceedings u/s 147 of the Act and the original/initial order dated 31-03-2015 passed by the Id. ITO, Ward 5(4), New Delhi u/s 147/ 143(3), being without jurisdiction, is invalid, null and void ab initio.*

3.1 *The Id. CIT(A) failed to appreciate that the assessment order without jurisdiction renders all consequential orders invalid and can be challenged in collateral proceedings; and the Id. CIT(A) erred in holding that these grounds pertain to the original order and failed to decide the ground.*

3.2 *The Id. CIT(A) failed to appreciate that the onus to prove the service of notice is on the Id. AO and the Id. CIT(A) erred in observing that the Assessee has not filed any proof to show that notice u/s 143(2) was not issued and notice u/s 148 was not served.*

4 *The Id. CIT(A) failed to appreciate the fact that the assessment order is invalid, inter alia, because the order u/s 263 by the Id. Pr. CIT is invalid.*

5 The Id. CIT(A) erred in upholding addition of Rs. 9,11,61,905 u/s 68 of the Act.

6 The Id. CIT(A) erroneously observed that the ground of appeal No. 4 to 10 are in respect of the addition made in the original/initial assessment order, which has not been set aside by the Id. Pr. CIT and the Id. CIT(A) erred in not deciding the ground of appeal No. 4 to 10.

7 The Id. CIT(A) erred in upholding charging of interest u/s 234A and 234B of the Act and without prejudice the same is excessive.

8 The observations made in the assessment order as well as the impugned appellate order are against the facts of the case as well as law.

9 The assessment order and impugned appellate order is against the facts of the case as well as law.

3. Briefly stated the peculiar facts of the case in hand are that the assessee did not file its return of income for the year under consideration, therefore, notice u/s. 148 was issued on 21.02.2014 for reassessment. The assessee filed its return of income declaring income of Rs.1679349/- which was assessed at Rs.45,71,040/-. This assessment was set aside by the PCIT-2, Delhi u/s. 263 of the Act.

4. The aforementioned sequence of events has to be understood properly because the reassessed income of Rs.4571040/- was questioned by challenging the validity of the reassessment order and the dispute travelled upto this Tribunal and this Tribunal in ITA No.2884/Del/2022 by order dated 17.02.2023 has annulled the assessment by holding that the reopening was bad in law.

5. As mentioned elsewhere this assessment order was set aside by the PCIT u/s. 263 of the Act and since now this has been annulled by the order of the ITAT (supra) the present order does not have any foundation whatsoever. Since the foundation has been removed the super structure must fall which means since the foundation assessment order has been annulled the order framed u/s. 263 of the Act must fall, therefore, the present assessment order framed pursuant to the order u/s. 263 must also fall.

6. The DR has filed a written submissions alongwith reference to some judicial decisions which do not have any bearing on any facts discussed here in above and, therefore, we do not deem it fit to mention those irrelevant decisions here.

7. For the facts discussed here in above the appeal is allowed.

Order pronounced in the open court on 14.02.2024.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA

Date:- .02.2024

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI