

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.679/Kol/2023
Assessment Year: 2008-09**

L&T Finance Ltd. (Successor of L&T Fincorp Limited, now merged) 15 th Floor, PS Srijan Tech Park, Plot No. 52, Block DN, Sector V, Salt Lake City, Kolkata-700091.	Vs.	Assistant Commissioner of Income Tax, circle-5(1), Kolkata
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Prasant Jaiswal, FCA

Respondent by : Shri B. K. Singh, JCIT, Sr. DR

Date of Hearing : 05.03.2024

Date of Pronouncement : 08.03.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld.CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order No. ITBA/NFAC/S/250/2022-23/1046171594(1) dated 04.10.2022 passed against the assessment order by DCIT (OSD), Circle-2(2), Mumbai u/s.143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 30.11.2010 for AY 2008-09.

2. Appeal of the assessee is delayed by 214 days. Order of Ld. CIT(A) is dated 04.10.2022 and the present appeal was filed on 06.07.2023. Assessee has placed on record a petition for condonation of delay explaining the cause for the said delay. In the said condonation application, assessee submitted that there was an event of amalgamation because of which regulatory proceedings could not be

monitored. Assessee also submitted that the impugned order of Ld. CIT(A) was uploaded on the e-filing portal on 22.05.2023 only and, therefore, assessee could file the appeal thereafter. We have considered the submissions made by the assessee in the petition for condonation of delay and accordingly, the delay is condoned to adjudicate upon the present appeal.

3. The moot point raised in the present appeal relates to dismissal of the appeal by Ld. CIT(A) on a misconceived notion that the appeal had already been disposed of vide order dated 18.10.2016 by the Ld. CIT(A). According to the assessee, Ld. CIT(A) failed to consider the fact that the first appellate order dated 18.10.2016 relates to the appeal against the assessment order passed u/s. 143(3) read with section 147 dated 29.01.2016 whereas the impugned appeal was against the assessment order passed u/s. 143(3) read with section 147 dated 30.03.2013.

3.1. To deal with the above issue, we take note of the chronology of events which transpired in the present case. Assessee filed its return of income on 27.09.2008 reporting total income at Rs.50,22,60,749/-. The original assessment u/s. 143(3) was completed vide order dated 30.11.2010. Thereafter, the reassessment proceedings were initiated on the issues relating to claim of assessee with respect to hedging loss of Rs.2,75,29,536/- and mark to market loss on hedging contract amounting to Rs.97,86,948/-. This reassessment was completed vide order dated 30.03.2013. Against this reassessment order, assessee preferred an appeal before the Ld. CIT(A).

3.2. Case of the assessee was again reopened vide notice u/s. 148 dated 30.03.2015. These reassessment proceedings were initiated in respect of claim of carry forward of long term capital loss of sale of shares. This reassessment was completed vide order passed u/s. 143(3) read with section 147 dated 29.03.2016. Assessee went in

appeal before the Ld. CIT(A) which was disposed of vide order dated 18.10.2016 whereby the appeal of the assessee was allowed. Department went in appeal before the Tribunal against this appellate order which was dismissed vide order dated 20.05.2022.

3.3. From the above facts, it is worth-noting that the appeal relating to the first reassessment order dated 30.03.2013 was pending for disposal before the Ld. CIT(A). While disposing the said appeal, Ld. CIT(A) in para 5 has noted that appeal of the assessee had already been disposed of by the jurisdictional CIT(A) vide order dated 18.10.2016 and, therefore, dismissed it. The said para is reproduced as under:

“5. I have gone through the facts of the case and circumstances of the case. It is noted that the matter for which the appellant is in appeal, is already been disposed off by the jurisdictional the CIT(Appels) vide order dated 18.10.2016. Therefore, the grounds of appeal No. 1 & 2 raised by the appellant are dismissed.”

4. From the above extraction of the decision by Ld. CIT(A), it is apparent that the appeal has been disposed of without dealing on the merits of the case and by merely noting that it has already been disposed of vide order dated 18.10.2016 which in fact, is the disposal of the appeal filed by the assessee pursuant to second reassessment proceedings in which the reassessment order was passed on 29.03.2016, on altogether difference issue. Thus, the appeal filed by the assessee against the reassessment order dated 30.03.2013 remains to be adjudicated by the Ld. CIT(A).

5. In the light of the above stated facts, we find it proper to remit the matter back to the file of Ld. CIT(A) for proper adjudication on the appeal filed by the assessee against the reassessment order dated 30.03.2013, by passing a speaking order on the issues raised by the assessee therein. Needless

to say that assessee be given reasonable opportunity of being heard to represent its case on the grounds raised therein. Since the assessment year involved in the present case is AY 2008-09 and there has been an amalgamation with another company, therefore we direct the Ld. CIT(A) to dispose of the matter within three months from the receipt of this order. Accordingly, appeal of the assessee is allowed for statistical purposes.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order is pronounced in the open court on 8th March, 2024.

Sd/-

(Sanjay Garg)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 8th March, 2024

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent.
 3. CIT(A), NFAC, Delhi
 4. CIT
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata