

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3222/Del/2023
(ASSESSMENT YEAR 2014-15)**

Income Tax Officer Gurgaon	Vs.	Sunray Cotspin Pvt. Ltd. Plot No.660, Udyog Vihar, Phase-V Gurgaon-122001 Haryana PAN-AAPCS2728D
(Appellant)		(Respondent)

Assessee by	Shri Lalit Mohan, CA & Shri Parth Singhal, Adv.
Respondent by	Shri Anuj Garg, Sr. DR

Date of Hearing	09/05/2024
Date of Pronouncement	17/05/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 31/08/2023 for Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deciding the case on the basis of decision of Hon'ble ITAT and not on merit of the case, where decision of Hon'ble ITAT is not reached at finality as department appeal is pending before Hon'ble High court.

2. On the fact and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating on the issue of share application money from the persons from whose creditworthiness could not be proved.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating on the issue of share Premium from the person from whose creditworthiness could not be proved.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not adjudicating on the issue of Share application money for pending allotment from the persons from whom creditworthiness could not be proved.”

3. The brief facts of the case are, the assessee filed its return of income on 09/10/2014 and the case of the assessee was taken up for scrutiny through CASS. The assessment was completed u/s 143(3) of the Income Tax Act, 1961 ('the Act' for short) by accepting the return of income on 18/08/2016. Subsequently, Ld. Pr.CIT, on examination of the case records found that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. The order u/s 263(1) was passed by the Ld. PCIT, Gurgaon on 05/03/2019 setting aside the aforesaid assessment order and the matter was

restored to the file of Assessing Officer for making fresh assessment order after making the proper enquiries, after providing adequate opportunities to the assessee. Subsequently, the assessment order u/s 143(3) r.w.sec. 263 of the Act was passed on 23/12/2019 by making the addition u/s 68 of the Act.

4. In between the assessee filed an appeal before the Co-ordinate Bench against the order passed u/s 263 of the Act and the Co-ordinate Bench has decided the issue in favour of the assessee vide order dated 21/02/2020 in ITA No.5239/Del/2019 for Assessment Year 2014-15 by setting aside the order passed u/s 263 of the Act.

5. The Assessing Officer passed the order u/s 143(3) r.w.sec. 263 and against the above said order, the assessee preferred an appeal before the CIT(A), NFAC, Delhi. The Ld. CIT(A) passed an order dated 31/08/2023 by considering the decision of Co-ordinate Bench in assessee's own case setting aside the order passed u/s 263 of the Act observing that the order passed u/s 143(3) r.w.

section 263 has no legal standing, considering the fact, the Co-ordinate Bench has set aside the order passed u/s 263 of the Act.

6. Aggrieved with the above order, the Revenue is in appeal before us and in the grounds No.1 of the appeal, the Assessing Officer has raised the ground that the decision of the Hon'ble ITAT is not reached finality as Departmental Appeal is pending before the Hon'ble High Court.

7. At the time of hearing, both the Counsels at the Bar have agreed that Co-ordinate Bench has decided the issue u/s 263 in favour of the assessee and set aside the order. Since, the order passed by the Assessing Officer on the basis of order passed u/s 263 of the Act and the same order was set aside by the Co-ordinate Bench, therefore, the order passed u/s 143(3) r.w. section 263 becomes infructuous. Therefore, we are inclined to uphold the findings of the Ld. CIT(A). We do not see any reason to interfere with the same. Accordingly, the appeal filed by the Revenue is dismissed.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 17th May, 2024.

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 17/05/2024

Pk/sps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI