

IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SMT. RENU JAUHRI, AM**

ITA Nos.1698 & 1711/Mum/2024
(Assessment Years: 2017-18 & 2016-17)

Asst. CIT (IT) 2(1)(1) 1714, 17 th Floor, Air India Building, Nariman Point, Mumbai-400 021	Vs.	Credit Suisse (Singapore) Limited 1 Raffles Link, 33/34-01 South Lobby Singapore
PAN/GIR No. AACCC 7328 N		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Harsh Shah
Respondent by	:	Shri Anil Sant
Date of Hearing	:	03.07.2024
Date of Pronouncement	:	03.07.2024

ORDER

Per Kavitha Rajagopal, J M:

The captioned appeals are filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), relevant to the Assessment Year (‘A.Y.’ for short) 2016-17 and 2017-18.

2. Since the issues are identical in both the appeals, we hereby pass a consolidated order by taking ITA No. 1711/Mum/2024, pertaining to A.Y. 2016-17 as the lead case.

ITA No. 1711/Mum/2024

3. The Revenue has challenged these appeals on the ground that the Id. CIT(A) has erred in allowing the assessee to withdraw the appeal against the order u/s. 143(3) r.w.s.

263 of the Act on the ground that the Tribunal has quashed the section 263 order and that the Id. CIT(A) has erred in not deciding the appeal on the merits of the case.

4. Briefly stated the assessee company is a resident of Singapore which invests in Indian capital market registered with Security and Exchange Board of India (SEBI) as a Foreign Portfolio Investor (FPI). The assessee had filed its return of income on 29.11.2016, declaring total income at Rs.62,91,62,077/- after exempting the dividend earned by it. The assessee had claimed net short term capital loss (STCL) and long term capital loss (LTCL for short) had carried forward the same u/s. 74 of the Act. The assessee has also shown the short term capital gain (STCG for short) and long term capital gain (LTCG for short) and had claimed exempt under Article 13 of India Singapore Tax Treaty. The assessee's case was selected for scrutiny and pursuant to the draft assessment order, the Id. A.O. passed the final assessment order dated 18.02.2020 r.w.s. 143(3) r.w.s. 144C(3) of the Act, determining the total income at Rs.94,93,38,360/-

5. The Id. PCIT invoked the revisionary powers u/s. 263 of the Act for the reason that the assessment order is erroneous insofar as it is prejudicial to the interest of the Revenue for the reason that the income under the head 'capital gains' under IT Act would be inclusive of all capital gains and losses in accordance with the Act without taking selective recourse to the DTAA and further that the assessee if chooses to take the benefit of tax treaty between India and Singapore then the income and losses should be covered under the said treaty and no carry forward of losses shall be allowed under the Income Tax Act. In this case the assessee had carry forwarded the losses u/s. 74 of the Act. The impugned order u/s. 143(3) r.w.s. 263 of the Act dated 18.07.2022 was passed by the Id.

A.O. where the Id. A.O. determined the total income at Rs.62,91,62,079/- holding that the assessee cannot carry forward losses as per the I. T Act and it was further appealed by the assessee before the first appellate authority.

6. During the pendency of the appeal before the Id. CIT(A), the Tribunal vide order dated 09.03.2023 had quashed the revisionary order passed u/s. 263 of the Act on the ground that as the assessment was a limited scrutiny on the issue of examining outward foreign remittance, the Id. CIT had no jurisdiction to invoke revisionary powers on issues which were not subject matter of limited scrutiny. Subsequently, the Id. CIT(A) in his order dated 19.01.2024 had dismissed the appeal filed by the assessee as infructuous for the reason that as the Tribunal had set aside the revisionary order, the consequential assessment order u/s. 143(3) r.w.s. 263 of the Act herein the impugned order, does not survive in the eyes of law.

7. The Revenue is in appeal before us, challenging the order of the Id. CIT(A) for dismissing the appeal as infructuous.

8. When the appeal came up for hearing today before us, the learned Departmental Representative ('Id.DR' for short) for the Revenue contended that the Id. CIT(A) does not have the power to allow withdrawal of appeal on the request of the assessee without deciding the issue on the merits. The Id. DR relied on the decision of the Hon'ble Jurisdictional High Court decision in the case of *CIT vs. Premkumar Arjundas Luthra (HUF)* [2016] 69 taxmann.com 407 (Bom). The Id. DR contended that the Id. CIT(A) cannot dismiss the appeal for non prosecution.

9. The learned Authorised Representative ('ld. AR' for short), on the other hand, vehemently opposed to the same and contended that the ld. CIT(A) has not dismissed the appeal of the assessee as being withdrawn but has given a clear finding that since section 263 order has been quashed, the consequential order would not survive. This does not amount to appeal being dismissed as withdrawn.

10. After duly considering both the rival submissions and on perusal of the materials available on record, though the assessee vide letter dated 06.07.2023 has stated the fact that since section 263 order has been set aside by the Tribunal, the consequential assessment order would not survive and further requested for withdrawing the captioned appeals and to dismiss the same accordingly, the Commissioner of Appeals has in his order discussed the power of ld. CIT(A) as per section 251 of the Act whereby he can confirm, reduce, enhance or annul the assessment while deciding the appeal u/s. 246A of the Act filed by the assessee which are within the purview of section 251(1)(a) of the Act. The ld. CIT(A) had also relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Premkumar Arjundas Luthra* (supra) which was relied upon by the ld. DR and also the decision Hon'ble Madras High Court in the case of *Loganathan v/s ITO*, [2013] 350 ITR 373 (Mad.) and also the Tribunals decision in the case of *M/s. Deekay Gears v/s. ACIT, Circle-29(1), Mumbai* (ITA no.2366/Mum./2018), wherein it was held that the power of allowing withdrawal of appeal is not within the provision of section 251(1)(a) of the Act and has further held that the ld. CIT(A) has to decide the issue on the merits of the appeal. The ld. CIT(A) has further stated that inspite of the fact that the assessee has filed an application seeking withdrawal of appeal, the appeal cannot be

dismissed *in limine* without getting into the merits of the case. The Id. CIT(A) has further proceeded to conclude by saying that since the revisionary order u/s. 263 of the Act has been quashed, the consequential order which is the very edifice of the impugned consequential order u/s. 143(3) r.w.s. 263 of the Act would not survive in the eyes of law, is according to us has rightly been held so by the Id. CIT(A). We do not find any justification in the Revenue's objection that it is evident that the appeal has not been dismissed on the basis of the withdrawal application filed by the assessee, in holding so, we find no merits in the grounds of appeal raised by the Revenue.

ITA No. 1698/Mum/2024

11. As the facts are identical in these two appeals, the finding in ITA No. 1711/Mum/2024 applies *mutatis mutandis* to this appeal also.

16. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on 03.07.2024.

Sd/-

(Renu Jauhri)
Accountant Member

Mumbai; Dated : 03.07.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai