

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

**BEFORE SHRI SAKTIJIT, VICE-PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.839/Del/2024  
Assessment Year: 2013-14

Income Tax Officer, Ward-8(1), New Delhi	<b>Vs.</b>	Ellora Infratech Pvt. Ltd., D-22/5, Okhla Industrial Area, Phase-II, New Delhi
		<b>PAN :AACCE6491J</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	None
Department by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing	03.07.2024
Date of pronouncement	09.07.2024

**ORDER**

**PER SAKTIJIT DEY, VICE-PRESIDENT**

This is an appeal by the Revenue against order dated 10.01.2024 passed by National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2013-14.

2. When the matter was called out, none appeared on behalf of the assessee, despite notice. Therefore, we proceed to dispose of the appeal *ex-parte* qua the assessee, after considering the

submission of learned Departmental Representative and perusing the materials on record.

2. Grounds raised by the Revenue are as under:

- (i) *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) is justified in quashing the assessment order u/s 263/143(3) of the Act without considering that the AO in his assessment order u/s 143(3) of the Act failed to make detailed verification and enquiry on the unsecured loan received during the year under consideration amounting to Rs.8,00,00,000/-*
- (ii) *The appellant craves to leave, to add, alter or amend any ground of appeal raised above at the time of hearing.*

3. We have heard learned Departmental Representative and perused the materials on record.

4. Briefly the facts are, the assessee is resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 25.09.2013 declaring loss of Rs.3,44,964/-. Assessment in case of the assessee was completed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') vide order dated 21.01.2016. Subsequently, while examining the assessment record, learned Principle Commissioner of Income Tax (PCIT) was of the view that in course of assessment proceedings, the Assessing Officer has not examined and inquired

into unsecured loans received by the assessee. Thus, he held that the assessment order passed is erroneous and prejudicial to the interest of Revenue. After issuing a show-cause notice to the assessee and considering the submissions, learned PCIT, ultimately, held the assessment order to be erroneous and prejudicial to the interest of Revenue. Accordingly, he set aside the assessment order with a direction to pass a fresh assessment order, keeping in view the observations made in the revision order. Challenging the order passed under section 263 of the Act, the assessee preferred an appeal before Income Tax Appellate Tribunal (ITAT). During pendency of the appeal before the ITAT, the Assessing Officer completed fresh assessment in compliance with the directions of learned PCIT under section 263 of the Act. Against the said assessment order, assessee preferred an appeal before the first appellate authority.

5. While deciding the appeal, learned first appellate authority was apprised of the fact that the order passed under section 263 of the Act, in the meanwhile, has been quashed by the Tribunal while deciding assessee's appeal. Taking note of such fact, the first appellate authority held that the assessment order passed

under section 143(3) read with section 263 of the Act does not survive. Accordingly, he allowed assessee's appeal.

6. Having heard learned Departmental Representative, we find that the present proceeding arises out of the consequential assessment order passed by the Assessing Officer in pursuance to the order passed under section 263 of the Act by learned PCIT. The fact that the order passed under section 263 of the Act has been quashed by the Tribunal vide order dated 12.10.2023 in assessee's appeal, being ITA No. 258/Del/2019 remains uncontroverted. Thus, when the order passed under section 263 stands quashed, the assessment order passed in pursuance to such order cannot have any independent existence.

7. In view of the aforesaid, we do not find any infirmity in the decision of learned first appellate authority. Grounds are dismissed.

8. In the result, appeal is dismissed.

*Order pronounced in the open court on 9<sup>th</sup> July, 2024*

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SAKTIJIT DEY)**  
**VICE-PRESIDENT**

Dated: 9<sup>th</sup> July, 2024.

RK/-

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi