

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**&**  
**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 2560/Mum/2024**  
**Assessment Year: 2018-19**

<b>M/s. MX Systems International Pvt. Ltd.</b> T-7, 3 <sup>rd</sup> Floor Pinnacle Business Park Mahakali Caves Road Andheri (East) Mumbai - 400093 <b>[PAN: AAECM5026B]</b>	Vs	<b>Principal Commissioner of Income Tax, Mumbai -4</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Shri Piyush Chaturvedi, A/R
Revenue by :	Smt. Sanyogita Nagpal, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 13/08/2024  
घोषणा की तारीख/**Date of Pronouncement** : 20/08/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM :**

This appeal by the assessee is preferred against the order dated 26/03/2024, framed u/s 263 of the Act by the PCIT, Mumbai - 4 (in short 'PCIT'), pertaining to Assessment Year 2011-12.

2. The sum and substance of the grievance of the assessee is that the PCIT erred in assuming jurisdiction u/s 263 of the Act and further erred in holding that the assessment order dated 23/04/2021 framed u/s 143(3) r.w.s. 144B of the Act is erroneous and prejudicial to the interest of the revenue.

3. Representatives of both the sides were heard at length. Case records carefully perused.

4. Briefly stated the facts of the case are that, the assessee electronically filed its revised return of income on 30/03/2019 declaring loss of Rs.7,57,49,062/- as the original return was filed on 30/11/2018. The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. The assessment was completed vide order dt. 23/04/2021.

4.1. Assuming powers conferred upon him by the provisions of Section 263 of the Act, the PCIT issued notice dated 06/09/2023. The relevant part of the notice reads as under:-

*“In your case, return of income for A. Y. 2018-19 was filed on 30.11.2018 declaring total loss of Rs. 11,93,51,376/-. Thereafter, you have filed revised return on 30.03.2019 declaring total loss of Rs. 7,57,49,062/-. Subsequently, your case was selected for scrutiny under CASS and Assessment Order u/s 143(3) r.w.s 144B of the IT Act for AY 2018-19 was completed on 23.04.2021 accepting the returned loss of Rs. 7,57,49,062/-, which was allowed to be carried forward as per tax computation sheet.*

*2. On perusal of case records, it is seen that the due date for filing original return of income for A. Y. 2018-19 was 30.10.2018. However, you have filed the return of income on 30.11.2018, which is beyond time period allowed u/s 139(1) of the IT Act. Though there is Form No.3CEB available on record, however, the assessee has objected to referring the case to the TPO during the course of assessment proceedings as per submissions and details filed. Based upon the same, the Assessing Officer had not referred the case to the TPO and it is also noticed that no TP order passed in this case and, therefore, the assessee cannot take the help of extended time upto November, 2018 in this case. Therefore, considering the facts of the case, no TP issue involved and case was not referred to TPO, the due date for filing return of income in the case of assessee was 30.10.2018 and not 30.11.2018. Hence, in view of the provisions of Section 139 r.w.s 71 and 73A of the Income Tax Act, 1961, the carry forward of loss of Rs.7,57,49,062/- to subsequent year is not allowable. In the Assessment Order u/s. 143(3) r.w.s 144B of the IT Act dated 23.04.2021, the Assessing Officer allowed the carry forward loss of Rs.7,57,49,062/- despite the fact that the original return of income for the year under consideration was filed beyond the due date for filing return of income.*

3. *In view of the aforesaid reasons, it is seen that the Assessment Order dated 23.04.2023 passed is erroneous in so far as it is prejudicial to the interest of the revenue. Therefore, I, the Pr. Commissioner of Income-tax -4, Mumbai, in exercise of the powers conferred on me under the provisions of Section 263 of the I.T. Act, 1961, propose to consider this matter and pass such order thereon as the facts and circumstances of the case may justify.*

4. *Before doing so, I hereby give you an opportunity of being heard to explain your stand. If you desire to be heard in person or through an authorised representative, you may please attend before me at my office at the above mentioned address on 22/09/2023 at 12:00 AM. You are also requested to furnish your submissions in writing so as to reach me on or before the date mentioned above.*

*Please note that in the event of failure to avail of the opportunity of being heard as aforesaid, the matter will be decided on merits on the basis of material available on record..."*

5. A perusal of the aforementioned notice shows that the quarrel revolves around the date of filing of the original return of income. Since there was an international transaction the assessee took the due date for its return of income as 30<sup>th</sup> November and as per the provisions of Section 92E of the Act, the assessee obtained a report from an accountant and furnished the same in Form 3CEB. Merely because the assessee had raised objections before the AO, who was referring the matter to the TPO, the PCIT cannot say that the assessee accepted the due date for filing its return of income as 30<sup>th</sup> October.

6. In our considered view, the assessee may have objected for the reference to the TPO but that would not have changed the colour of the mandatory provisions of the Act as mentioned elsewhere. As per the provisions of Section 92E of the Act, since the assessee has entered into an international transaction it obtained the report from an accountant in Form 3CEB and furnished the same and since the AO was about to refer the matter to the TPO, it shows that there was an international

transaction and, therefore, the due date for the assessee for filing the return of income was 30<sup>th</sup> November.

6.1. The assessee has simply carried forward losses and the apprehension of the PCIT are premature as the same will be considered only when the assessee claims set off of brought forward losses which will happen in the subsequent AYs as and when the assessee claims the set off of losses. For the year under consideration the assessee has simply carried forward losses.

7. Considering the facts of the case in totality we are of the opinion that the assessment order is neither erroneous nor prejudicial to the interest of the revenue for the year under consideration. Therefore, we set aside the order of the PCIT dated 26/03/2024 and restore that of the AO dated 23/04/2021.

8. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 20<sup>th</sup> August, 2024 at Mumbai.**

*Sd/-*

(SANDEEP SINGH KARHAIL)  
JUDICIAL MEMBER

*Sd/-*

(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER

Mumbai, Dated 20/08/2024

*\*Sd/-*

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai