

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA Nos. 3502 to 3504/MUM/2024
Assessment Years: 2008-2009, 2010-11 & 2011-12**

Asst. CIT-4(2)(1),
R. No. 640, 6th floor, Aayakar
Bhavan, MK Road,
New Marine Line,
Mumbai-400020.

Appellant

Vs. Deutsche Investments India Pvt. Ltd.,
Block B1, Nirlon Knowledge Park,
Western Express Highway,
Goregaon East,
Mumbai-400063.
PAN NO. AACCD 1765 E
Respondent

Assessee by : Mr. Niraj Sheth
Revenue by : Mrs. Sanyogita Nagpal, CIT-DR

Date of Hearing : 14/10/2024
Date of pronouncement : 14/10/2024

ORDER

PER OM PRAKASH KANT, AM

The captioned appeals by the Revenue are directed against three separate orders, each dated 09.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2008-09, 2010-11 and 2011-12 respectively. In these appeals common



issue in dispute is involved and therefore same were heard together and disposed off by way of this consolidated order for convenience.

2. In all these appeal, the assessment order in question have been passed pursuant to the revision order u/s 263 of the Income-tax Act, 1961 (in short 'the Act') passed by the Principal Commissioner of Income-tax (in short the PCIT). The Income-tax Appellate Tribunal (in short 'the ITAT') in separate orders has quashed the revision order passed by the Ld. PCIT. Accordingly before us, the Ld. counsel for the assessee submitted that when all the three years, the revision order passed by the Ld. PCIT u/s 263 has been quashed, the consequent assessment orders passed by the Assessing Officer to give effect to the direction of the Ld. PCIT cannot survive. The relevant finding of the ITAT passed in ITA No. 3665/Mum/2014 for assessment year 2008-09 is reproduced as under:

"21. Thus once it is held that the Assessing Officer has adopted one of the two possible view with which learned CIT does not agree, the same does not give learned CIT(A) jurisdiction to exercise revisionary power u/s. 263 of the Act. Moreover, as we have already held above that by asking the Assessing Officer to make further examination without any finding about the order being erroneous and prejudicial to the interest of revenue the learned CIT(A) has clearly erred and hence his order is not sustainable. Explanation (2) added to section 263 of the Act cannot come to the rescue of revenue as the same is not applicable for the current assessment year.

22. More so, because we have held that the Assessing Officer's view is a possible view. On the touchstone of Hon'ble Bombay High Court decision in the case of State Bank of India (supra), the issue having been detailed in the computation of income and case law referred therein and the Assessing Officer having accepted that, it cannot be said that the Assessing Officer has not applied his mind in that issue. Thus in the background of the aforesaid discussion and precedent, we



are of the considered opinion that learned CIT could not have legally assumed jurisdiction u/s. 263 of the Act to ask the Assessing Officer to make a denovo examination by making further examination without finding order being erroneous as well as prejudicial to the interest of revenue. We further note that learned Counsel of the assessee has given case laws for the proposition that the method adopted by assessee for claiming deduction for broken period expenses and mark to market loss is having judicial acceptance. These were also before learned CIT(A), who has not cogently dislodged the reliance placed on the case law.

23. The case law of Raj Mandir Estate (supra) referred by learned Departmental Representative was with respect to bogus share capital and share premium allowed by the Assessing Officer without proper enquiry and in that context on the facts of that case Hon'ble Apex Court has observed that no prejudice will be caused to the assessee by re examination by the Assessing Officer. This case law is not applicable on the facts here. The case law from Hon'ble Delhi High Court in the case of Gee Vee Enterprises (99 ITR 375) is not applicable on the facts of this case. This case law was duly referred to in Hon'ble Delhi High Court decision in the case of ITO Vs. D.G. Housing Projects Ltd. (343 ITR 329) and Hon'ble High Court has observed as under :-

“It is in this context that the Supreme Court in *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax*, (2000) 243 ITR 83 (SC), had observed that the phrase “prejudicial to the interest of Revenue” has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of Revenue. Thus, when the Assessing Officer had adopted one of the courses permissible and available to him, and this has resulted in loss to Revenue; or two views were possible and the Assessing Officer has taken one view with which the CIT may not agree; the said orders cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by the Assessing Officer is unsustainable in law. In such matters, the CIT must give a finding that the view taken by the Assessing Officer is unsustainable in law and, therefore, the order is erroneous. He must also show that prejudice is caused to the interest of the Revenue.”

The above case law duly supports the case of the assessee.

24. Since the issue has been decided by following Hon'ble Supreme Court & Hon'ble Bombay High Court decisions directly applicable, dealing with other case laws referred by learned Departmental Representative is only of academic interest.

25. We have already quashed the order of learned CIT(A) on the ground that assumption of jurisdiction on matters for denovo examination by the Assessing Officer is not legally sustainable, we are of the opinion that adjudicating upon merits of the issues is only of academic interest and we are not engaging into the same.”



2.1 Following the above finding of the ITAT, the Ld. CIT(A) held the assessment order unsustainable in law observing as under:

“4.2. Perusal of the above order reveals that the Hon’ble ITAT has quashed the order u/s 263 of the Act passed by CIT-6, Mumbai on 26.03.2014 with a detailed reason and therefore, the assessment order passed u/s 143(3) in pursuance of the order u/s 263 of the Act itself doesn’t survive. Hence, the present appeal against the order u/s 143(3) r.u.s. 263 of the Act becomes infructuous and doesn’t require any specific adjudication.”

3. In all the three years, the Revenue also in its grounds has challenged the order of the Ld. CIT(A) merely for the reason that Income-tax Department has already preferred appeal against order of the ITAT quashing the revision order of the PCIT passed u/s 263 of the Act. We don’t find any infirmity in the order of the Ld. CIT(A) in following the order of the ITAT and holding the appeal as infructuous. The finding of the Ld. CIT(A) on the issue in dispute is accordingly upheld for assessment year 2008-09, 2010-11 and 2011-12. The grounds of the assessee in three appeals are accordingly allowed.

4. In the result, all the three appeals of the Revenue are dismissed.

Order pronounced in the open Court on 14/10/2024.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 14/10/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai