

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**Before Shri Duvvuru RL Reddy, Vice President and  
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No.166/Kol/2025**

Assessment Year: 2011-12

**Dhanterash Tradewing Pvt. Ltd.....Appellant**

No.101, Real Tech Park, Vashi,

Navi Mumbai-400705.

[PAN: AADCD6307R]

**vs.**

**ITO, Ward-10(1), Kolkata.....Respondent**

**Appearances by:**

Shri Vimal Punmiya, AR, appeared on behalf of the appellant.

Shri Raja Sengupta, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : August 07, 2025

Date of pronouncing the order : August 27 , 2025

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal is filed by the assessee for the assessment year 2011-12 against the order dated 22.11.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has challenged the order of the ld. NFAC, Delhi upholding the order passed by the Assessing Officer u/s 144 r.w.s. 147 dated 19.11.2018 by ignoring the fact that the addition made by the Assessing Officer in respect of funds received by the assessee company was already subject matter of the revisionary proceedings u/s 263 of the Act which were dropped by the Pr. CIT after the assessee replying the show-cause notice issued u/s 263 with all evidences and documents by accepting the assessee's contentions.

3. The facts in brief are that the assessee filed its return of income declaring a total income of Rs.3,851/- which was processed u/s 143(1)

of the Act. Later on, the case of the assessee was selected for scrutiny and assessment was accordingly framed u/s 143(3) of the Act vide order dated 7.05.2013 after assessing the income at Rs.49,750/-. During the assessment proceedings, all the details were called for by the Assessing Officer in respect of money received by the assessee during the year of Rs.7,03,66,330/-. It is pertinent to note that the said assessment was proposed to be revised by the Pr. CIT by invoking revisionary jurisdiction u/s 263 of the Act in February, 2015 by issuing a show-cause notice u/s 263 of the Act 03.02.2015 on the ground that the Assessing Officer did not verify the genuineness of the investment made in the assessee company from the investors. The assessee replied the said show-cause notice along with all evidences and documents and the proceedings u/s 263 of the Act were dropped vide order passed u/s 263 of the Act 28.03.2016. Thereafter, the Assessing Officer reopened the assessment of the assessee u/s 147 of the Act on the basis of information received from DDIT(Inv.), Unit 1(3) by issuing notice u/s 148 of the Act on 23.03.2018. It was noted in the reasons recorded that the assessee company was the beneficiary of Rs.7,03,66,330/- during the F.Y 2010-11 relevant to A.Y 2011-12. There was no compliance to the notice u/s 148 by the assessee and the Assessing Officer thereafter issued notice u/s 142(1) of the Act and finally added the entire amount of Rs.7,03,66,330/- to the income of the assessee in the assessment framed u/s 144 r.w.s. 147 of the Act dated 19.11.2018.

4. Aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A) and the assessee assailed the assessment order both on legal issue as well as on merit. The Id. CIT(A) issued various notices of hearing including a notice dated 04.12.2023 which was replied by the assessee on 15.12.2023 vide acknowledgment no.555684451151223 furnishing detailed explanation along with evidences on all points in defence of the grounds of appeal raised by the assessee. However, ultimately the Id. CIT(A) simply ignored the reply of

the assessee and passed an ex parte order without taking the said reply/evidences/documents into consideration by simply stating that there was no compliance on the part of the assessee.

5. The assessee has now come in appeal before us. The ld. counsel vehemently argued before us that the order passed by the Assessing Officer dated 19.11.2018 u/s 144 r.w.s. 147 of the Act is bad in law as the reopening was made without any valid jurisdiction. The ld. AR submitted that the assessment in this case was framed u/s 143(3) of the Act vide order dated 07.05.2013 assessing total income at Rs.49,750/- and during the course of assessment, the Assessing Officer duly examined the issue of receiving of funds by the assessee from subscribers and investments thereof by calling for various explanations and details/documents from the assessee which were duly furnished and it was only after taking into consideration all these information and explanations provided by the assessee, the Assessing Officer framed the assessment u/s 143(3) of the Act. The ld. AR further submitted that the ld. Pr. CIT upon perusal of the assessment records observed that the Assessing Officer has failed to verify the funds received by the assessee company and their further investments in securities during the course of assessment proceedings and accordingly revisionary jurisdiction u/s 263 of the Act was involved on the ground that the assessment framed by the Assessing Officer dated 07.05.2013 was erroneous as well as prejudicial to the interest of the revenue. Accordingly, a show-cause notice was issued on 03.02.2015 calling upon the assessee to explain as to why the assessment framed by the Assessing Officer should not set aside for the reasons that the Assessing Officer did not verify the genuineness of the investments made in the assessee company by various investors and the Assessing Officer had also not verified the genuineness of the investments made by the assessee. The ld. AR further submitted that the assessee duly replied to the said show-cause notice dated 03.02.2015 with all necessary documents and explanations and the ld. Pr. CIT, after

considering the facts and submissions of the assessee, dropped the proceedings u/s 263 on 28.03.2016. Therefore, further reopening of the assessment on the same issue on which the Pr. CIT has already accepted the contention of the assessee, is against the provisions of the Act and is accordingly invalid and unsustainable in eyes of law. The ld. AR in his defence relied on the decision of the Coordinate Mumbai Bench of the Tribunal in ITA Nos.7434/Mum/2002 & 170/Mum/2003 in the case of Asea Brown Boveri Ltd. vs. ACIT. The ld. AR, therefore, prayed before the Bench that the Assessing Officer having made invalid reopening of the assessment by ignoring the fact that the issue has already been examined by the Pr. CIT in 263 proceedings u/s 263 of the Act and after due examination of the submissions of the assessee dropped the said proceedings u/s 263 of the Act, therefore, the assessment framed by the Assessing Officer u/s 147 r.w.s. 144 of the Act may kindly be quashed as it is nullity in the eyes of law.

6. On the other hand, the ld. DR heavily relied on the order of the authority below.

7. We have heard the rival submissions and perused the materials available on record. The undisputed facts are that the assessment in this case was framed u/s 143(3) of the Act vide order dated 07.05.2013 and thereafter, the ld. Pr. CIT invoked jurisdiction u/s 263 of the Act on the same issue of receiving of funds by the assessee company and investments thereof in other companies by issuing show-cause notice u/s 263 of the Act dated on 03.02.2015. We note that the assessee properly replied to the said show-cause notice with all supporting documents and the ld. Pr. CIT dropped the proceedings u/s 263 vide order dated 28.03.2016 passed u/s 263 of the Act. For the sake of convenience or ready reference, we extract the order passed u/s 263 of the Act as under:

**GOVERNMENT OF INDIA**  
OFFICE OF PR. THE COMMISSIONER OF INCOME TAX, KOLKATA- 4, KOLKATA  
6<sup>TH</sup> FLOOR, 'AAYAKAR BHAVAN', P-7 CHOWRINGHEE SQUARE, KOLKATA – 700 069  
Ph:033-22136434, Fax:033-22136450

01. Name of the assessee / निर्धारितकानाम	M/s Dhanterash Tradewing Pvt. Ltd.
02. Address / पता	91, Amalangsusen Road, 2nd Floor, Kolkata – 700048
03. PAN / स्था.ले.सं./सा.सू.र.सं	AADCD6307R
04. Status / हेसियत	COMPANY
05. Assessment Year / निर्धारणवर्ष	2011-2012
06. Previous Year / पूर्ववर्ष	2010-2011
07. Date of order / आदेशकीतारीख	28.03.2016
08. Section and sub-section under which the assessment is mode / किसधारातथाउपधाराकेअधीननिर्धारणकियागया	UNDER SECTION 263 OF THE INCOME TAX ACT, 1961

आदेश / ORDER U/s 263 of the I.T. Act, 1961

The proceedings initiated u/s 263 of the I T Act, 1961 in above case is hereby dropped.



*(Signature)*  
(Devendra Nath Mishra)  
Pr. Commissioner of Income Tax-4, Kolkata

देवेन्द्र नाथ मिश्रा  
**DEVENDRA NATH MISHRA**  
प्रधान आयकर आयुक्त-4, कोलकाता  
Principal Commissioner of Income Tax-4,  
Kolkata

Copy forwarded to:-

1. M/s Dhanterash Tradewing Pvt. Ltd, 91, Amalangsusen Road, 2<sup>nd</sup> Floor, Kolkata-700 048
2. ITO, Ward- 10(1), Kolkata

*(Signature)*  
(Devendra Nath Mishra)  
Pr. Commissioner of Income Tax-4, Kolkata

7.1 We further note that the Assessing Officer reopened the assessment u/s 147 of the Act on the ground that the assessee is a beneficiary of funds to the tune of Rs.7,03,66,330/- by issuing notice u/s 148 of the Act dated 23.03.2018. Now, the issue before us is that as to whether the reopening of the assessment on the same issue which has been considered by the Id. PCIT in proceedings u/s 263 of the Act which were dropped subsequently after taking into consideration of all required

evidences filed by the assessee. In our view, the ld. Pr. CIT is a superior authority in hierarchy of income tax administration and the issue has been first examined by the Assessing Officer in the proceedings u/s 143(3) of the Act with all evidences and the assessment order was framed on 07.05.2013. Thereafter, the ld. Pr. CIT examined the issue in the revisionary proceedings carried out u/s 263 of the Act and the said proceedings were dropped by the ld. Pr. CIT vide order dated 28.03.2016 as has been extracted above. Therefore, we are of the opinion that the reopening of the assessment on the same issue by the Assessing Officer is invalid and cannot be sustained. The case of the assessee is squarely covered by the decision of the Coordinate Mumbai Bench of the Tribunal in the case of Asea Brown Boveri Ltd. vs. ACIT (supra), the operative part whereof is extracted as under:

- “11. We heard both sides in detail on this legal issue and had long deliberations in the course of hearing of the appeals. If we examine the anatomy of section 263, one of the predominant conditions to be satisfied to initiate revision proceedings is that the order passed by the Assessing Officer must be "erroneous". But it is possible to argue that an Assessing Officer may exercise his jurisdiction under section 147 even in a case whether the assessment order is not erroneous, provided he has recorded apparent reasons to come to a belief that income has escaped assessment in a particular assessment year. A new line of argument is possible on the nature of jurisdiction available under section 263 and also under section 147 if the above line of thinking is adopted for a while.*
- 12. But we have to see another important aspect of this case. The very same issue was raised by the assessee in the immediately preceding assessment year 1987-88 before the Income-tax Appellate Tribunal "A" Bench, wherein the Tribunal found that the hon'ble Madras High Court in the case of CIT v. Ramachandra Hatcheries [2008] 305 ITR 117, has considered the same legal issue that whether 147 action is permissible in a case where proceedings under section 263 has already been dropped. In the said case, the hon'ble High Court has held that the Assessing Officer has no jurisdiction to reopen an assessment under section 147 so as to circumvent the order of the Commissioner of Income-tax passed under section 263 which had become final unless and until the order was set aside by any process known to law. In the case of the earlier assessment year 1987-88 also, the facts and circumstances of the case were exactly similar. The Commissioner of Income-tax had issued notice under section 263 proposing revising of the assessment order on the basis of certain specific observations. On receipt of the notice, detailed reply was filed by the assessee. The Commissioner of Income-tax accepted those explanations and came to a conclusion that there was no justification in proceeding further. Accordingly, the proposed action under section 263 was dropped. Thereafter the Assessing Officer issued notice under section 148 proposing to reopen the assessment on the basis of the very same observations recorded by the Commissioner of Income-tax. On going through the facts and on appreciating the law, the hon'ble Madras High Court came to a*

conclusion that when a set of matters have already been adjudicated by the Commissioner of Income-tax under section 263, the assessing authority has no jurisdiction to repeat the discussion on the very same issues by issuing notice under section 148 proposing reopening of the assessment under section 147.

13. In the impugned assessment year also, the reasons which prompted the Commissioner of Income-tax to issue notice under section 263 were regarding technical know-how fees, cash assistance and duty-draw back, consideration of doubtful debts for the deduction under section 32AB and matter regarding deduction under section 80-I. The reasons recorded by the Assessing Officer for issuing notice under section 148 and the reasons reflected in the notice under section 263 are also nothing else but the very same issues considered by the Commissioner of Income-tax for the purpose of section 263 proceedings.
14. Now as a matter of fact, the Tribunal has held that the reopening of assessment made by the Assessing Officer was bad in law for the immediately preceding assessment year 1987-88 and has allowed the appeal filed by the assessee. Consequently, the appeal filed by the Revenue was dismissed as infructuous.
15. In the order passed by the Tribunal for the immediately preceding assessment year 1987-88 and in the impugned appeal for the assessment year 1988-89, the assessee is the same, facts and circumstances are exactly similar and the grounds raised are again just the same. The co-ordinate Bench of the Tribunal has already held in favour of the assessee for the earlier assessment year 1987-88 relying on the judgment of the Madras High Court in the case of Ramachandra Hatcheries [2008] 305 ITR 117 .
16. When the co-ordinate Bench has already passed an order on an issue, we have to follow the said order of the co-ordinate Bench unless the facts are different or new questions of law have been raised or new materials have been placed. If the facts and circumstances are the same and the law considered the same and the materials placed before the Tribunal are also the same, the Tribunal has to follow the earlier decision of the co-ordinate Bench as that is the mandate of rule regarding judicial precedence and that of judicial discipline. If the Tribunal does not follow the earlier decision of the co-ordinate Bench without valid reasons, it would be an onslaught on the rule of law. Not to follow the order of the co-ordinate Bench would be ridiculed as a pompous show of self-righteousness. That is why the hon'ble Supreme Court in the case of Union of India v. Raghbir Singh [1989] 178 ITR 548 has held that the Tribunal has to follow its own decision and should not differ from its earlier view simply because a contrary view is possible.
17. Therefore, in the facts and circumstances of the case, despite extensive deliberations made in the course of hearing, we hold that the issue is covered by the decision of the Income-tax Appellate Tribunal " A" Bench rendered for the preceding assessment year 1987-88 in the assessee' s own case through its order dated February 16, 2010. Respectfully following the above order of the Tribunal passed for the assessment year 1987-88, we hold that the order of the Assessing Officer reopening the assessment for the impugned assessment year 1988-89 is bad in law and, therefore, set aside.
18. As the reopening of the assessment has been held to be without jurisdiction and been set aside, the appeal filed by the Revenue becomes infructuous and therefore, liable to be dismissed.
19. As these appeals have been decided on the ground of jurisdiction itself, the other grounds raised on contentions of merit have become academic and, therefore, not considered.

20. In the result, appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed as infructuous.

7.2 Therefore, respectfully following the said decision of Coordinate Mumbai Bench, we quash the reopening proceedings as well as consequent assessment framed by the Assessing Officer and accordingly, the appeal of the assessee is allowed.

8. Since we have allowed the appeal of the assessee on legal issue raised before us, therefore, we are not adjudicating on merits of the case at this case and the same is left open for adjudication if the need arises in later stage.

9. In terms of the above, the appeal of the assessee is allowed.

***Kolkata, the 27<sup>th</sup> August, 2025.***

Sd/-  
**[Duvvuru RL Reddy]**  
**Vice-President**

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Dated: 27.08.2025.

RS

*Copy of the order forwarded to:*

1. Appellant -
2. Respondent -
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches