



आयकर अपीलीय अधिकरण 'ए' न्यायपीठ, लखनऊ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

श्री कुल भारत, उपाध्यक्ष एवं श्री निखिल चौधरी, लेखा सदस्य के समक्ष
**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND
SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

आयकर अपील सं/ ITA Nos.161/LKW/2019

निर्धारण वर्ष/ Assessment Year: 2012-13

&

आयकर अपील सं/ ITA Nos.174/LKW/2019

निर्धारण वर्ष/ Assessment Year: 2012-13

U.P Rajya Vidyut Utpadan Nigam Ltd 7 th Floor, Shakti Bhawan Extension 14, Ashok Marg, Lucknow-226001.	v.	DCIT, Range-VI 3 rd Floor, 27/2, Raja Ram Mohan Rai Marg, P. K. Complex, Lucknow- 226001.
PAN: AAACU4749D		
अपीलार्थी/(Appellant)		प्रत्यर्थी/(Respondent)

आयकर अपील सं/ ITA No.209/LKW/2019

निर्धारण वर्ष/ Assessment Year: 2012-13

DCIT, Range-VI 3 rd Floor, 27/2, Raja Ram Mohan Rai Marg, P. K. Complex, Lucknow-226001.	v.	U.P Rajya Vidyut Utpadan Nigam Ltd 7 th Floor, Shakti Bhawan Extension 14, Ashok Marg, Lucknow-226001.
		PAN:AAACU4749D
अपीलार्थी/(Appellant)		प्रत्यर्थी/(Respondent)

अपीलार्थी कि और से/Appellant by:	Shri Sandeep Jain, C.A		
प्रत्यर्थी कि और से /Respondent by:	Shri R. K. Agarwal, CIT(DR)		
सुनवाई कि तारीख / Date of hearing:	04	12	2025
घोषणा कि तारीख/ Date of pronouncement:	20	01	2026

**आदेश / O R D E R****PER KUL BHARAT, VICE PRESIDENT.:**

This bunch of three appeals by the assessee and the Revenue respectively against the different order of the Ld. Commissioner of Income Tax (Appeals)-II, Lucknow [‘CIT(A)’, in short], dated 10.01.2019 and 14.01.2019 respectively, pertaining to the A.Y. 2012-13. The ITA. No.161/LKW/2019 and ITA.209/LKW/2019 are cross appeals by the assessee and Revenue against the order of Ld. CIT(A) dated 10.01.2019 which relates to the assessment order passed in pursuance of direction of Ld. PCIT issued by way of order u/s 263 of the Income Tax Act, 1961 (“Act”, for short). However, in ITA. No.174/LKW/2019 is against the order dated 14.01.2019 related to the original assessment order dated 23.01.2015.

2. For the sake of convenience, these appeals were heard together and are being disposed of by way of consolidated order. In ITA. No. 174/LKW/2019, pertaining to the A.Y. 2012-13, the assessee has raised the following grounds of appeal: -

1. Because the learned first appellate authority ought not to have dismissed the appeal of the assessee as having become infructuous.

2. Because the learned first appellate authority ought to have deleted addition of Rs.49,25,509/- made by the assessing officer u/s 14A of the Income Tax Act, 1961 in computing the Total Income of the appellant under normal provisions of the Income Tax Act, 1961.

3. Because the learned first appellate authority ought to have deleted addition of Rs.49,25,509/- made by the assessing officer u/s 14A of the Income Tax Act, 1961 in computing the Book Profit of the appellant u/s 115JB of the Income Tax Act, 1961.

4. Because the learned first appellate authority ought to have allowed depreciation on the amount of Repairs & Maintenance treated as capital expenditure in AY 2004-05, as in assessment for A.Y. 2004-05 the



depreciation on such amount treated as capital expenditure was allowed and depreciation on WDV is liable to be allowed in subsequent years also in view of Explanation 5 of section 32 of the income Tax Act, 1961. This is without prejudice to the assessee's ground in appeal for A.Y. 2004-05 in which the treatment of repairs and maintenance expenditure as capital expenditure has been contested.

5. Because the learned first appellate authority ought to have directed the assessing officer to allow credit of TDS as per the claim of the assessee as complete details of the same were given in the Return of income and Form 26AS.

6. Because the order appealed against is contrary to facts, law and principles of natural justice.

7. Any other grounds that may be taken at the time of hearing.”

3. Further, the grounds of appeal raised by the assessee in ITA No.161/LKW/2019 and the grounds of appeal raised by the Revenue in ITA. No.209/LKW/2019 are as under:-

ITA NO.161/LKW/2019

1.1 Because the learned first appellate authority ought not to have confirmed the addition of Rs. 500,85,00,000/- made by the Assessing officer to the total income of the appellant under normal provisions of the Income Tax Act, 1961.

1.2 Because the learned first appellate authority ought to have deleted the addition of Rs. 500,85,00,000/- made by the assessing officer in computing the total income of the appellant under normal provisions of the Income Tax Act, 1961.

1.3 Because the learned first appellate authority ought to have considered the claim of the assessee of Rs. 500,85,00,000/- in Assessment Year 2012-13 itself since the same is as per the accounting policy consistently followed by the assessee in accordance with the mandatory accounting standards notified under the Companies Act, 1956.

1.4 Because the learned first appellate authority ought to have allowed the claim of the assessee of Rs. 500,85,00,000/- in assessment year 2012-13 itself as the action of the assessee for claim of Rs. 500,85,00,000/- is in accordance with and in conformity with the requirements of section 145 of the Income tax Act, 1961.

1.5 Because the learned first appellate authority erred in inferring that the amount of Rs.500,85,00,000/- is an expenditure in the nature of unascertained contingent liability during the assessment year 2012-13.

2 Because the learned first appellate authority ought not to have confirmed the rejection of books of accounts of the appellant made by the assessing officer u/s 145(3) of the Income Tax Act, 1961.



3. *Because the order appealed against is contrary to the facts, law and principles of natural justice.*

4. *Any other grounds that may be taken at the time of hearing.”*

ITA NO.209/LKW/2019

“1. That the Ld. CIT(A)-2, Lucknow had erred in law and facts in deleting the re-computation of book profit u/s 115JB of the I.T. Act, 1961 ignoring the facts that the assessee had not prepared the P & L a/c in accordance with the provisions of Companies Act and also that any deduction pertaining to succeeding financial year is not an allowable deduction.

2. The appellant craves leave to add or amend any one or more of the grounds of appeals, as stated above, as and when need to do so arises with the prior permission of the Court.”

4. Apropos to the grounds of appeal, the Ld. Counsel for the assessee, at the outset, contended that in the present case, the original assessment order was completed on 23.01.2015 u/s 143(3) of the Income Tax Act, 1961 (“Act”, for short). Thereafter, the Ld. Principal Commissioner of Income Tax, Lucknow (“PCIT”, for short), in exercise of powers u/s 263 of the Act, cancelled the assessment order. Aggrieved by the action of the Ld. PCIT, the assessee preferred an appeal before this Tribunal, which was allowed in favour of the assessee. Against the said order of the Tribunal, the Revenue is in appeal before the Hon’ble High Court, which is presently pending adjudication. He contended that in the appeal against the original assessment order, the Ld. CIT(A) has dismissed the appeal on the grounds that since the original assessment order dated 23.01.2015 has been cancelled, therefore, the appeal against such assessment order has become infructuous.

5. The Ld. Departmental Representative did not controvert this fact.



6. Heard the Ld. Representatives of the parties. In the present case, the order u/s 263 of the Act was passed by the Ld. PCIT on 12.01.2017, as informed by the Ld. Counsel for the assessee. In pursuance of the said order, the Assessing Officer passed a consequential order on 24.11.2017. Aggrieved thereby, the assessee filed in appeal before the Ld. CIT(A) on 10.01.2019. Subsequently, on 15.03.2019, the Co-ordinate Bench of this Tribunal set aside the order passed u/s 263 of the Act. Meanwhile, the assessee in ITA No.161/LKW/2019 and the Revenue in ITA No.209/LKW/2019 challenged the order dated 10.01.2019 passed by the Ld. CIT(A). These appeals were filed on 27.02.2019 and 02.04.2019 respectively. The assessee had also filed appeal before Ld. CIT(A) for the same assessment year against the original assessment order dated 23.01.2015, which had been revised by the Ld. PCIT vide order dated 12.01.2017 and the order passed by Ld. CIT(A) treating the appeal of the assessee as infructuous is under challenge in ITA. No.174/LKW/2019. The Revenue has not disputed the fact that the order passed u/s 263 of the Act has been set aside by this Tribunal. Consequently, the natural corollary is that the original assessment order stands revived and comes back into existence. Therefore, the impugned order, whereby, the Ld. CIT(A) treated the appeal as infructuous, is hereby set aside, and the grounds of appeal are restored to the file of the Ld. CIT(A) for adjudication on merits in accordance with law. Accordingly, the grounds raised in this appeal are allowed for statistical purposes.

7. Now, coming to the rest of the appeals, i.e., ITA No. 161/LKW/2019 and ITA No. 209/LKW/2019, being the cross-



appeals filed by the assessee and the Revenue, respectively. Since these appeals arise out of the proceedings-initiated u/s 263 of the Act, and it is undisputed that the order passed u/s 263 of the Act has already been set aside, the assessment order passed in pursuance thereof does not survive. Consequently, the appeals arising from such assessment order have become infructuous. We hold accordingly. Therefore, the cross-appeals filed by the assessee and the Revenue in ITA Nos. 161/LKW/2019 and 209/LKW/2019 are dismissed as infructuous.

8. In the result, the appeal of the assessee in ITA. No.174/LKW/2019 is allowed for statistical purposes and ITA. No.161/LKW/2019 and ITA. No.209/LKW/2019, the cross appeals of the assessee and Revenue are dismissed as infructuous.

Order pronounced in the open Court on 20/01/2026.

Sd/-

[निखिल चौधरी]

[NIKHIL CHOUDHARY]

लेखा सदस्य/ACCOUNTANT MEMBER

दिनांक/DATED: 20/01/2026

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard File

// True Copy//

Sd/-

[कुल भारत]

[KUL BHARAT]

उपाध्यक्ष/VICE PRESIDENT