

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

I.T.A. No.1018/KOL/2026
Assessment Year: (2012-13)

JCIT (IN-SITU), Circle – 1(1), Kolkata	Vs.	Dozco India Private Limited, 309, 3 rd Floor, Waterloo Street, Kolkata - 700069 [PAN: AABCD076E]
(Appellant)	..	(Respondent)

C.O. No.37/KOL/2026
(Arising out ITA No.1018/Kol/2026)
Assessment Year: (2012-13)

Dozco India Private Limited, 309, 3 rd Floor, Waterloo Street, Kolkata - 700069 [PAN: AABCD076E]	Vs.	JCIT (IN-SITU), Circle – 1(1), Kolkata
(Appellant)	..	(Respondent)

Appellant by :	Ms Ruchika Sharma, Sr. DR
Respondent by:	Shri S. M. Surana, Advocate & Shri Sunil Surana, FCA

Date of Hearing	24.06.2026
Date of Pronouncement	08.07.2026

ORDER

PER PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER:

These appeals and cross objection have been filed by the revenue and assessee are directed against the orders dated 22.01.2026 of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Id. CIT(A)")

passed u/s 250 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year (A.Y.) 2012-13.

2. In the present case, the assessee has challenged the validity of the order passed u/s 250 of the Act. Hence, we are taking CO No.37/Kol/2026 for A.Y. 2012-13 as 'lead' case.

C.O. No.37/Kol/2026 (A.Y. 2012-13):

3. The facts of the case in brief are that the appellant filed its return of income on 22.09.2012, declaring income of Rs.7,06,02,924/- for A.Y. 2012-13. Subsequently, the case was completed u/s 143(3) of the Act on 29.03.2015 at income of Rs.15,22,28,100/- under normal provision. Further, the assessment was reviewed by Id. PCTI-1, and given direction u/s 263 of the Act to the AO vide order dated 13.02.2017 to pass a fresh assessment. The assessment proceedings were completed vide 263/143(3) order dated 03.08.2017 by making addition of Rs.2,32,00,812/- on account of contingent liability.

4. Aggrieved by the said order, the assessee preferred appeal before the Id. CIT(A), wherein the appeal of the assessee has been allowed by Id. CIT(A) by observing as follows:

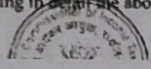
"5. Appellate finding and decision:

5.1 I have perused the form no.35, grounds of appeal, the impugned assessment order, the written submissions and the facts of the case.

5.2 The background of the issue is that Id PCIT-1, Kolkata passed order u/s 263 dated 13.02.2017 on the specific issue of disallowance of contingent liability on external commercial borrowing (ECV) which was claimed as deduction in the profit and loss account by the appellant company. The assessment was framed afresh by the AO vide order dated 03.08.2017 wherein the addition of Rs.2,32,00,812/- was made by the AO by observing as under:

The assessee had debited a sum of Rs.88960078 as foreign exchange loss which included a sum of Rs.23200812 being amount payable on ECB calculated @ Rs.51.53 for the year ended 31/3/2012. During the year the assessee was engaged in the business of import and distribution of heavy earthmoving machinery and spares. The assessee itself clarified in the Notes on Financial Statement (Notes 25 Clause 2(A)(D)) that the exchange loss of Rs.2,32,00,812 on outstanding external commercial borrowing was a contingent liability and the same had not been provided for. The PCIT-1 Kolkata was of the view that the loss of Rs.2,32,00,812 being a contingent liability and calculated on notional basis cannot be allowed to be set off against the taxable income of the year. The liability could have been claimed as deduction only if that is an ascertained one.

Following the direction of the Principal Commissioner, a notice u/s 142(1) dated 21.06.2017 was duly sent to the assessee on 23.06.2017, intimating in terms of the above observation and calling for rebuttal reply supported by evidence.



The assessee submitted his written explanation 28.06.2017 that "There is mistake in disclosure made in the Balance Sheet and such mistake was clarified by the Auditors of the company. This was submitted before the Ld. CIT in the proceeding under section 263 of the Act. It may please be noted that the fact of liability has not been disputed." The Ld. Pr. CIT-1, Kolkata already stated in his order that the audit report cannot be rectified nor can be corrected at such belated stage. However, the "contingent liability" of Rs.2,32,00,812 on ECB was not proven to be an actual liability or actual expenditure. The rectified audit report was not accepted by the Ld. PCIT-1 during the 263 proceedings. Therefore the assessee's explanation in this regard is not acceptable.

Therefore, the loss of Rs.2,32,00,812 being a contingent liability and calculated on notional basis cannot be allowed to be set off against the taxable income. The same is therefore disallowed and added back to the total income of the assessee. The assessment is revised as per direction of the Principal Commissioner of Income Tax-1, Kolkata u/s 263 without interfering with the other issues of the original assessment made on 29/3/2015. The total assessed income is computed as below:-

Total assessed income as per order u/s 143(3) dated 29.03.2015	Rs. 15,22,28,100
Add: Contingent liability as discussed above	<u>Rs. 2,32,00,812</u>
Revised total income	<u>Rs. 17,54,28,912</u>

5.3 The appellant during the course of appellate proceedings has contended that the said liability was not contingent but an ascertained liability. The appellant has further given the exact working of the computation of the forex loss as under:

Dozco India Pvt Ltd Working Calculation on Foreign Exchange Fluctuation Loss											
Lender	Loan Taken				Loan Repaid				Actual Loss	Booked Loss/Gain	
	Date	USD	Rate	INR	Date	USD	Rate	INR			
OLYMPIA	25.09.2007	1,000,000.00	39.56	39,560,000.00	02.04.2013	1,000,000.00	54.32	54,320,000.00		31.03.2012	21,513,445
STAR	30.05.2008	1,000,000.00	42.44	42,440,000.00	28.04.2014	1,200,000.00	60.62	72,740,040.00		31.03.2013	6,290,460
EQUIPMENT L.L.C. DUBAI (UAE)	21.10.2008	200,000.00	48.98	9,796,000.00						02.04.2013	(69,300)
										31.03.2014	6,840,840
										16.09.2014	632,040
		2,200,000.00		91,796,000.00		2,200,000.00		127,060,040.00	35,264,040.00		35,207,485
EXCON	25.02.2008	250,000.00	39.75	9,937,500.00	25.02.2011	275,000.00	41.26	11,346,225.00		31.03.2012	1,687,367
EQUIPMENTS	26.12.2008	250,000.00	48.16	12,040,625.00	29.03.2011	225,000.00	44.81	10,082,250.00		31.03.2013	3,288,195
SERVICES	27.01.2009	300,000.00	48.77	14,631,000.00	10.01.2014	1,150,000.00	61.97	71,265,500.00		10.01.2014	8,717,805
PTE LTD.	24.02.2009	850,000.00	49.81	42,338,500.00							
SINGAPORE		1,650,000.00		78,947,625.00				1,650,000.00	92,693,975.00	13,746,350.00	13,693,367
G. TOTAL		3,850,000.00		170,743,625.00		3,850,000.00		219,754,015.00	49,010,390.00		48,900,852.00

5.4 The appellant has further contended that the loss was booked as per the AS-11 prescribed by the ICAI by which the forex fluctuations are marked to market (MTM) and need to claim along with the expenses.

5.5 The appellant has further relied upon the decision of the Hon'ble Apex Court in the case of CIT v Woodward Governor India Pvt Ltd. 312 ITR 254 (SC). The appellant has also relied upon the decisions of Hon'ble ITAT in the case of Oil and Natural Gas Corpn Ltd v DCIT 261 ITR (AT) 1 (Del ITAT) and DCIT v Bank of Bahrain and Kuwait (2010) 132 TTJ 0505 (SB).

5.6 I have considered the submission of the appellant as well as the fact of the case. It is noted that the appellant had claimed the forex losses based on the rate of currency at the end of each financial year. Further it is noted that the appellant has followed the same accounting principle with respect to forex losses over other years as well but no addition has been made in other years except the relevant previous year 2011-12.

5.7 In view of the above the addition of Rs.2,32,00,812/- made by the AO is hereby directed to be deleted. The appellant gets relief on all the grounds of appeal.

6. In the result, the appeal filed by the appellant is treated as allowed.”

5. Being aggrieved, dissatisfied, the revenue filed appeal before us. In the appellate proceedings, the assessee has preferred Cross Objection, which we have taken first to decide it. The learned Authorized Representative (Id. AR) challenges the very impugned order thereby submitting that order passed by the Id. PCIT u/s 263 of the Act is *void an initio* since the original order u/s 143(3) of the Act never existed in laws as it was quashed by the Id. CIT(A) by holding that it is barred by limitation and the said order has been confirmed by the ITAT in an appeal filed by the revenue. The Id. AR submits that when the original order has been set-aside so the consequential order passed by the AO in pursuant to the order passed u/s 263 of the Act is invalid and *void ab initio*. The Id. AR further submits that order passed by the ITAT in which the appeal of the revenue has been dismissed has been confirmed by the Hon'ble Calcutta High Court when the revenue has preferred appeal before the Hon'ble High Court against such order. The Id. AR placed the following documents: (i) Original assessment order u/s 143(3), dated 29.03.2015, (ii) ITAT Order dated 22.08.2023 and (iii) Calcutta High Court order dated 14.08.2024.

6. Contrary to that, learned Senior Departmental Representative (Id. Sr. DR) supports the impugned order but did not raise any doubt, the order passed by the ITAT confirmed by Calcutta High Court in the original assessment order passed u/s 143(3) of the Act.

7. Upon hearing the submission of the Id. AR of the representative parties and on perusal of the facts, we find that original assessment order in the present case was passed on 29.03.2015. The assessee appealed against the same before the Id. CIT(A) that was allowed as barred by limitation. The revenue preferred appeal against the order passed by the Id. CIT(A) before the ITAT and Hon'ble ITAT vide its order dated 22.08.2023, dismissed the appeal of the revenue by confirming the order passed by the Id. CIT(A). The revenue carried the matter before the Hon'ble Calcutta High Court where in order passed by the ITAT has confirmed by dismissing the appeal of the revenue. It is a fact that when the matter was pending before the Id. CIT(A), Id. PCIT passed an order u/s 263 of the Act on the limited ground that the assessee claimed foreign exchange loss, which was contingent in nature and set-aside the matter to the AO to verify. The AO passed the order u/s 143(3) r.w.s. 263 of the Act and disallowed the said loss as contingent in nature. It is an admitted fact that an order passed by the AO u/s 143(3) r.w.s. 263 of the Act was placed before the Id. CIT(A), wherein the Id. CIT(A) allowed the appeal of the assessee by following the judgement of the various Court. Now, the revenue has filed against the same. There is no dispute that original order passed u/s 143(3) of the Act never existed in law as it was quashed by Id. CIT(A) as barred by limitation and the order passed by the Id. CIT(A) has attained its finality as the revenue has lost its battle up to the Hon'ble High Court. Since the order passed u/s 143(3) of the Act is become a non-existence so any consequential order passed by the AO u/s 143(3)/263 of the Act is invalid and *void ab initio*.

8. The Id. AR placed reliance on the judgement of Hon'ble Calcutta High Court in case of Keshab Narayan Banerjee vs. CIT, (1999) 238 ITR 694 (Cal.),

wherein it has been held that whether where in absence of valid service of notice, orders u/s 147 passed against appellant were bad in law, proceedings u/s 263 originating from such orders could not be initiated against appellant.

9. Keeping in view the discussion made above, we find substance in the arguments of the Id. AR that when the original order u/s 143(3) of the Act never existed in law and quashed by Id. CIT(A) as bared by limitation, so the consequential order passed by the AO u/s 263/143(3) of the Act is invalid and *void ab initio*. Hence, the Cross Objection of the assessee is hereby allowed.

10. Since, we have decided the Cross Objection in favour of the assessee, hence, it is needless to discuss on merits and the appeal filed by the revenue (ITA No.1018/Kol/2026) becomes infructuous and hereby dismissed.

11. In the result, the appeal of the revenue is dismissed whereas the CO filed by the assessee is allowed.

The order is pronounced in the open Court on 08/07/2026.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Pradip Kumar Choubey)
JUDICIAL MEMBER

Kolkata, Dated: 08/07/2026

SAMANTA

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

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

BY ORDER,

// TRUE COPY //

Asstt. Registrar, ITAT, Kolkata