

आयकर, अपीलीय अधिकरण राजकोट न्यायपीठ ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT**  
**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER**  
**AND**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ **ITA.No.215/RJT/2016**  
निर्धारण वर्ष/ **Asstt. Year: 2009-2010**

ITO, Ward-1(2)(1) Rajkot.	Vs	Shri indrajitsinh Balubhai Dabhi Janak Nivas, Station Plot Gondal Dist. Rajkot.
------------------------------	----	---

<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
-------------------------------	--	---------------------------------

Revenue by :	Shri Jitendra Kumar, CIT-DR
Assessee by :	Shri D.M. Rindani, AR

सुनवाई की तारीख/Date of Hearing : 15/01/2018  
घोषणा की तारीख /Date of Pronouncement: 01/02/2018

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Present appeal is directed at the instance of Revenue against order of the Id.CIT(A), Rajkot dated 16.3.2016 passed for the Asstt.Year 2009-2010.

2. It emerges out from the record that originally an assessment order was passed under section 143(3) on 14.11.2011. The Id.Commissioner took cognizance under section 263 of the Income Tax Act and held that order passed by the AO is erroneous and prejudicial to the interest of the Revenue. The Id.CIT has set aside this assessment order on 19.3.2014 vide order passed under section 263. In pursuance of CIT's order dated 19.3.2014 the AO has passed impugned order on 30.3.2015 under section 143(3) r.w.s 263 of the Act. This order was challenged before the Id.CIT(A). In the meanwhile, the

assessee has challenged order of the Id.Commissioner passed under section 263 vide ITA No.245/RJT/2014. The Tribunal has allowed appeal of the assessee and quashed the order of the Id.Commissioner dated 19.3.2014 passed under section 263. The Id.CIT(A) in the impugned order observed that since the very jurisdiction infused in the AO by virtue of order under section 263 has been extinguished after order of the ITAT, therefore, this impugned assessment order become infructuous. The Id.CIT(A) did not adjudicate the appeal and observed that it became infructuous.

3. On due consideration of the above facts, we are of the view that the Id.CIT(A) ought to have allowed appeal of the assessee for statistical purpose, and should have quashed the assessment order because jurisdiction infused in the AO by way of order passed under section 263 was extinguished. This assessment order is not sustainable. But to our mind, there cannot be any grievance to the Revenue if the Id.CIT(A) has treated appeal of the assessee as infructuous after making the above observation. In any case, the assessment order passed under section 143(3) r.w.s 263 of the Act is not sustainable and all these proceedings have become redundant after order of the ITAT passed in ITA No.245/RJT/2014. With the above observation, this appeal is disposed off.

4. In the result, the appeal of the Revenue is disposed off.

**Order pronounced in the Court on 1<sup>st</sup> February, 2018 at Ahmedabad.**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad; Dated 01/02/2018