

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 321/Kol/2017
Assessment Year: 2009-10

Deputy Commissioner of Income-tax, Circle-8(1), Kolkata.	Vs.	M/s. ITC Ltd. (PAN: AAACI5950L)
Appellant		Respondent

Date of Hearing	17.04.2018
Date of Pronouncement	26.04.2018
For the Appellant	Shri G. Hangsing, CIT
For the Respondent	Smt. Sushmita Basu, Ld. AR

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the revenue is against the order of Ld. CIT(A)-3, Kolkata dated 20.12.2016 for AY 2009-10.

2. At the outset, it has been brought to our notice by the Ld. Counsel for the assessee that the Ld. CIT(A) taking note of the fact that the assessment order dated 26.06.2015 was pursuant to the order passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) passed by the Ld. CIT, Kolkata-3 by order dated 18.03.2015. According to the Ld. Counsel, the Tribunal vide order dated 03.02.2016 has quashed the 263 order of the Ld. CIT, Kolkata-3 dated 18.03.2015. Therefore, since the Ld. CIT’s order passed u/s. 263 of the Act has been quashed, the assessment order giving effect to the order of the Ld. CIT does not survive. Based on the said factual aspect, the Ld. CIT(A) has allowed the appeal of the assessee which does not call for any interference. The Ld. DR could not controvert the said fact brought to our notice by the Ld. AR.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the Ld. CIT, Kolkata-3 vide order dated 18.03.2015 passed an order u/s. 263 of the Act and the AO has given effect to the order of the Ld. CIT by passing an order on 26.06.2015, which was challenged by the assessee before the Ld. CIT(A) wherein the Ld CIT (A) taking note of the fact that the Tribunal vide order dated 03.02.2016 was pleased to quash the CIT’s order passed u/s. 263 of the Act, allowed the appeal of assessee.

In such a scenario, the AO's order giving effect to the CIT's order passed u/s. 263 of the Act cannot survive, when the foundation of the AO's order dated 26.06.2015 has become non-est in the eyes of law by the operation of Tribunal's order. Therefore, the assessment order of AO in such a scenario cannot survive on its own and, therefore, we confirm the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

4. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 26th April, 2018.

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :26th April, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Circle-8(1), Kolkata.
2. Respondent – M/s. ITC Ltd., 37, J. N. Nehru Road, Chowringhee, Kolkata-700 071.
3. The CIT(A), Kolkata
4. CIT ,
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Senior Pvt. Secy.