आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH "B", CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.438/Chd/2018**
निर्धारण वर्ष / Assessment Year : 2001-02

M/s Punjab Beverages Pvt. Ltd., 60, Yadvindra Colony, The Mall, Patiala	बनाम	The D.C.I.T., Circle Patiala.
स्थायी लेखा सं./PAN NO: AAACP8581C		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ **ITA No.446/Chd/2018**
निर्धारण वर्ष / Assessment Year : 2001-02

The D.C.I.T., Circle Patiala.	बनाम	M/s Punjab Beverages Pvt. Ltd., 60, Yadvindra Colony, The Mall, Patiala
		स्थायी लेखा सं./PAN NO: AAACP8581C
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Tarandeep Singh, Adv.
राजस्व की ओर से/ Revenue by : Shri Ashish Gupta, CIT DR

सुनवाई की तारीख/Date of Hearing : 19.09.2018
उदघोषणा की तारीख/Date of Pronouncement : 17.12.2018

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER.:

The impugned cross appeals by the assessee and the Revenue have been filed against the order passed u/s 250(6) of the Income The Income Tax Act, 1961 (hereinafter referred to as 'Act') by the Ld. Commissioner of Income Tax

(Appeals), Patiala (in short ("CIT(A)") dated 5.1.2018 relating to assessment year 2001-02.

2. This is second round before the I.T.A.T. and brief facts relating to the case are that the assessee is a domestic company engaged in the business of manufacturing and trading of soft drinks. For the impugned assessment year no return u/s 139(1) of the Act had been filed, but in response to notice u/s 142(1) of the Act, the assessee returned nil income accompanied by a letter stating that no business had been conducted by the assessee during the year. The said return was held to be an invalid return u/s 139(9) of the Act ,on account of deficiency pointed out therein by the Assessing Officer (A.O).. Thereafter, from the return filed by the assessee for the subsequent year i.e. assessment year 2002-03 the A.O. noted that the assessee had taxable income for the impugned assessment year in terms of remission of liability of payment of interest on bank loan, pursuant to one time settlement with the bank. Armed with this information, the A.O. assumed jurisdiction to reassess the assessee company for the impugned year and issued notice u/s 148 of the Act. In response to the same, the assessee conceded that it had entered into one time settlement with Punjab & Sind Bank and Oriental Bank of Commerce, as per which a sum of Rs.4,95,98,644/- was agreed to be paid in full and final settlement of all the claims of the bank as on 31.3.2001. The assessee further contended that inspite of the said settlement entered into

by the assessee no interest was liable to be taxed in the impugned year since the Department had never allowed the assessee's claim of interest on these bank loans in the past, right from assessment year 1997-98 to 1998-99 amounting to Rs.2,44,63,820/-. The A.O. rejected the claim of the assessee and assessed the said amount of interest of Rs.2,24,34,509/- as income from other sources, against which adjustment of brought forward losses as well as claim of depreciation was declined on the ground that the assessee company had no business income during the year under consideration. The matter was carried in appeal before the Ld.CIT(A) who dismissed the assessee's appeal. On further appeal to the I.T.A.T., it was held that the remission of income u/s 41(1) of the Act should be taxed under the head ' Income from business ' only and not as 'Income from other sources'. But at the same time the I.T.A.T. restored the matter back to the A.O. to verify whether any deduction on account of interest towards bank loan was claimed and allowed. The I.T.A.T. further held that unabsorbed depreciation of the block of A.Y 1997-98 to 2001-02 was not to be allowed to be set off against income. On receipt of the aforesaid order of the Tribunal the A.O. reduced the demand of Rs.1,90,32,260/- ,which was raised pursuant to the original order of assessment against the assessee, vide plus minus account No.86 on 28.3.2013. Subsequently, the A.O. framed the assessment again under the provisions of section 143(3)/254 of the Act expressing his inability to follow the directions of the Hon'ble Tribunal

since the assessee has failed to furnish necessary documentary evidences to corroborate its claim. The assessee went in appeal against the aforesaid order of the A.O. challenging the impugned order as being non-est since the A.O. had already passed an order earlier on 28-03-13 and there could not be two assessment orders for assessing the same income for the same assessment year on the same person. This claim of the assessee was dismissed by the CIT(A) stating that the earlier order passed was only a computation sheet and not an order passed under the Act. The assessee further challenged the order on merits, to which the CIT(A) held that the A.O. had passed the order in abject disregard of the directions of the Tribunal, since all necessary evidences had been filed by the assessee for complying with the directions of the Tribunal and/or were available with the A.O. in the assessment record pertaining to the assessee. The CIT(A) held that within the phraseology of section 251(1)(a) of the Act, he was left with no option but to annul the impugned assessment but on noting that this act would lead to unintended consequences of closure of the case as non-est or void abinitio, which would be unfair to the Revenue, he directed the A.O. to comply with the directions of the I.T.A.T. and verify the claim of the assessee vis-à-vis interest and unabsorbed depreciation allowance and thereafter assess the income in accordance with law. The Ld.CIT(A) stated that his aforesaid directions would not tantamount to setting aside the assessment order and referring the case back to the A.O. for making fresh

assessment which had been omitted from section 251(1)(a) of the Act giving the powers to the CIT(A), since the A.O. had failed to comply with the directions of the I.T.A.T. and vide this order the CIT(A) was only directing him to comply with the same which directions could not be construed as setting aside of assessment accordingly.

3. Aggrieved by the same both the assessee and the Revenue have come up in appeal before us, with the assessee challenging the order of the CIT(A) holding that no assessment order was passed earlier and, therefore, the assessment order impugned in the present case cannot be treated as a second assessment order while the Revenue has challenged the action of the CIT(A) in restoring the matter back to the A.O. for verification.

We shall first be taking up the assessee's appeal in ITA No.438/Chd/2018.

ITA No.438/Chd/2018(Assessee's Appeal):

4. Grounds raised by the assessee read as under:

> *1. That on facts and in law the Commissioner of Income Tax (Appeals) {hereinafter referred to as "CIT(A)"} has erred in not appreciating that the order of assessment dated 23th March, 2014 passed by Assessing officer {hereinafter referred to as "At)"} is non-est and bad in law in as much as after having passed an order dated 28th March, 2013 u/s 143(3)/254 of the Income Tax Act, 1961 {hereinafter referred to as "Act"} no other order giving effect to ITAT order could have been passed.*
>
> *2. That on facts and in law the CIT(A) erred in treating order dated 28thMarch, 2013 as merely a computation sheet.*
>
> *3. That on facts and in law the order of Assessment u/s 143(3)7254 of the Act passed by the AO is bad in law*

and void ab initio."

5. As is evident from the above discussion the issue to be adjudicated is whether the A.O. had passed "assessment order" on 28.3.2013 as a consequence of which the subsequent assessment order passed on 28.3.2014 which is the impugned order in the present case was non-est and void abinitio since two assessment orders could not be passed by the A.O. on the same person for the same year. Before preceding it is, therefore, necessary to reproduce the documents dated 28.3.2013 which is the bone of dispute between the two parties, with the assessee claiming it to be an assessment order, while the Revenue claims it to be an administrative document only. The same was filed before us at Paper Book page No.32 and is reproduced hereunder:

Income Tax Computation

Name of the assesses	M/s Punjab Beverages Pvt. Ltd.
Address	Regd. Office # 60, Yadwindra Colony, Patiaia
Assessment Year	2001-02
Status	Company
Date of order	28.3.2013
Assessed income u/s 143(3)/147	22434509/-
Income assessed after CIT(A)' order inn appeal no.203/08-09 dated 18.03.2011 & I.T.A.T.	
Income assessed after CIT(A)'s order in appeal no. 203/08-09 dated 18.03.2011 & ITAT order in ITA no. 590/Chd./2011 dated 27.02.2013	NIL
Total Tax & Interest	NIL
Net Tax Payable	NIL

Demand of Rs. 19032260/- taken into +- A/c No.86

(ROHIT KUMAR)
Asst. Commissioner of Income Tax,
Circle, Patiala

Copy to assessee"

6. Drawing our attention to the above, the Ld. counsel for assessee stated that the said order was clearly an appeal effect order passed in pursuance to the directions of the I.T.A.T. in its order passed in ITA No.590/Chd/2011 dated 27.2.2013. The Ld. counsel for assessee stated that all the contents of an assessment order find mention in the impugned document i.e. the name of the assessee, the date of the order, assessed income u/s 143(3)/147, income to be assessed pursuant to order of Hon'ble I.T.A.T., final tax demand, tax demand payable and even "copy to assessee" find mention in the same. The Ld. counsel for assessee stated that all the above are ingredients of an assessment order and, therefore, for all purposes the aforesaid document, dated 28.3.2013, was an appeal effect order. The Ld. counsel for assessee pointed out that even the A.O. had accepted the said fact that the impugned document was an appeal effect order in his remand report dated 7.9.2016 filed before the CIT(A). Drawing our attention to the same placed at Paper Book page Nos.54 and 55, the Ld. counsel for assessee pointed out that at paras 3 and 5 of the said remand report the A.O. had categorically mentioned that vide his order dated 28.3.2013 the appeal effect to the order of the I.T.A.T. in ITA No.590/Chd/2011 was given. The relevant para Nos.3 and 5 are reproduced hereunder:

> *"3. The appeal effect to the .order of the hon'ble ITAT in ITA no, 590/Chd/2011 dated 27.02.2013 was given 'by*

the A.O. vide order dated 28.03,2013 and the income was reduced to Nil as the appeal of the assessee was partly allowed for statistical purposes.

5. Keeping in view the facts of the case stated above, it is quite clear that the order dated 28.03.2013 was passed giving appeal effect to the order of the hon'ble ITAT dated 27.02.2013 and not an order of reassessment (copy enclosed). The reassessment order dated 28.03.2014 u/s!43(3)/254 of the Act was passed giving effect to the set aside proceedings."

7. The Ld. counsel for assessee further stated that even before the I.T.A.T. the Ld.CIT DR, during the course of hearing, had filed a report of the A.O. dated 14.8.2018 (inadvertently typed as 14.8.2017) stating so. Our attention was drawn to first para of the said report wherein the A.O. had stated as under:

"Ld. AR has claimed vide page 32 of paper book submitted before Hon'ble ITAT that on 28.03.2013, an assessment order was passed by Assessing Officer. However, the said document is merely a computation sheet which was for the purpose of giving appeal effect o the directions of Hon'ble ITAT. Further, examination of assessment file shows that there isn't any assessment order which was passed on dated 28.03.2013. Since no assessment order was passed on 28.03.2013, the assessment order passed on 28.03.2014 cannot be termed re-assessment."

8. The Ld. counsel for assessee stated thereafter that it is trite law that even the order giving appeal effect is an order of assessment. Our attention was drawn to the following case law in support of the above contention:

1) Caltex Oil Refining (India) Ltd. Vs. CIT, 202 ITR 375 (Bom)

9. The Ld. DR at this juncture rebutted and strongly supported the order of the CIT(A) stating that as is clearly evident from the heading of the document that it is only a computation sheet reducing the demand pending verification

of the material facts as directed by the Tribunal. The Ld. DR drew our attention to the last sentence of the said document stating that the "Demand of Rs.1,90,32,260/- taken into plus minus A/c No.86, stating that this line directly supports the case of the Revenue that the said sheet was only a computation sheet reducing the demand to nil, pending verification of the material facts as directed by the Tribunal. The Ld. DR pointed out from the order of the CIT(A) that the said document was not accompanied by notice of demand u/s 156 of the Act which is mandatory requirement even if the demand is nil, further supports the case of the Revenue.

10. To this, the Ld. counsel for assessee stated that there is no statutory requirement to issue notice u/s 156 of the Act when the demand is nil and that even if the document is titled "Income Tax Computation" it will not change its status as being assessment order ,since all the key ingredients of an assessment order find mention therein. Our attention was drawn to the order of the Hon'ble Apex Court in the case of Kalyan Kumar Ray Vs. CIT reported in 191 ITR 634 (SC) in this regard. Copy of the same was placed before us. The Ld. Counsel for assessee further contended that since the demand after the I.T.A.T. order does not survive that is why the A.O. vide order dated 28.3.2013 had stated the demand as nil, statutory intent being to pass an order giving effect and none of the authorities below had been able to refer to the statutory provision supporting any interim process of

demand to a "plus minus account". The Ld. counsel for assessee further submitted that the issue in dispute was answered in detail by two direct decisions of the Hon'ble High Court as under:

1) CIT Vs. City Financial Consumer Finance India Pvt. Ltd. in ITA No 275/2015 dated 17.7.2015 (Del).

2) Classic Share & stock Broking Services Ltd. Vs. ACIT, 216 Taxman 238 (Bom).

11. The Ld. counsel for assessee filed a brief synopsis of his submissions before us which is reproduced hereunder:

> ***A. Issue*** *- Order of assessment dated 23rd March 2014 is bad in law in as much as after having passed an order dated 28th March 2013 no other order giving effect to ITAT order could have been passed.*
>
> ***B. Facts*** *- These are second round of proceedings. It is submitted that pursuant to order dated 27th February, 2013 passed in ITA No.590/Chd/2011 by Hon'ble ITAT the AO vide order dated 23rd March, 2013 (copy enclosed at page 32) assessed the total taxable income of the appellant at Rs. NIL and also determine the tax and interest liability of the appellant at Rs. NIL. However, thereafter vide notice u/s 143(2) dated 18th October, 2013 (copy enclosed at page the AO directed appellant's attendance in his office on 4th November, 2013. Since the proceedings re-initiated by the AO vide notice u/s 143(2) was without proper jurisdiction inasmuch as effect to Hon'ble ITAT's directions had already been given by the AO earlier vide order dated 23rd March, 2013, vide letter dated 2nd November, 2013 (copy enclosed at page*
>
> *33) the appellant raised objections. Thereafter vide notice u/s 143(2) dated 11th November, 2013 (copy enclosed at page 35) the AO impliedly rejected the objections raised by appellant and directed it to participate in proceedings. Pursuant thereto order dated 28th March 2014 has been passed by AO.*
>
> ***C. Status of document dated 28th March 2013 enclosed at page 32 of PB*** *- It is apparent from page 32 of PB that document dated 23rd March 2013 is an assessment order giving effect to order passed by Hon'ble ITAT. All ingredients of assessment order are present:- i.e (a) name of assessee, (b) date of order, (c) assessed income u/s 143(3)/147, (d) income to be assessed pursuant to order of Hon'ble ITAT, (e) final tax demand,(f) tax demand payable, (g) copy to assessee.*

AO accepts that document at page 32 of PB is issued / passed giving effect to order passed by Hon'ble ITAT. Kind reference in this regard is invited to:

(i) Remand Report dated 07th September 2016 filed by AO before CIT(A).. pgs 54-55 of PB, paras 3 and 5

(ii) Report dated 14th August 2018 (inadvertently typed as 14th August 2017) filed by A.O. before Hon'ble ITAT - Copy filed by Ld CIT(DR) during course of hearing on 20th August 2018

Rebuttal of arguments taken by Ld CIT(A):

- *It is apparent that since demand payable is 'NIL' there is no requirement to issue notice u/s 156.*

- *Fact that document at page 32 is titled as "Income Tax Computation" will change its status as not being an order of assessment. Key ingredients of an assessment order are determination of "total income" and "tax payable". Both these ingredients present. "Income Tax Computation" signed by AO is also part of an order of assessment. {Reference Kalyankumar Ray vs CIT reported in 191 ITR 634(SC) copy enclosed at pages 85 to 94 of PB}*

- *Demand after ITAT order does not survive that is why AO vide order dated 28thMarch 2013 has stated demand payable as 'Nil'. Statutory intent is to pass an order giving effect. Neither lower authorities nor Ld CIT(DR) has been able to refer any statutory provision which would support any interim processing of demand to a "+/- account".*

It is submitted that in document enclosed at page 32 of PB the AO clearly states that "Income assessed after CIT(A)'s order in appeal no. 203/08-09 dated 18.03.2011 & ITAT order in ITA no. 590/Chd/2011 dated 27.02.2013" is 'Nil'. Therefore clearly "in substance and effect" the ***document dated 28th March 2013 is an order passed giving effect to order passed by Hon'ble ITAT*** *as "it is in conformity with or according to the intent and purpose of the Act". (Refer section 292B}*

D. It is trite law that even an order giving appeal effect is also an order of assessment

- Reference in this regard is invited to decision of Hon'ble Bombay High Court in case of Caltex Oil Refining (India) Ltd reported in 202 ITR 375(Bom) wherein it is held as under:

".....So far as the first submission is concerned which relates to the nature of an order passed by the ITO in consequence of

orders of the appellate authorities with a view to giving effect to the directions contained therein, ***it is difficult to hold that such an order is an administrative order.*** *The power of the ITO is to make assessment under section 143 or 144. It is that assessment which is the subject-matter of appeal. The appellate authority, on an appeal against an order of assessment, has power to confirm, reduce, enhance or annul the assessment or to set aside the assessment and refer the case back to the ITO for making a fresh assessment in accordance with the directions given by such authority (section 251). Evidently the effect of an appellate order is that the assessment either stands confirmed, reduced or enhanced or it stands annulled or set aside. In case of confirmation, reduction or enhancement the original order of assessment stands modified to the extent of the directions given by the appellate authority. In the case of annulment the order becomes non est. In case an order is set aside, the authority has to start the entire process afresh and make a fresh order of assessment complying with the directions given by the appellate authority.* ***It is, thus, clear that what remains as a final order after giving effect to the orders of the appellate authorities is an order of assessment under section 143 or 144. It cannot be anything else.***

11. This aspect of the matter also came to be considered by the Calcutta High Court in Kooka Sidhwa & Co. v. CIT [1964] 54ITR 54 in which it was held that where, pursuant to the directions of the Tribunal in an order under section 33(4) of the Indian Income-tax Act, 1922 (section 254 of the 1961 Act) to revise and amend the assessment made by the ITO, the ITO revises the assessment, the order passed by the ITO partakes of the character of a fresh assessment order and is referable only to section 23 of the 1922 Act (corresponding to sections 143 and 144 of the 1961 Act). An appeal would, therefore, lie under section 30 of the Act (section 246 of the 1961 Act) to the AAC against an order of the ITO amending or revising an assessment pursuant to the directions of the Tribunal under section 33(4) (section 254 of the 1961 Act). It was observed:

> *"...The Income-tax Officer's duty to assess the total income of the assessee and to determine the sum payable by him on the basis of the return under section 23 of the Act is the whole process of assessment which may end with his order or may be revised by the higher appellate authorities including the Appellate Assistant Commissioner and the Tribunal recognised by the Income-tax Act. If, therefore, such higher appellate authorities such as the Appellate Assistant Commissioner or the Tribunal directs or orders him to do something again with regard to the assessment he has already made and that by way of revision or amendment, the Income-tax Officer must be held to be still under section 23 of the Act on the process of assessing the total income of the assessee and determining the sum payable on the basis of the return already filed by him. No other construction or interpretation of section 23 of the Act seems to me to be sensible or consistent with the scheme of the Act." (p. 65)*

This view is also fully supported by a decision of the Supreme Court in Garikapati Veeraya v. N. Subbiah Choudhry AIR 1957 SC 540 where it was observed:

> *"The legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding." (p. 540)*

This view was reiterated recently by the Supreme Court in Umaji Keshao Meshram v. Smt. Radhikabai AIR 1986 SC 1272 where it was observed that an appeal is not a fresh proceeding but merely a continuation of the original proceedings.

12. In the light of these decisions and for the reasons given above, ***we are of the opinion that the impugned order of assessment passed by the ITO pursuant to the directions of the appellate authorities with a view to giving effect to the directions contained therein is an order of assessment within the meaning of section 143 or section 144 of the Act*** *and an appeal lies under section 246(c) against such an order."*

E. Direct Precedents on the issue *- It is submitted that issue in dispute is answered in detail by two direct decisions of Hon'ble High Courts. There cannot be two assessment orders for assessing the same income in the same assessment year on the same person. References:*

* *Hon'ble Delhi High Court decision in case of CIT vs. City Financial Consumer Finance India Pvt. Ltd. vide order dated 17th July, 2015 in ITA No.275/2015 copy enclosed at pages 64 to 72 of PB - relevant conclusions at pages 68 to 71, paras 8 to 12.*

* *Hon'ble Bombay High Court decision in case of Classic Share & Stock Broking Services Ltd vs ACIT reported in 216 Taxman 238(Bom) copy enclosed at pages 95 to 98 of PB - relevant conclusions at page 97, para 6."*

12. We are not convinced with the arguments of the Ld. counsel for assessee that the documents dated 28.3.2013 was an order passed by the A.O. for the purpose of this Act and, therefore, the subsequent order passed dated 28.3.2004 against which the assessee has come up in appeal before the first appellate authority and even before us, is nullity or is void. Going through the contents of the documents filed before us and the arguments made by both the parties we

agree with the Ld.CIT(A) that this contention raised by the assessee is not only misplaced but also egregiously misleading and we shall explain in detail the reasoning for the same.

13. To decide whether the document is an assessment order or not it would be necessary to look into the Act and understand what it stipulates to be an assessment order. Section 143(3) of the Act states that the A.O. shall by an order in writing make an assessment of the total income or loss of the assessee and determine the same payable by him or refund of any amount due to him on the basis of such assessment. The provisions of the relevant section are being reproduced hereunder for clarity:

> *"143[(3) [On the day specified in the notice issued under] sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:]"*

14. It is evident from the above that an assessment order necessarily has two components;

> i) dealing with the assessment of the total income or loss of the assessee and
>
> ii) determining the tax payable by him or the refund due to him.

15. The Hon'ble Apex Court in the case of Kalyan Kumar Ray (supra) has, while interpreting this sub section, held

that assessment is one integrated process involving not only the assessment of the total income but also the determination of the tax and that the later is as crucial for the assessee as the former. The Hon'ble Apex Court held that the Income Tax Officer has to determine by an order in writing not only the total income but also the net sum which will be payable by the assessee for the assessment year in question. The relevant findings of the Hon'ble Apex Court in this regard are as under:

> *"Sri S. Padmanabhan, learned Counsel for the petitioner, invited attention to the language of Section 143(3) of the Act which mandates that the I.T.O. "shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him on the basis of such assessment". The Department pointing to the placement of a comma after the word "assessee" suggested before the Tribunal that an order in writing is required only for the assessment of the income or loss and that the determination of the sum payable can be an independent process not necessarily in writing. The suggestion seems plausible but is not really tenable. As pointed out for the petitioner, judicial decisions under the 1922 Act as well as the present Act have read both clauses together. Assessment is one integrated process involving not only the assessment of the total income but also the determination of the tax. The latter is as crucial for the assessee as the former. Section 144, which also describes the same process, makes no distinction as suggested. It will not be therefore correct to read the provision, as leaving undefined the process of determination of the net sum payable by the assessee. In our opinion, therefore, learned Counsel for the petitioner is right in his submission that the Income Tax Officer has to determine, by an order in writing, not only the total income but also the net sum which will be payable by the assessee for the assessment year in question and that the demand notice under section 156 has to be issued in consequence of such an order."*

16. Having said so what logically follows is that the assessment of income has to necessarily precede the calculation of tax payable.

In the present case the document before us is headed "Income Tax Computation". Therefore, it is only the second component of the assessment order. Now there necessarily has to be a assessment of income preceding it. This can be either in the order of the I.T.A.T. where the income is assessed giving all findings with regard to the same, leaving the computation of tax to the A.O. or if not so there has to be a separate order passed by the A.O. assessing the income. On going through the contents of the order of the I.T.A.T. we find that there is no finding vis-à-vis the computation of total income of the assessee. The I.T.A.T. in its directions has asked the A.O. to verify whether any deduction on account of interest towards bank was claimed and allowed and then decide the issue in accordance with law. In fact, we find that the I.T.A.T. had categorically mentioned that there is no finding to this effect in the orders of the A.O. or even the appellate authorities. This is clear from para 25 of the order of the I.T.A.T. giving such a direction as under:

> *"25. As far as taxability of this amount u/s 41 is concerned, it was contended that the assessee has not claimed deduction on account of interest and the same has not been allowed by the Department. However, perusal of the assessment order or appellate order do not show that there is a finding to this effect. Therefore, we remit this issue back to the file of Assessing Officer with the direction to verify whether any deduction on account of interest towards bank was claimed and allowed and then decide; the issue in accordance with law."*

17. The I.T.A.T. had also directed the A.O. to not allow set off of unabsorbed depreciation which is outside the block of assessment years 1997-98 to 2001-02. Now considering the directions given in para 25 of the order of the I.T.A.T. it is

clear that even the total income has not been assessed or tax has been computed by the I.T.A.T. but has been left to the A.O. to do in the set aside proceedings. Also admittedly, no order has been passed by the A.O. assessing the assessed income of the assessee, preceding this computation of income tax. Therefore, for all purposes this income tax computation document cannot be treated as an order passed by an A.O. giving effect to the directions of the I.T.A.T. We do not find any merit in the contention of the Ld. counsel for assessee, therefore, that all the ingredients of the assessment order are present in it, because it is only an income tax computation and not an order passed u/s 143(3) r.w.s. 254 of the Act and as stated above, a mere income tax computation sheet, despite containing other ingredients of an assessment order cannot be treated as an assessment order unless and until it is preceded by an order computing the income of the assessee. That no separate order has been passed assessing the taxable income of the assessee consequent to the directions of the I.T.A.T., is evident from the fact that the said document mentions the income assessed both “after the CIT(A)’ order and I.T.A.T.’s order”. If it would an assessment order passed in consequence to the directions of the I.T.A.T., there was no reason at all to mention income assessed after the CIT(A)’s order. In fact, we find merit in the contention of the Revenue that this was only a computation sheet pending verification of the material facts as directed by the I.T.A.T. and which constituted part of the procedure followed by the Department in every such

case. It was pointed out to us that on receiving orders from the appellate authorities the A.Os are directed to pass orders giving effect to the appellate orders raising demand or issuing refund to the assessee immediately thereafter and in this process where certain issues are set aside for verification to the A.O, a computation of tax is prepared wherein demand is raised on account of additions made, reduced on account of relief granted and also reduced on account of issues which are set aside for verification since on account of the setting aside order of the A.O., the order no longer survives and so also the demand and it is only subsequently when the set aside issue is decided that a fresh demand is raised on the assessee. It was pointed out that such a procedure is followed to update the record of tax recoveries so that taxes due after appeals are effectively collected and in cases where the demand in nullified, either on account of deletion of additions made or where matters are set aside and the original order does not survive, this procedure helps in avoiding notices of recovery of demand being unnecessarily issued. We also do not find any merit in the contention of the Ld. counsel for assessee that even the A.O. had admitted to this fact that the document was an appeal effect order. It need not be pointed out by us, since it is abundantly clear, that the nature of the document is not determined by the averments of the person preparing it but is to be determined from the contents of the same. Even otherwise the Ld. counsel for assessee is merely trying to read the averments of the A.O. in this regard out of context.

What the A.O. has stated in his Remand Report is only in consonance to what the Department has been pleading all along that such documents are to be prepared on receiving the appellate orders and is being incorrectly read as an order giving effect to the directions of the I.T.A.T. The reliance placed by the Ld. counsel for assessee on the decision of the Hon'ble Bombay High Court in the case of Caltex Oil Refining (India) Ltd. (supra) is, we find, of no assistance to the assessee since it dealt with the issue of whether an order giving effect to the orders of appellate authorities could be treated as an assessment order. In the present case since we have held that the impugned document was not an order at all giving effect to the directions of the I.T.A.T., the said decision is of no help to the assessee. Also, the decisions relied upon by the Ld. counsel for assessee of the Hon'ble High Court in the case of Citi Financial Consumer Finance India Pvt. Ltd. (supra) and of the Hon'ble Bombay High Court in the case of Classic Share & Broking Services Ltd. (supra) is also of no assistance to the assessee since they are clearly distinguishable on facts. In both the said cases though the issue was whether two assessment orders could be passed by an A.O., there was a categorical finding of fact that the first was an order passed u/s 254/143(3) of the Act which is absent in the present case. The document in the present case is headed income tax computation while in those cases the documents were headed or passed u/s 254/143(3) of the Act. Therefore, the said orders are again of no assistance of the assessee. In

view of the above we uphold the order of the Ld.CIT(A) dismissing the claim of the assessee that the impugned order or so second assessment order are hence void.

The appeal of the assessee is, therefore, dismissed.

ITA No.446/Chd/2018(Revenue's Appeal):

18. We shall now be taking up the appeal of the Revenue. Grounds of appeal raised by the Revenue are as under:

> *"1. Whether in the facts and circumstances of the case, the Ld. CIT(A), Patiala is legally correct in adjudicating by setting aside the order of the Assessing Officer passed u/s 143(3)/254 of the Income Tax Act, 1961 when the assessee failed to substantiate its claim which has been provided in books of accounts and not claimed in the return of income (by the assessee) by not producing the books of accounts before the Assessing Officer during the re-assessment proceedings (giving effect to the order of Hon'ble ITAT).*
>
> *2. It is prayed that the order of Ld. CIT(A) be set-aside and that of the Assessing Officer be restored.*
>
> *3. The appellant craves leave to add or amend any grounds of appeal before the appeal is heard and finally disposed off."*

19. The Revenue in the present case has challenged the directions of the CIT(A) setting aside the order of the A.O. and directing him to comply with the directions of the ITAT. The Ld. DR has contended that since the assessee failed to substantiate its claim by not producing the relevant records before the A.O., there was no question of setting aside the issue again to the A.O. The Ld. DR also contended that the CIT(A) had no power u/s 251(1) to set aside the assessment order and, therefore, the impugned directions of the CIT(A) was bad in law. The Ld. counsel for assessee, on the other

hand, relied upon the findings of the CIT(A) at paras 13 to 16 of the order as under:

> *"13. The other ground of appeal challenges the action of the AO in ignoring the documents adduced before him by the appellant in terms of profit and loss account, computation of total income, assessment orders and appellate orders for A.Ys. 1985-86 to 2000-01, which would have clearly indicated that the appellant company had neither claimed nor allowed any deduction on account of interest payable to Punjab & Sindh Bank in earlier years so that the remission of liability to that effect could not be brought to tax by invoking the provisions of section 41 (1) of the Act, as directed by the Hon'ble Tribunal. It was further stated that the appellant had diligently furnished before the AO, in the remand proceedings, a chart of the cumulative unabsorbed depreciation allowance for A.Ys. 1979-80 to 1996-97 along with copies of assessment and appellate orders for the said years, evidencing the working of cumulative depreciation allowance computed in the chart.*
>
> *14. On a vigilant perusal of the aforesaid submissions and details, it becomes evident that the Assessing Officer has brazenly failed to follow the directions of the Hon'ble Tribunal qua the verification of the appellant's claim or allowance thereof in respect of interest accruing on the bank loans in the years earlier than the assessment year under consideration so as to decide on the taxability of remission of liability to the extent of Rs.2,24,34,509/- pursuant to the "one-time settlement" with the Bank. For such verification, the AO only needed to carefully scan the profit and loss account, computation of total income, assessment orders and the appellate orders for the earlier years, which documents were reconstructed and duly furnished before the AO. Beside, the said documents must have been available on the record of the Department so a be confirmed about the veracity of the documents placed before the AO in the remand proceedings, the AO being the custodian of assessment records. From even a cursory perusal of the said documents adduced in the appellate proceedings, the claim of the appellant that such interest, though provided interest he books, were neither claimed nor allowed interest eh earlier assessment proceedings or in the tax computations accompanying the return of income for the earlier years, seems to be in order. The only issue remains that the same have not been verified from the departmental records or the veracity of such orders have not been checked by the AO as per the directions of the Hon'ble Tribunal. Similarly, cumulative*

unabsorbed depreciation could only be verified from the copies of the assessment and appellate orders for A.Ys. 1979-80 to 1996-97, which were duly placed before the AO at the time of effecting order under section 143 (3)/254 as also during the remand proceedings directed by this appellate authority for the finalisation of the instant appeal. However, the AO is seen to have been stubbornly refusing to look at the records for such verification even in the remand proceedings directed by this appellant authority. The only reason intelligible for such an act on the part of the AO seems to be to oust the decision of the Tribunal in giving appropriate relief to the appellant. It is also not understood as to what documents the AO is looking for to discharge his obligation of following the directions of the Hon'ble Tribunal, which had attained finality as per the provisions of section 254 (4) as the proposal of filing appeal under section 260A before the jurisdictional High Court against the subject order of the Hon'ble Tribunal dated 27/02/2013 was not approved vide communication dated 03/07/2013 from the office of the then CCIT, Chandigarh.

15. *Considering the entirety of the circumstances, it is held that there has been an abject disregard of the directions of the Hon'ble Tribunal. Since the AO has failed to comply with the specific directions, the impugned order cannot possibly see the light of the day. Within the phraseology of section 251 (1) (a) of the Act, this appellate authority is left with little scope but to annul the impugned assessment. However, it is felt that an annulment would have the unintended consequence of closure of the case as non est or void abinitio, which would be unfair to the Department. The AO is, hereby directed to comply with the directions of the Hon'ble ITAT, Chandigarh viz verify whether the appellant company has claimed deduction of interest, accrued and provided in the books, in the earlier years. If the appellant is found to have claimed the said deduction in the earlier years, then the remission of liability shall be taxable as per the provisions of section 41 (1) of the Act as business income. If not, there shall not be a case of taxability of the said remission. Similarly, the AO is required to verify the claim of the appellant about the* ***cumulative unabsorbed depreciation allowance of Rs.3,86,91,993/- for the assessment years other than A.Ys. 1997-98 to 2001- 02.*** *If the said claim of the appellant is found to be correct on verification of the records, the AO shall be required to set off such amount, should there be an assessed income during the year under consideration. It is ordered accordingly.*

16. *However, before parting, it is necessary to spell out the reasons as to why the aforesaid direction to the AO should not be considered as unauthorised in view of the amendment of section 251(l)(a) by the Finance Act, 2001, w.e.f. 1-6-*

2001 which ommitted the words "or he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment in accordance with the directions given, by the Commissioner (Appeals) and after making such further enquiry as may be necessary, and the Assessing Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment". The scope and effect of the aforesaid omission was elaborated by the Departmental circular No. 14 of 2001 to state that the Commissioner (A) may not set aside the assessment and refer the case back to the Assessing Officer for making fresh assessment and that the Commissioner (A) continues to have the powers under section 250 of making further enquiry, or directing the Assessing Officer to make further enquiry and report the result of the same to him, which can be made use of in appeals needing further enquiry or gathering of additional facts or evidence. The intention behind the said omission was to help bringing about an early finalisation to the assessment and to avoid prolonging the process of litigation. In effect, what was withdrawn from the powers of the CIT(A) was the authority to issue directions to the AO to reframe the assessment in a particular manner after carrying out the analysis or investigation as suggested by him. This, however, in the opinion of this appellate authority does not exclude the direction to the AO to comply with the directions of the appellate authorities superior to the CIT(A). In the instant case, the assessment has not been set aside for making fresh assessment by the AO as per the directions of this appellate authority. On the contrary, since the order of assessment earlier passed by the Assessing Officer merged with the orders passed by the Hon'ble ITAT, the AO was, thereafter, duty bound to carry out the compliance of the directions of the ITAT. Since the AO has failed to do the same, vide the instant appellate order, he has been directed to carry out the compliance of the order of the ITAT that had become final. Such directions cannot possibly be construed as setting aside of assessment. This issue has earlier been assayed by the Hon'ble High Court of Rajasthan in the case of Commissioner of Income Tax, Udaipur Vs Hindustan Zinc Ltd, reported in [2012] 22 taxmann.com 248 where it was held that directions issued by Commissioner (A) to the AO to comply with the directions of the ITAT would not amount to setting aside of the assessment. Paras 20 & 21 of the said order of the Hon'ble High Court of Rajasthan is extracted herein below for the purposes of reference :

"20. This apart, in the present case, as observed hereinbefore, the factual aspect has been that the order passed by the AO which was subject of appeal before the CIT(A), was not an original order of

> *assessment but was an order of assessment passed after remand by the IT A T. The directions in remand order having not been complied with, the course as adopted by the CIT (A) cannot be said to be de hors the powers available to him tinder the statute.*
>
> *21. On the facts and in the circumstances of the present cases, we are clearly of the view that even if the appeal had been filed after the amendment to section 251(l)(a) of the Act, 1961, the order as passed by the CIT(A) directing the AO to decide the matter in accordance with the directions of the ITAT cannot be said to be unauthorised...".*
>
> *In view of the aforesaid observations, the Assessing Officer is directed to comply with the directions of the Hon'ble ITAT. It is ordered accordingly.*

20. We have heard the rival contentions and gone through the orders of the authorities below. We do not find any reason to interfere in the well-reasoned order of the CIT(A). The CIT(A) has clearly pointed out that the A.O. has brazenly failed to follow the directions of the I.T.A.T. qua the verification the assessee's claim in respect of interest accruing on bank loans in the earlier years and even set off of unabsorbed depreciation pertaining to the block period 1997-98 to 2001-02. The CIT(A) has noted that the assessee had filed all necessary documents before him for verifying these claims by way of Profit & Loss Account, computation of income, assessment orders and appellate orders for earlier years despite the same the A.O. has failed to do as directed, and had stubbornly refused to look into such records. These findings of the CIT(A) have not been controverted by the Revenue. Therefore, the findings of the CIT(A) to the effect that the A.O. has totally disregarded the directions of the I.T.A.T. is correct. We also agree with the Ld.CIT(A) that in such circumstances, the issue needed to be sent back to the

AO for re-verification and the said act could not be said to be setting aside the assessment order which the CIT(A) was prohibited from doing u/s 251(1) of the Act. The reasoning of the CIT(A) that in the present case assessment order has not been set aside for making fresh assessment by the A.O. but since the earlier order passed by the A.O. merged with the order passed by the I.T.A.T., the A.O. was duty bound to comply with the directions of the I.T.A.T. and have failed to do so the CIT(A) has only directed him to comply with the directions of the I.T.A.T. which does not tantamount to setting aside the assessment framed by the A.O. Reliance placed by the CIT(A) on the decision of the Hon'ble High Court is apt, wherein it has been categorically held that despite the amended section 251(1)(a) of the Act order passed by the CIT(A) directing the A.O. to decide the matter in accordance with the directions of the I.T.A.T., cannot be said to be unauthorized. In view of the above, we do not find any merit in the appeal of the Revenue and the same is dismissed.

21. In effect, both the appeals of the assessee and the Revenue are dismissed.

Order pronounced in the Open Court.

Sd/-	Sd/-
संजय गर्ग	**अन्नपूर्णा गुप्ता**
(SANJAY GARG)	**ANNAPURNA GUPTA)**
न्यायकि सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

दिनांक /Dated: 17th December, 2018
रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar