

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D": NEW DELHI  
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2902/Del/2018  
(Assessment Year: 2008-09)

Jindal Steel & Power Limited, Delhi Road, Hissar, Haryana, India	Vs.	Pr. Commissioner of Income Tax, Gurugram,
(Appellant)		(Respondent)

Assessee by :	Shri Salil Kapoor, Adv Ms. Ananya Kapoor, Adv
Revenue by:	Shri J K Mishra, CIT DR
Date of Hearing	01/04/2019
Date of pronouncement	04/06/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id Pr. CIT, Gurgaon, dated 22.03.2018 for the Assessment Year 2008-09, passed u/s 263 of the Act for Assessment Year 2008-09 holding that assessment order passed u/s 143(3) read with Section 147 of the Act on 31.03.2016 passed by the Assistant Commissioner of Income Tax, Circle-1(1), Gurgaon dated 31.03.2016 was held to be erroneous and so far as prejudicial to the interest of the revenue.
2. The assessee has raised the following grounds of appeal:-
  - “1. *That on the facts and circumstances of the case and in law, the impugned order dated 22/28.3.2018 passed by the Commissioner of Income Tax (“CIT”) under section 263 of the Income-tax Act, 1961 (‘the Act’) is beyond jurisdiction, illegal and bad in law and is liable to be quashed.*
  - 1.1 *That on the facts and circumstances of the case and in law, the impugned order passed by the CIT is illegal and bad in law, being barred by limitation prescribed under section 263(2) of the Act.*
  - 1.2 *That on the facts and circumstances of the case and in law, the impugned order passed by the CIT seeking to revise the original assessment order dated 27.12.2010 passed under section 143(3) in the guise of revising the reassessment order dated 31.3.2016 passed*

*under section 147/143(3) of the Act, is without jurisdiction, illegal and bad in law.*

- 1.3 *That on the facts and circumstances of the case in law, since the reassessment order dated 31.3.2016 sought to be revised was patently without jurisdiction, impugned revisionary proceedings were also without jurisdiction, illegal and bad in law.*
- 1.4 *That on the facts and circumstances of the case and in law, the impugned order passed under section 263 of the Act, without appreciating that the twin conditions of that section viz., assessment order being erroneous as well as prejudicial to the interests of the Revenue, were not satisfied, is illegal and bad in law.*
- 1.5 *That on the facts and circumstances of the case, the impugned order passed by the CIT without affording reasonable opportunity of being heard to the appellant in violation of principles of natural justice, is illegal and bad in law.*
- 1.6 *That on the facts and circumstances of the case and in law, the impugned order passed by the CIT without first disposing of the legal objections by passing a separate speaking order, is illegal and bad in law.*
2. *That on the facts and circumstances of the case and in law, the CIT erred in holding that reassessment order dated 31.3.2016 passed under section 147/143(3), was erroneous and prejudicial to the interests of the Revenue on the issue of examination of quantum of production/ mined quantities of iron ore recorded in books of accounts, having regard to some report of Justice MB Shah Commission on illegal mining issued in June, 2013.*
  - 2.1 *That the CIT exceeded his jurisdiction in setting aside the reassessment order on issue of examination of quantum of production/ mined quantities of iron ore, despite the fact that the said issue was not at all subject matter of reassessment proceedings.*
  - 2.2 *That the CIT erred in setting aside the reassessment order on aforesaid issue on vague/general ground for examination of quantum of production/ mined quantities of iron ore, without pointing out the error, much less prejudice, in the earlier assessments.*
3. *That on the facts and circumstances of the case and in law, the CIT erred in setting aside the reassessment order on issue of disallowance under section 14A of the Act, vaguely observing that the issue was not properly examined by the assessing officer.*
  - 3.1 *That the CIT failed to appreciate that issue of disallowance under section 14A was extensively examined during the course of original as well as reassessment proceedings and the same was, therefore, outside the scope of revisionary jurisdiction under section 263 of the Act.*
  - 3.2 *That the CIT erred in setting aside the reassessment order on aforesaid issue on vague/general ground, without pointing out the error, much less prejudice, in the reassessment order.”*

3. At the time of the hearing of appeal, Ld AR submitted that in ITA No. 2403/Del/2017 for Assessment Year 2008-09 as per order dated 10.12.2018, it is held that the notice issued u/s 148 issued on 26.03.2015 is bad in law and therefore, the assessment framed pursuant to that order was quashed. Therefore, the facts as is shown to us that the original assessment passed by the AO which was subject to revision before the Id Pr. CIT has been quashed.

4. The Id AR submitted as under:-

“1. This appeal is filed against the order passed under section 263 dated 23.02.2018 holding that the order passed under section 143(3) r.w.s 147 of the Act by ACIT Circle (1) Gurgaon dated 31.03.2016 for AY 2008-09 is erroneous and prejudicial to the interests of revenue.

2. The Hon'ble Tribunal in JTA No. 2403/0/2.017 for AY 2008,09 vide order dated 10.12.2018 has held that the notice issued under section 148 on 26.03.2015 is bad in law and therefore, the assessment framed pursuant to this order deserves to be quashed.

3. Without prejudice, to our other submissions in respect of validity and merits of order under section 263 dated 23.02.2018, it is submitted that the said order of CIT also deserves to be quashed as the initiation of reassessment proceedings and reassessment order dated 31.03.2016 are already quashed vide order dated 10.12.2018 in ITA No. 2403/D/2017 for AY 2008-09.

4. It may also be brought on record that the Tribunal in following decisions has held that if the initiation of reassessment proceedings is held to be invalid and the reassessment order passed held to be invalid, then consequentially the order passed under section 263 in respect of the reassessment order is also held to be invalid and quashed :-

- Decision of ITAT Delhi in the case of M/s Supersonic Technologies Pvt. Ltd. Vs. PCIT [ITA No 2269/D/2017] (Relevant Para 26,40. 46 of Annexure 1)
- Decision of ITAT Kolkata in the case of M/s Classic Flour & Food Processing Vs. CIT [ITA No 764/Kol/2014] (Relevant Para 7-10 and 16 of Annexure 2)
- Decision of ITAT Mumbai in the case of M/s Westlife Development Ltd. Vs. PCIT [ITA No 688/Mum/2016] (Relevant Para 9.8,9,9,10 of Annexure 3)
- Decision of ITAT Lucknow in the case of Inder Kumar Bachani (HUF) Vs. ITO [ITA No 486/Luck/2003] (Relevant Para 8.8,12.14 of Annexure 4)

5. It may be submitted that submitted that the quashing of 148 proceedings by Hon'ble ITAT will have the effect that order under section 263 dated 31.03.2016 will be a nullity and it is humbly prayed that the order under section 263 should be quashed in view of the order dated 10.12.2018 in ITA No. 2403/D/2017.

6. *The maintainability of the appeal has to be seen on the date when the appeal was filed, subsequent development will not impact the maintainability of the appeal.*
7. *The Hon'ble ITAT order dated 10.12.2018 will not render the order under section 263 as non est ipso facto but an order of the higher court has to be passed in respect of CIT order being non est and is to be quashed.*
8. *It may also be brought on record that a stay order dated 10.12.2018 was passed in the appeal whereby the effect of assessment order to be passed in consequence to the said 263 order was stayed. The consequential order under section 143(3) r.w.s 263 has already been passed on 30.12.2018 by the AO giving effect to the said order under section 263 and only after the order under section 263 is quashed, the effect of the said consequential order can be nullified.*
9. *It is submitted that while exercising jurisdiction under section 263 of the Act, the CIT assumed that the reassessment order dated 31.03.2016 was valid in the eyes of law. It is submitted that the validity of the reassessment proceedings was not the subject matter of consideration in the revisionary proceedings under section 263 of the Act, since the Commissioner proceeded on the premise that the reassessment order was valid in law.*
10. *The validity of the order under section 263 of the Act is dependent on the fate of the reassessment order which has been quashed by Hon'ble ITAT. It is accordingly reiterated that since the reassessment order is set aside as null and void being beyond jurisdiction, there would not be any scope of sustainability of revisionary order under section 263 of the Act.*
11. *It is submitted that dismissing the appeal as infructuous would render the appellant remediless insofar as the issue of validity of revision proceedings are concerned as raised in the present appeal. The statutory provision of appeal under section 253A of the Act is for the benefit of the assessee. So long as the grievance of the appellant continues to subsist, the appeal cannot be regarded and, or dismissed as infructuous, so as to render the appellant remediless.*
12. *Strong reliance is placed on the decision of Hon'ble ITAT decision in the case of M/s. Supersonic Technologies Pvt. Ltd vs The PCIT-8, New Delhi ITA.No.2269/Del./2017 wherein it was observed that it only the valid order which can be revised under section 263 of the I.T. Act. Brief summary of the case-*

*Facts of the Case:*

*Para 3- The facts of the case are that original return of Income in this case was filed on 20.10.2007 at NIL income. The notice under section 148 of the Income Tax Act, was issued on 25.03.2014 after recording the reasons and taking prior approval from the competent authorities.*

*The A.O. after discussing the case with the assessee, accepted the returned income and completed the re-assessment order under section 147/143(3) of the I.T. Act, 1961, dated 30.06.2014.*

*Para 3.1- Accordingly, a show cause notice under section 263 of the I.T. Act was issued to the assessee on 27.01.2017 which is reproduced in the impugned order.*

*Assessee Argument before ITAT –*

*Para 4 at Page 14 -*

*Counsel for the Assessee relied upon the Order of ITAT, Delhi Bench in the case of M/s. NKG Infrastructure Ltd., New Delhi vs. Pr. CIT, Circle-3, New Delhi in ITA.No.3825 to 3827/Del./2018, dated 05.09.2018, in which the issue was validity of proceedings under section 147/148 of the I. T. Act. The assessee submitted before the Tribunal that assessment order in this case is barred by limitation is non-est in the eye of Law. Therefore, the Pr. CIT cannot assume jurisdiction under section 263 of the I.T. Act to revise such assessment order which is non-est in the eye of Law and being barred by limitation. The Tribunal held that the Order which is barred by limitation cannot be revised under section 263 of the I.T. Act by the Pr. CIT.*

*Para 20 at Page 46 -*

*Learned Counsel for the Assessee contended that re-assessment order in this case under section 143(3)/147 is invalid and bad in law and as such, the same could not be revised under section 263 of the I.T. Act. He has submitted that in fact said issue can be raised in collateral proceedings as is held in the following judicial decisions.*

*Adjudication- Paragraph 6.1. at Page 26- Since the reassessment order itself is bad in law, therefore, Learned Counsel for the Assessee, rightly contended that the same cannot be revised under section 263 of the I.T. Act. Only valid re-assessment order can be revised under section 263 of the I. T. Act. On this around itself the proceedings under section 263 of the I. T. Act are bad in law and liable to be quashed. We, accordingly, set aside the Order of Ld. Pr. CIT passed under section 263 of the I.T. Act and quash the same.*

*Adjudication- Paragraph 13.2 at Page 40 The Hon'ble Delhi High Court in the case of SNG Developers Ltd., 404 ITR 312 held that when A.O. initiated the re-assessment proceedings without application of mind, such proceedings would be invalid. A.O. in the present case has failed to verify the information received from Investigation Wing. Therefore, it is non-application of mind on the part of the A.O. to record correct facts in the reasons for reopening of the assessment. In such circumstances, the re-assessment order could not be treated as valid and in accordance with law. Since re-assessment proceedings are invalid and bad in law, therefore, such proceedings could not be revised under section 263 of the I.T. Act. Following the reasons for decision in the case of M/s. Supersonic Technologies Pvt. Ltd., (supra), we set aside the order passed by the Ld. Pr. CIT under section 263 of the I.T. Act and quash the same.*

13. *This note is being submitted without prejudice to our claim that even otherwise, the order under section 263 is illegal, bad in law and without jurisdiction and deserves to be quashed on many grounds, if required the assessee shall argue in this respect and file synopsis.”*

5. The Id DR submitted that as the original order passed u/s 143(3) read with section 147 of the Act has been quashed the present impugned order passed u/s 263 of the Act does not stand as valid order in the eye of the law and therefore, appeal filed against that order which is now non est, the appeal of the assessee becomes infructuous and therefore deserves to be dismissed.
6. We have carefully considered the rival contentions and also perused the orders of the lower authorities as well as the order of the coordinate bench in assessee's own case in ITA NO. 2403/Del/2017 for Assessment Year 2008-09 dated 10.12.2018 which held that notice issued u/s 148 on 26.03.2015 is bad in law and therefore, apparently the order passed by the Id AO on 31.03.2016 based on such notice was also quashed. The provisions of section 263 of the income tax act and be applied for the purpose of revision only on the valid order. As the order of assessment itself has become invalid no proceedings u/s 263 can be concluded on such order. In short, as the order itself does not exist, same cannot be subject to revision u/s 263 of The Income Tax Act. As the Pr. CIT has revised the impugned order dated 31.03.2016 u/s 263 which is also a proceeding based on an assessment order which has already been quashed. Therefore, the apparent corollary is that the order passed by the Pr. CIT also becomes infructuous and not a valid order subsisting at present in the eye of the law. We also failed to understand the argument of the learned authorised representative that dismissing the appeal of the assessee will render it remedy less. The coordinate bench has already held that reopening of the assessment is invalid, therefore, we do not have any option but to dismiss the appeal of the assessee is infructuous. We are also aware that the assessee will always have a remedy the moment the reopening of assessment proceedings is held by superior court as valid to contest the revision of such order. In view of this the present appeal filed by the assessee is also infructuous and hence dismissed.

In the result appeal of the assessee is dismissed.

Order pronounced in the open court on 04/06/2019.

-Sd/-

(BHAVNESH SAINI)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 04/06/2019  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi