

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “ए” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “A”, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील स / ITA No.304/PUN/2017

निर्धारण वर्ष / Assessment year : 2009-10

The Asst. Commissioner of Income Tax,
Circle – 10, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

Pushpak Steel Industries Pvt. Ltd.,
Gat No.119,
Alandi Markal Road,
Village Dhanore,
Taluka Khed, Pune.

..... प्रत्यर्थी /
Respondent

PAN : AABCP0081C.

Assessee by : Shri R.G. Nahar.

Revenue by : Shri Vishwas Mundhe.

सुनवाई की तारीख / Date of Hearing : 01.07.2019	घोषणा की तारीख / Date of Pronouncement: 12.07.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the Revenue is emanating out of the order of Commissioner of Income Tax (Appeal) – 9, Pune dated 05.10.2016 for A.Y. 2009-10.

2. The sole ground raised by the Revenue reads as under :

“Whether on the facts and circumstances of the case, the CIT(A) was justified on deleting the addition on the ground that Hon’ble ITAT has quashed the order of 263 and therefore the order u/s 143(3) rws 263 has become void, when the order of the Tribunal is not reached upon its finality from the Dept. as to whether said decision shall be contested or not before Hon’ble High Court ?

3. Before us, ld. A.R. submitted that the assessment of the assessee company for A.Y. 2009-10 was framed u/s 143(3) of the Act on 27.12.2011

wherein the AO accepted the returned income. Subsequently, the assessment order was reviewed by Ld. CIT u/s 263 of the Act and vide order dated 26.03.2014 passed u/s 263 of the Act, he set aside the original assessment order passed by AO u/s 143(3) of the Act. Aggrieved by the order of Ld.CIT passed u/s 263 of the Act, assessee preferred appeal before the Tribunal. He submitted that the Co-ordinate Bench of the Tribunal vide order dated 16.09.2016 in ITA No.763/PN/2014 has held that revisionary proceedings exercised by Ld.CIT to be not correct and accordingly set aside the order of Ld.CIT. He placed on record the copy of the aforesaid order of the Tribunal and pointed to the relevant findings. He therefore submitted that when the order of Ld.CIT passed u/s 263 itself has been set aside by the Tribunal, the consequential order passed u/s 143(3) r.w.s. 263 of the Act does not survive and Ld.CIT(A) has rightly annulled the order. He thus supported the order of Ld.CIT(A). Ld. D.R. on the other hand did not controvert the submissions made by Ld.A.R. but however supported the order of AO.

4. We have heard the rival submissions and perused the material on record. It is an undisputed fact that original assessment order u/s 143(3) of the Act was passed by AO on 27.12.2011. Thereafter, Ld.CIT vide order dated 26.03.2014 passed u/s 263 of the Act wherein he set aside the assessment order passed by the AO u/s 143(3) of the Act and directed the AO to reframe the assessment as per the directions contained therein. Consequent to order of Ld.CIT passed u/s 263, AO framed assessment u/s 143(3) r.w.s. 263 vide order dated 30.09.2014. Against the order passed by Ld.CIT u/s 263, assessee carried the matter before the Tribunal. The Co-ordinate Bench of the Tribunal in ITA No.763/PUN/2014 order dt.16.09.2016 had held that the revisionary proceedings exercised by

Ld.CIT to be not correct and therefore had set aside the order passed by Ld.CIT u/s 263(1) of the Act. In such a situation, when the original order of Ld.CIT passed u/s 263 of the Act has been set aside, the consequential order passed by the AO u/s 143(3) r.w.s. 263 of the Act does not survive. The Ld.CIT(A) has thus rightly held the assessment order passed u/s 143(3) r.w.s. 263 of the Act on the basis of order of Ld.CIT to be void. We do not find any fallacy in the findings of Ld. CIT(A) and **thus, the ground of the Revenue is dismissed.**

5. **In the result, the appeal of Revenue is dismissed.**

Order pronounced on 12th day of July, 2019.

Sd/- (VIKAS AWASTHY) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
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पुणे Pune; दिनांक Dated : 12th July, 2019.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-9, Pune.
4. Pr. CIT- 5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" / DR, ITAT, "A" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.