

आयकर अपीलीय 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.306/PUN/2017

निर्धारण वर्ष / Assessment year : 2008-09

The Dy. Commissioner of Income Tax,
Circle – 9, Pune.

..... अपीलार्थी /
Appellant

बनाम v/s

M/s. Faurecia Interior India Pvt. Ltd.,
Plot No.T-187, BG Block, Pimpri
Industrial Area, Bhosari,
Pune – 411 026.

..... प्रत्यर्थी /
Respondent

PAN : AACCT0275F.

Assessee by : Mrs. Padmaja Likhite.

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) – 13, Pune dated 23.11.2016 for A.Y. 2008-09.

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

“Whether on the facts and circumstances of the case, the CIT(A) is right in allowing the disallowance made u/s 10A(7) r.w.s. 80IA(10) of the Act, of Rs.2,88,69,742/-.”

3. Before us, Ld.A.R. submitted that while framing the assessment order u/s 143(3) of the Act, AO had disallowed Rs.2,88,69,742/- u/s

10A r.w.s. 80IA(10) of the Act on account of excess profit adjustment. Being aggrieved with the said assessment order, assessee company filed an appeal before the Ld.CIT(A). Subsequently, CIT-IV, Pune initiated proceedings u/s 263 of the Act. On examination of the assessment records, Ld.CIT considered that assessment order passed by the AO to be erroneous and prejudicial to the interest of the revenue as the AO did not disallow the mark to market losses on forward contracts of Rs.2,33,89,522/- by ignoring the Board's Circular No.3 of 2010. Accordingly, Ld.CIT vide order dated 21.03.2014 passed order u/s 263 of the Act set aside the order u/s 143(3) of the Act passed by the AO and directed the AO to reframe the assessment as per the directions contained in his order. The ld. A.R. further submitted that against the order of ld. CIT passed u/s 263, assessee preferred appeal before the Tribunal. She submitted that the Co-ordinate Bench of the Tribunal vide order dated 05.01.2017 in ITA No.1058/PUN/2014 has held that revisionary proceedings exercised by Ld.CIT u/s 263 of the Act to be not correct and accordingly set aside the order of Ld.CIT. She placed on record the copy of the aforesaid order of the Tribunal and pointed to the relevant findings of the Tribunal. She 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. She submitted that Ld.CIT(A) on merits has deleted the addition and on this ground also, the appeal of Revenue needs to be dismissed. She thus supported the order of ld. CIT(A). Ld. D.R. on the other hand did not controvert the submissions of Ld.A.R. but supported the order of lower authorities.

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 30.12.2011. Thereafter, Ld.CIT vide order dated 21.03.2014 passed u/s 263 of the Act whereby he directed the setting aside of the assessment order passed by the AO and directed the AO to reframe the assessment as per the directions contained therein. Consequent to order passed u/s 263, AO framed assessment u/s 143(3) r.w.s. 263 vide order dated 16.03.2015 which was challenged by assessee before Ld.CIT(A). Ld.CIT(A) by the impugned order on merits granted relief to assessee. 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.1058/PUN/2014 order dt.05.01.2017 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. 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. We further find that Ld.CIT(A) even on merits has decided the issue in assessee's favour. In such a situation, we do not find merit in the appeal of Revenue. We thus dismiss the ground of Revenue. **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

पुणे Pune; दिनांक Dated : 12th July, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-13, 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.