

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1561 & 1562/PUN/2018
निर्धारण वर्ष / Assessment Year : 2007-08 & 2011-12

ACIT, Central Circle-2,
Nashik.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Suyojit Infrastructure Pvt. Ltd.,
F-1/2, First Floor, Suyojit Heights,
Opp. Rajiv Gandhi Bhavan,
Sharanpur Road, Nashik-422002.

PAN : AAFCS1381N

.....प्रत्यर्थी / Respondent

Revenue by : Shri N. Ashok Babu
Assessee by : Written Submission

सुनवाई की तारीख / Date of Hearing : 15.07.2019
घोषणा की तारीख / Date of Pronouncement : 05.09.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

There are **two appeals** under consideration. Both the appeals are filed by the Revenue against the common order of CIT(A)-12, Pune dated 22.06.2018 for the Assessment Years 2007-08 and 2011-12 respectively.

2. Despite service of notice of hearing, there was none to represent the assessee. However, the assessee filed the written submission in support of their case. Therefore, both the appeals of the Revenue are being decided on the basis of material available on record, written submission of the assessee and after hearing the ld. DR for the Revenue.

3. The grounds raised by the Revenue are common in both the appeals. Therefore, for the sake of brevity, we proceed to extract the grounds in ITA No.1561/PUN/2018 for the assessment year 2007-08 as follows :-

*“i) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has **failed to adjudicate the issue on merits** and has deleted the addition on technical grounds.*

ii) On the facts and in the circumstances of the case, the ld. CIT(A) fails to appreciate that Department has filed appeal to Hon’ble High Court in group cases against the decision of Tribunal in setting aside the order u/s 263 of the IT Act.

iii) On the facts and in the circumstances of the case, the ld. CIT(A) at best should have kept the appeal in abeyance till the decision of appeal by Hon’ble High Court.

iv) It is prayed to set aside the order of CIT(A) and restore the order of Assessing Officer.”

4. Briefly stated the relevant facts include that the assessee is a Private Limited Company engaged in the business of Builders, Land Developers, Contractors, etc. The assessee filed the returns of income declaring total income of Rs.28,92,450/- and Rs.20,73,420/- for the assessment years 2007-08 and 2011-12 respectively. A search and seizure action u/s 132 of the Act was conducted on 17.09.2010 on the Suyojit Group. In response to notice u/s 153A of the Act, the assessee revised the on 31.05.2012 for A.Y. 2007-08 declaring total income at Rs.43,92,440/-; whereas, for A.Y. 2011-12, no revise return of income was filed u/s 153A of the Act. The original return of income was itself to be considered as return of income u/s 153A of the Act too. The assessment u/s 143(3) r.w.s 153A of the Act was completed on 28.03.2013 assessing the total Income at Rs.55,75,440/- after making addition of Rs.11,83,000/- for A.Y. 2007-08 and at Rs.71,73,420/- after

making additions of Rs.51,00,000/- for A.Y. 2011-12. The additions made by the A.O. were deleted by CIT(A) in respect of both the assessment years vide orders.

5. Therefore, the Revenue filed appeals Before the Tribunal (ITA No.1686 & 1688/PUN/2013) in respect of A.Y. 2007-08 & A.Y. 2011-12 respectively. The said appeal of the revenue for A.Y. 2007-08 is dismissed by the Tribunal on Monetary Limits Ground vide order dated 08.07.2015 and the appeal for A.Y. 2011-12 is dismissed by the Tribunal on merit on 09.09.2016.

6. In the background of the above, the Pr. Commissioner of Income Tax, Central, Nagpur (Pr. CIT) passed order u/s 263 of the Act on 23.03.2015 in respect of both the years and directed the Assessing Officer to frame fresh assessment.

7. However, the said order of Pr. CIT u/s 263 of the Act was set aside by Tribunal (ITA Nos.811 &822/PUN/2015) vide order dated 28.03.2018

8. Aggrieved, the Revenue now filed an appeal before the Hon'ble Bombay High Court against the said orders (ITA Nos.811 & 822/PUN/2015) dated 28.03.2018 (supra).

9. Meanwhile ignoring the relief to assessee on the revision orders of the Pr.CIT, fresh assessment orders u/s 143(3) r.w.s 263 of the Act for A.Y. 2007-08 & A.Y. 2011-12 were passed on 25.02.2016 & 19.01.2016

by the A.O. assessing the total income at Rs.1,74,75,440/- and Rs.1,46,81,280/- respectively.

10. In the fresh assessment order for A.Y. 2007-08 passed pursuant to the order u/s. 263, the A.O. made additions of Rs.11,83,000/- and Rs.1,19,00,000/- and, in the fresh assessment order for A.Y. 2011-12 passed pursuant to order u/s. 263, the A.O. made additions of Rs.51,00,000/- & Rs.75,07,860/- respectively.

11. It is pertinent to note that, out of the additions made by A.O. in the both the years i.e. the additions of Rs.11,83,000/- & Rs.51,00,000/- were made by Assessing Officer in the assessment orders of A.Y. 2007-08 & A.Y. 2011-12 respectively for the reason that the same were also made in the original assessment orders passed u/s 143(3) r.w.s 153A of the Act. These additions were already deleted by CIT(A) vide orders dated 04.06.2013 & 03.06.2013 respectively. Consequently, these additions are unsustainable.

12. The assessee filed appeals in respect of both the years before Commissioner of Income Tax against the said order passed u/s 143(3) r.w.s 263 of the Act. The Commissioner of Income Tax allowed both the appeals of the assessee vide order dated 22.06.2018 for the reason that the orders passed for the years under appeals u/s. 263 are already set aside by the Tribunal and therefore, the assessment orders passed pursuant to the order u/s. 263 shall not survive.

13. Aggrieved with the said decision of the CIT(A), the Revenue is in appeal before us with the above extracted grounds of appeal.

14. From the above, it is evident that these appeals arise from the fresh assessment order passed u/s 143(3) r.w.s. 263 of the Act. In this regard, ld. Counsel filed the written submission on 11.07.2019 stating the facts and legal proposition in support of his case. **Considering the written submission, we find that the said revisional order passed by the CIT now stands quashed** and consequently, the fresh assessment orders made by the Assessing Officer becomes null and void *ab-initio*. Therefore, the appeals filed by the Revenue are required to be dismissed.

15. On the other hand, ld. DR for the Revenue relied heavily on the order of the Assessing Officer.

16. On hearing both the sides on this legal issue, we find the CIT(A) discussed this issue in para 7 of his order and the same is extracted hereunder :-

*“7. Vide this grounds of appeal the appellant challenged the addition made by the AO of Rs.75,07,860/- u/s 143(3) rws 263 in consequent to order passed by the CIT(Central), Nagpur u/s 263. During the course of appellate proceeding the AR of the appellant submitted that the order **passed by the CIT(Central), Nagpur u/s 263 has been set aside by the Hon’ble ITAT Pune vide Order ITA No. 811, 812/PUN/2015 for A.Y. 2007-08 & 2011-12 dated 28.03.2018 and submitted** copy of the order of the Tribunal, which is placed on record. Since the original order u/s 263 has been set aside by the Tribunal the consequential order passed u/s 143(3) rws 263 has no leg to stand on its own, thus the appeal against the consequential order have become infructuous. Therefore, for statistical purpose the ground raised by the appellant is allowed.”*

17. Present appeals emanate from the revision orders u/s 263 of the Act. These orders stand quashed as on date. Considering the above subsequent developments of the cases, we are of the opinion that both the appeals filed by the Revenue have to be dismissed. Therefore, without disturbing the order of the CIT(A), we dismiss both the appeals of the Revenue.

18. In the result, both the appeals of the Revenue are dismissed.

Order pronounced on 05th day of September, 2019.

Sd/-
(विकास अवस्थी /**VIKAS AWASTHY**)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डी. करुणाकरा राव/**D. KARUNAKARA RAO**)
लेखा सदस्य/**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 05th September, 2019.
Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The DGIT (Inv.), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.