

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

I.T.A. No.3852/DEL/2017  
Assessment Year 2005-06

DCIT, Central Circle-2, Faridabad.	v.	P.D. Memorial Religious & Educational Association, Sarai Aurangabad, Bahadurgarh, Haryana.
TAN/PAN: AAATP3857G (Appellant)		(Respondent)

Appellant by:	Smt. Sushma Singh, CIT-DR		
Respondent by:	None		
Date of hearing:	11	02	2020
Date of pronouncement:	17	02	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Revenue against the impugned order dated 10.03.2017, passed by Commissioner of Income Tax (Appeals)-III, Gurgaon for the quantum of assessment passed u/s. 143(3) r.w.s. 263 for the Assessment Year 2005-06. In the grounds of appeal, the Revenue has raised following grounds:-

*“i. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in law by holding that as the order u/s 263 passed by CIT(Central) Gurgaon vide order 26.03.2013 has been cancelled and appeal of the appellant has been allowed by the Hon’ble ITAT, Delhi Bench in IT No. 3054/Del/2013 dated*

*07.04.2016 for the year under consideration the assessment order in consequence of the CIT's order u/s 263 does not survive ignoring the fact that the Department had filed appeal against the order in ITA No. 3054/Del/2013 on 17.10.2016, which is subjudice.*

*ii. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in not deciding the issues on merits.”*

2. At the outset, ld. counsel informed that the present assessment proceedings are in pursuance of order passed u/s.263 by Ld. CIT (Central), Gurgaon vide order dated 26.03.2013. Later on, ITAT in ITA No.3054/Del/2013 vide order dated 07.04.2016 has quashed the order passed u/s.263 and therefore, the impugned assessment order is not survived. Even the Ld. CIT (A) has noted this fact.

3. On the other hand, ld. DR submitted that the appeal has been filed to keep the issue alive as the Revenue has preferred an appeal before the High Court.

4. Since, the present appeal has been passed against the assessment order, passed u/s.143(3)/263 dated 31.03.2014 in pursuance of order passed by ld. CIT u/s.263 vide order dated 26.03.2013 and now that the order passed u/s.263 itself has been quashed, therefore, the impugned assessment order does not survive and is treated as infructuous. Ld. CIT (A) too has noted this fact and has held that the assessment order in consequence of Ld. CIT order u/s.263 does not survive.

5. In view of the above, the present appeal of the Revenue is dismissed.

6. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 17<sup>th</sup> February, 2020.**

Sd/-

**[O.P. KANT]**

**ACCOUNTANT MEMBER**

DATED: 17<sup>th</sup> February, 2020

PKK:

Sd/-

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**