

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER &
SHRI SANJAY ARORA, ACCOUNTANT MEMBER**

I.T.A. No.107/JAB/2018
Assessment Year: 2011-12

Deputy Commissioner of Income Tax, Circle-1(1), Jabalpur, MP	vs.	Jashn Beneficiary Trust, Modern House, First Floor, 15, Dr. V.B Gandhi Road, Fort Mumbai- 400001 (Maharashtra) (PAN: AABTJ 2463P)
(Appellant)		(Respondent)

Appellant by	Smt. Gunjan Varshney, Sr. DR
Respondent by	Shri Subhash Bajpayee, CA
Date of hearing	06/10/2020
Date of pronouncement	06/10/2020

ORDER

Per Sanjay Arora, AM:

This is an Appeal by the Revenue directed against the Order dated 15/02/2018 by the Commissioner of Income Tax (Appeals)-1, Jabalpur ('CIT(A)' for short), allowing the assessee's appeal contesting its' assessment under section 143(3) r/w s. 263 of the Income Tax Act, 1961 ('the Act' hereinafter) dated 21/10/2016 for assessment year (AY) 2011-12.

2. The Revenue's appeal raises a single ground, i.e., whether the ld. CIT(A) was justified in quashing the assessment as infructuous. The assessment having been made pursuant to an order u/s. 263, it would not, in his view, survive on the quashing of the section 263 order by the Tribunal (vide its' order dated 15/3/2017, in I.T.A. No.100/Jab/2016). We do not find

any infirmity in the said finding, which forms the basis of the impugned order (refer para 7). Once section 263 order stands quashed, the consequent order of assessment is without any basis in law. The Id. CIT-DR would, while confirming that the Revenue's appeal against the Tribunal's order dated 15/3/2017 is pending as on date before the Hon'ble High Court, which has not stayed its operation, submit for keeping the instant appeal in abeyance, i.e., till the disposal of the said appeal by the Hon'ble Court. We see no reason for the same. As and when the Revenue's appeal, i.e., where so, is decided by the Hon'ble High Court in its' favour, the matter shall necessarily travel to the file of Id. CIT(A) inasmuch as he has not decided the assessee's appeal on merits. This is, apart from s. 153, axiomatic as the assessee's appeal remains undisposed on merits by the first appellate authority (also refer, inter alia, *Mela Ram & Sons vs. CIT* [1956] 29 ITR 607 (SC)). The Revenue in fact could carry this appeal before the Hon'ble High Court, so that both its' appeals, i.e., against the orders by the Tribunal disposing s. 263 and s. 250(6) orders, are heard together by the Hon'ble Court. As far as the Tribunal is concerned, till the time the order dated 15/3/2017 by the Tribunal obtains, the consequent order passed by the Assessing Officer is infructuous. We decide accordingly.

3. In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 06/10/2020

Sd/-
(N.R.S.Ganesan)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 06/10/2020

*Singh/-(P)

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