

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2055/Bang/2019  
(Assessment Year : 2009-10)

Joint Commissioner of Income Tax,  
Range 7, Bangalore.

....Appellant.

Vs.

M/s. United Breweries Limited,  
UB Tower, UB City, NO.24, VittalMallya Road,  
Bangalore-560 001.  
PAN AAACU 6053C

.....Respondent.

Assessee By:	Shri K.R. Vasudevan, Advocate.
Revenue By:	Shr Pradeep Kumar, CIT (D.R)
Date of Hearing :	28.01.2021.
Date of Pronouncement :	28.01.2021.

**ORDER**

**PER SHRI CHANDRA POOJARI, AM :**

This appeal filed by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-10, Bangalore Dt.22.07.2019 for the Assessment Year 2009-10.

2. The Revenue has raised the following grounds :

- " 1. *The order of the learned CIT(A) is opposed to law and facts of the case.*
2. *Whether the CIT(A) is correct in law in allowing the appeal filed by the assessee against the order u/s 143(3) r.w.s. 263 dated 26.2.2015 by merely relying on the order of the Hon'ble ITAT in ITA No.594/Bong/2014 dated 22.3.2019 for the A.Y. 2009-10 in assessee's own case without going into the merits of the case, and before reaching finality of the said order of the Hon'ble ITAT ?*
3. *Whether the CIT(A)-7, Bengaluru, is justified in assuming that the orders passed by the CIT, Bangalore-III, u/s 263 for the Asst. Year 2009-10 setting aside the Assessment order passed by the Assessing Officer for the asst. Year under consideration as erroneous and prejudicial to the interest of the revenue do not satisfy both the twin tests laid In the provisions of Sec. 263 of the I. T. Act in respect of non-adherence of provisions of section u/s 40(a)(ia) of the Act, relying on the decision of the Hon'ble ITA T without realizing that the Hon'ble ITA T has upheld the actions of the Ld. CIT in respect of other issues in the same order, such as incorrect disallowance of depreciation and incorrect grant of interest u/s 244A?*
4. *For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.*
5. *The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above."*

3. The facts of the case are that the assessee filed the Return of Income on 25.09.2009 declaring income of Rs.78,60,19,800 and subsequently a revised return was filed on 25.02.2011 declaring income of Rs.77,35,19,800. The assessment was completed u/s. 143(3) of the Income Tax Act, 1961 ('the Act') assessing total income of Rs.96,16,99,983. Subsequently, vide the CIT order dt.3.3.2014 passed u/s. 263 of the Act and cancelled the assessment order dt.21.12.2011 and directed the Assessing Officer to pass a de novo order. On appeal, the CIT (Appeals)

observed that the order passed u/s. 263 of the Act dt.3.3.2014 passed by CIT-III, Bangalore for subject matter before the Tribunal in ITA No.594/Bang/2014 vide Tribunal order dt.22.3.2019 in para 18 observed as under :

“ 18. To sum up, the order of the Commissioner setting aside the order passed by the assessing officer for non-deduction of tax (TDS) is required to be set aside firstly Commissioner has not correctly interpreted the provisions of sec.194C(2) of the Act and also did not consider the law amended in sec.40(a)(ia) which is held to be applicable retrospectively from 1 April 2005; secondly the order of the Commissioner was not correct as the Commissioner failed to verify and conduct the minimal enquiry about the status of alleged non-deduction of TDS and deposit of TDS in the government treasury before the due date for filing the return of income, despite availability of material on record and thirdly, the order passed by the CIT does not satisfy both the twin tests laid by the Hon'ble Supreme Court in Malabar Industrial Co.(supra) and Max India Ltd (supra). On account of these reasons, exercise of power by CIT u/s.263 cannot be sustained. In view of the above, the order passed by the CIT u/s.263, for non-deduction of TDS, for both the assessment years is required to be quashed and accordingly we quash the same.”

Being so, the CIT (Appeals) observed that the order passed u/s. 263 has been annulled by ITAT. The order passed by the A.O. u/s. 143(3) r.w.s. 263 dt.22.3.2019 is of no consequence. Again the Revenue is in appeal before us.

4. We have heard both the parties and perused the material on record. As rightly pointed out by ld. AR, we are of the opinion that there is no surviving order passed u/s. 263 of the Act. In this case, the order dt.3.3.2014 of CIT-III passed u.263 ota was quashed by Tribunal vide order dt.22.03.2019 in ITA No.594/Bang/2014. As such, the CIT (Appeals) is justified in allowing the appeal of the assessee which is

emanated from the assessment order passed u/s. 143(3) r.w.s. 263 of the Act. Accordingly, the Revenue's appeal is dismissed.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

**(SMT BEENA PILLAI)  
JUDICIAL MEMBER**

Sd/-

**(CHANDRA POOJARI)  
ACCOUNTANT MEMBER**

Dated: 28.01.2021.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore