

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavankumar Gadale (JM)

I.T.A. No. 5225/Mum/2019 (Assessment Year 2012-13)

DCIT-1(1)(1) Room No. 579 5 th Floor Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.	Vs.	M/s. Amazia developers Private Limited 108, G-Wing, Akruti Commercial Complex Next to Akruti Centre Point, Central Road Andheri East Mumbai-400 093. PAN : AAHCA6934H
(Appellant)		(Respondent)

Assessee by	Shri Anuj Kishnadwala
Department by	Shri Brajendra Kumar
Date of Hearing	09.02.2021
Date of Pronouncement	10.02.2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A) dated 30.5.2019 and pertains to assessment year 2012-13.

2. Grounds of appeal read as under :-

1. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) should have kept the matter in abeyance as the department has not accepted the order of Hon'ble ITAT quashing the order under sec. 263".
2. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) may be directed to adjudicate on merits if the Hon'ble High Courts upholds the order under sec. 263 and hence the appeal be restored".

3. Learned CIT(A) in this case has passed following order :-

"I find that the order under appeal is the order dated 31.8.2017 passed by the AO to give effect to the directions contained in the order u/s.263 dated 27.3.2017 passed by the C.I.T.-1, Mumbai. Since the order u/s.263 has been held to be invalid by the ITAT order in ITA No.2499/Mum/2017 dated

8/5/2019, the order dated 31.08.2017 passed by the Assessing Officer u/s. 143 r.w.s. 263 cannot survive. Accordingly, the said order u/s. 143(3) r.w.s. 263 dated 31.8.2017 is hereby quashed.”

4. Against this order the Revenue is in appeal before us.
5. We have heard both the counsel and perused the records. We find that learned CIT(A) has taken correct this view of the matter. There is no substance whatsoever in the Revenue’s appeal. Once the ITAT has quashed the learned CIT(A)’s order u/s. 263 of the Act. Consequent order pursuant to section 263 have no legs to stand before the ITAT. Hence, we affirm the order of learned CIT(A).
6. Learned Departmental Representative has contended that it may be recorded that if Hon'ble High Court reversed the ITAT order, the Revenue right should be protected. We find that if Hon'ble High Court reverses the ITAT order, the Revenue is free to take the appropriate action. No specific order by us is required in this regard at this stage.
7. In the result, this appeal filed by the Revenue stands dismissed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 10.2.2021.

Sd/-
(PAVANKUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 10/02/2021

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai

6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai