

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
and Saktijit Dey (Judicial Member)]**

ITA Nos. 3029 & 3030/Mum/2019
Assessment Year: 2012-13

**Dy. Commissioner of Income Tax- 8(2)(2)
Mumbai.**

..... **Appellant**

Vs.

**M/s. Sprit Infrapower & Multiventures Pvt. Ltd.,
(Successor to M/s. Premier Finance & Trading Co. Ltd.)
18th Floor, A-Wing, Marathon Futrex, N.M Joshi Marg,
Lower Parel, Mumbai 400013 [PAN: AACTS0331A]**

.....**Respondent**

Appearances:

Sunil Umap *for the appellant*

Jay Bhansali *for the respondent*

Date of concluding the hearing: : January 20, 2021

Date of pronouncement : April 15, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of these appeals, the Assessing Officer has challenged the correctness of the order dated 4th December 2018, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2012-13.

2. Grievances raised by the Assessing Officer are as follows:

1. " Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) should have considered that matter of quashing of order u/s.263 by ITAT had not attained finality and therefore should have provided for revival of appeal and adjudication of additions made as and when the order u/s.263 is upheld and restored by the Hon'ble High Court."

2. " Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT may provide for revival of appeal and adjudication on issues on merits as and when the order u/s.263 is quashed by Hon'ble ITAT is restored by the Hon'ble High Court."

3. To adjudicate on these appeals, only a very few material facts need to be taken note of. The assessment u/s. 143(3), in this case, was finalised on 19th March 2018. However, subsequently this case was subjected to revision proceedings by the Principal Commissioner of Income Tax and, in pursuance to the revision order dated 31st March 2017 passed by the learned CIT(A) the assessment was once again proceeded with. The assessment order so passed, as a result of the revision proceeding, is subject matter of present appeal. Aggrieved by the assessment order so passed assessee carried the matter in appeal before the CIT(A). In the meantime however the very revision order which resulted in the present assessment was quashed by the co-ordinate bench of this tribunal while order dated 28th September 2017. The very foundation of the impugned assessment thus ceased to hold good in law. It was in this background that the learned CIT(A) quashed the impugned assessment order and observed as follows:-

During the course of appellate proceedings it has been submitted by the appellant that the honourable Tribunal has quashed the order under section 263 of the IT Act passed by the PCIT-7, Mumbai. Since the honourable Tribunal has, vide order dated 20.12.2017 in ITA No. 3957/MUM/2017, quashed the order under section 263 passed by the Pr. CIT-7 on 31.03.2017, the order u/s 143(3) r.w.s 263 passed by the AO on 29.12.2017, to give effect to directions of the Pr. CIT-7 in order u/s 263 dated 31.03.2017, does not survive. Therefore, it is quashed and set aside. In view of this, the appeal of the appellant is treated as allowed for statistical purpose.

4. The Assessing Officer is, however, aggrieved and is in appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We find that the revision order, which is as a result of the impugned assessment order was passed, has been quashed by a co-ordinate bench of this tribunal. The very foundation of the impugned assessment order ceases to hold good in law. Learned CIT(A) was therefore quite justified in quashing the resultant impugned assessment order as well. We see no infirmity in the order of the CIT(A) and therefore, we decline to interfere in the matter. As regards the issues raised in the present appeal with regard to the consequence of the Tribunal order being reversed by the Hon'ble Courts above and the revision order being thus restored, such a possibility is purely hypothetical at this stage. Just because the matter is pending before the Hon'ble High Court, given effect to a subsisting and binding judicial order cannot be declined.

7. In the result, these appeals are dismissed. Pronounced in the open court today on the 15 day of April 2021.

Sd/-
Saktijit Dey
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 15 day of April 2021.

Copies to:

(1)	<i>The Applicant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*