

THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 4506/Mum/2019 (Assessment Year 2007-08)

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| DCIT, Circle-7(2)(1) Room No. 126A 1 st Floor Aayakar Bhavan M.K. Road Mumbai-400 020. | Vs. | M/s. Mauj Mobile Pvt. Ltd. (formerly know as People Infocom Pvt. Ltd.) 205, Shiv E-Numh, Dr. Annie Besant Road Worli, Mumbai-400 018. PAN : AADCP5658H |
| (Appellant) | | (Respondent) |

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| Assessee by | None |
| Department by | Shri Ajaykumar Srivastva |
| Date of Hearing | 04.03.2021 |
| Date of Pronouncement | 24.05.2021 |

ORDER

Per Shamim Yahya (AM) :-

This is an appeal by the Revenue directed against the order of learned CIT(A) dated 30.4.2015 pertains to A.Y. 2007-08.

The grounds of appeal read as under :-

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the appeal of the assessee holding that as the basis of order (i.e. order u/s 263) itself was squashed, the order of AO becomes non est without discussing the case on its merits."
 2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in allowing the appeal of the assessee when, he should have kept the appeal in abeyance pending the decision against the order u/s 263 for which appeal is admitted in the High Court?"
 3. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary".
3. Brief facts of the case are that the Assessing Officer order passed in this case pursuant to section 263 order by learned CIT, was set aside as non-est by the learned CIT(A) after noting that the said order under section 263 by

learned CIT has been quashed by the ITAT. Learned CIT(A) has held as under :-

“The order under reference was passed as a consequence to order u/s.263 passed by CIT-7, Mumbai on 10.02.2012. The order u/s.263 was subsequently squashed by the Hon'ble ITAT C-Bench, Mumbai vide order dated 19.05.2016. As the basis of order (i.e. order u/s.263) itself was squashed, the order of AO becomes non est.”

4. Against the above the Revenue is in appeal before us.
5. We have heard learned Departmental Representative. None appeared on behalf of the assessee. Learned CIT-DR repeated the grounds of appeal and submitted that a direction should be given that if revenue's appeal before Hon'ble High Court against the above said ITAT order succeeds the Revenue's appeal in the present case will be revived.
6. Upon careful consideration, we do not find any infirmity in the order of learned CIT(A). It is not the case of the Revenue that Hon'ble High Court has reversed the above said order of ITAT. Hence request of learned Departmental Representative is premature and in realm of conjecture and hence the same is rejected. Since the ITAT has quashed the order of learned CIT passed under section 263 the consequential order passed by the Assessing Officer will not survive.
7. In the result, appeal by the Revenue is dismissed.

Pronounced in the open court on 24.5.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 24/05/2021

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