

आयकर अपीलीय अधिकरण “के” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लष्कसदस्य कासमक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आकरअपील सं./ I.T.A. No.429/PNJ/2013
(निर्धारण वर्ष / Assessment Year: 2006-07)

Gigabyte Technology (India) Pvt. Ltd. B-411, BSEL Tech Park Sector 30A, Vashi Navi Mumbai, Maharashtra – 400 705	बनाम/ Vs.	ACIT-1, Margo, Goa
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABCD-7556-N		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vishal Kalra-Ld. AR
Revenue by	:	Shri Sunil Deshpande-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	20/07/2021
घोषणा की तारीख / Date of Pronouncement	:	20/07/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. In this appeal, the assessee has aggrieved by certain additions as made in assessment order dated 07/10/2013 passed u/s 143(3) r.w.s. 263 of the Act.

2. Ld. AR submitted that this order has been passed consequent to invocation of revisional jurisdiction u/s 263 by learned Commissioner of Income Tax on 20/03/2012. In the said order, Ld. CIT(A) set aside the

assessment order dated 18/12/2009 passed u/s 143(3) with a direction to Ld. AO to pass speaking draft assessment order in terms of the provisions of Sec.144C of the Act.

3. The Ld. AR further submitted that the assessee contested the validity of jurisdiction u/s 263 before Panaji Bench of Tribunal which was dismissed on 13/10/2014. However, the assessee preferred further appeal against the said order before Hon'ble Bombay High Court vide ITA No.77 of 2015 which was disposed-off on 19/10/2020. The Hon'ble High Court decided the appeal in favor of the assessee by setting aside the order passed by Ld. CIT u/s 263. The relevant observations are as under: -

45. According to us, the issue is whether the assessment order dated 18-12-2009 in this case, is void *ab initio* or not. Going by the decisions in *Zuari Cement Ltd. (supra)*, *Control Risk India (P.) Ltd. (supra)*; *International Air Transport Association; Lionbridge Technologies (P.) Ltd. (supra)* and *Vijay Television (P.) Ltd. (supra)*, we have to hold that the assessment order dated 18-12-2009, in the present case, was clearly without jurisdiction and, therefore, null and void or void *ab initio*. The fact that the Assessee, in this case, may have not instituted a Writ Petition to challenge the same, but has instituted only an appeal challenging the same, can make no difference to the legal position which is otherwise quite clear. This was not a case where the assessee was merely throwing some collateral challenge to the assessment order dated 18-12-2009. The assessee had frontally challenged this order by instituting an appeal against the same. Therefore, all these decisions could not have been ignored by the ITAT by merely observing that these were the decisions in Writ Petitions instituted by the Assesseees.

46. For all the aforesaid reasons, the two substantial questions of law will have to be answered in favour of the assessee and against the revenue. Further, the order dated 23-2-2012 made by the CIT in the purported exercise of jurisdiction under section 263 of the said Act, is liable to be set aside. Since this order has merged into the order of the ITAT dated 31-10-2014, even this impugned order made by the ITAT is required to be set aside.

The Ld. AR submitted that since order passed u/s 263 has been set-aside, the consequential assessment framed by Ld. AO would not survive and accordingly, the same would be invalid and bad in law. The Ld. DR could not controvert this position.

4. In view of the same, Ground No.2 of the appeal which contests the validity of assessment framed u/s 143(3) r.w.s. 263 stand allowed which render other grounds as infructuous.

5. The appeal stand allowed in terms of our above order.

Order pronounced on 20th July, 2021.

**Sd/-
(Mahavir Singh)**

उपाध्यक्ष / **Vice President**

**Sd/-
(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 20/07/2021
Sr.PS, Dhananjay/Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**