

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E': NEW DELHI)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
and  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.2386/Del./2018  
(ASSESSMENT YEAR : 2008-09)**

**ITA No.2387/Del./2018  
(ASSESSMENT YEAR : 2009-10)**

**ITA No.2389/Del./2018  
(ASSESSMENT YEAR : 2011-12)**

**ITA No.2388/Del./2018  
(ASSESSMENT YEAR : 2010-11)**

ACIT. Central Circle, vs. M/s. Mera Baba Reality Associate  
New Delhi. (P) Limited,  
D – Mall, Plot No.1,  
Netaji Subhash Place,  
District Centre, Wazirpur, Pitampura,  
New Delhi.

**(PAN : AADCM9592M)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S.K. Goyal, CA

REVENUE BY : Ms. Sarita Kumari, CIT DR

Date of Hearing : 23.12.2021

Date of Order : 23.12.2021

**ORDER**

**PER BENCH:**

Aforesaid appeals have been filed by the Revenue against the consolidated impugned order dated 29.01.2018

passed by the ld. CIT(A)-27, New Delhi for the quantum of assessment passed under section 143(3)/263 of the Income-tax Act, 1961 (for short 'the Act') for the assessment years 2008-09, 2009-10, 2010-11 & 2011-12.

2. Common grounds of appeal raised by the Revenue in all the appeals read as under:-

**“1. Whether on the facts of the case the Ld.CIT (A) has erred in deleting the additions made by the AO in pursuance of the specific directions of the Pr.CIT given vide order u/s 263 of the I.T.Act, 1961.**

**2. Whether on the facts of the case the Ld. CIT (A) has erred in appreciating the fact that the Hon'ble Apex Court in the case of Deniel Merchents Pvt. Ltd. vs. ITO (dated 29.11.2007) also upheld the action of the Pr. CIT issuing similar type of directions u/s 263 as given.”**

3. At the outset, ld. counsel for the assessee submitted that the present appeals filed by the Revenue are against the assessment order passed in pursuance of order u/s 263, passed by the Pr.CIT, Central 2, New Delhi vide his combined order dated 31.03.2015, setting aside the original assessment order passed by the AO vide order dated 28.03.2013 for the AYs 2008-09 to 2011-12 passed u/s 153A/143(3), on the ground that the same are erroneous and prejudicial to the interest of the Revenue. The said assessment order was set aside and was restored to the file of the Assessing Officer to make fresh assessment on certain issues. He informed that against the order u/s 263 passed by Pr.CIT, Central 2, New Delhi, the assessee had

preferred appeals before the Tribunal in all the assessment years. In the appeals this Tribunal in ITA Nos. 3452 to 3455/Del/2006 for AYs 2008-09 to 2011-12 vide order dated 10.11.2016 had allowed the appeals of the assessee and set aside the order passed u/s 263. Thus, the very basis of passing the impugned assessment order u/s 143(3)/263 now holds no ground. Not only that, he further informed that the Department had preferred an appeal against the said ITAT order before the Hon'ble Delhi High Court in ITA 637, 507, 508 & 509/2017 and the Hon'ble High Court vide order dated 21.08.2017 dismissed the appeal filed by the Revenue. Thus, the order of the Tribunal quashing the order passed u/s 263 has attained finality. He also brought on record that Revenue had still preferred an SLP before the Hon'ble Supreme Court which has been dismissed on the ground of tax effect, a copy of which has also been placed before us at page 33 of the paper book. Accordingly, all the appeals by the Revenue are infructuous and deserve to be dismissed.

4. Ld. CIT DR on behalf of the Revenue admitted that now that order u/s 263 passed by the Pr.CIT, Central 2, New Delhi has been quashed by the Tribunal which has attained finality from the stage of Hon'ble Supreme Court, thus the present appeals filed by the Revenue have been rendered infructuous. However, she submitted that when the AO had passed the order on 16.03.2016, the order of the ITAT was not there, therefore, the AO was justified in

passing the order in pursuance of the directions of the Pr.CIT.

5. We have perused the relevant facts and material brought on record as submitted by the ld. counsel for the assessee. We find that when the appeals were decided by the ld. CIT (A) vide his consolidated order the ld. CIT (A) himself noted as under :-

**“7. From the above, it is clear that the issue of reassessment proceedings in pursuance to the order u/s 263 of 1. T. Act of PCIT, Central-II, New Delhi has now been settled by Hon'ble ITAT and subsequently by Hon'ble High Court, holding that there was no justification in invoking the provisions of section 263 of the Act in the present case in the aforesaid four years. Since the very basis of initiation of reassessment proceedings in the case of appellant no longer exists, the additions made by AO during the reassessment proceedings for A.Yrs. 2008-09 to 2011-12 also do not survive. In view of this, I delete the additions made by AO in the aforesaid four years and allow the grounds taken by appellant.”**

6. Thus, before the ld. CIT (A), order of the Tribunal as well as the judgment of the Hon'ble Delhi High Court was already available, wherein the order u/s 263 was quashed and, therefore, there is no basis to sustain the impugned assessment orders and accordingly, all the additions made by the AO does not survive. The above factum of the ld. CIT (A) is admitted fact in the light of the orders produced before us. Accordingly, we uphold the order of the ld. CIT (A) as the assessment orders as well as additions made therein

have been rendered infructuous which have been passed in pursuance of the directions/order of the ld. Pr.CIT U/S 263 of the Act. Accordingly, all the appeals of the Revenue are dismissed.

**Order pronounced in open court on this 23<sup>RD</sup> day of December, 2021.**

**SD/-  
(ANADEE NATH MISSHRA)  
ACCOUNTANT MEMBER**

**SD/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Dated the 23<sup>RD</sup> day of December, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-27, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.