

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 89/SRT/2020 (AY 2009-10)
(Hearing in Virtual Court)

Assistant Commissioner of Income Tax, Central Circle-4, Room No. 508, 5 th Floor, Aaykar Bhavan, Majura Gate, Surat-395001	Vs	M/s S.R. Corporation C-601, Diamond World, Mini Bazar, Varachha Road, Surat PAN : ABCFS 2854 B
Appellant / Revenue		Respondent / assessee

Assessee by	Shri P.M. Jagasheth, C.A.
Revenue by	Shri H.P. Meena, CIT-DR
Date of hearing	10.02.2022
Date of pronouncement	10.02.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by Revenue is directed against the order of Id. Commissioner of Income tax (Appeals)-4, Surat ['CIT(A)' for short] dated 08.01.2020 for assessment year (AY) 2009-10, which in turn the assessment order under section 143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 28.03.2016. The Revenue has raised the following grounds of appeal:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.18,79,58,511/- in respect to purchase of land by relying on order of Hon'ble ITAT in ITA No.289/SRT/2018 dated 13.12.2019 without appreciating that the assessee failed to prove the source and genuineness of the claim of expenses of Rs.18,79,58,511/-.

2.It is, therefore, prayed that the order the Ld.CIT(A)-4, Surat may be set aside and that maybe restored to the above extent."

2. Brief facts of the case are that initially the assessment was completed under section 143(3) r.w.s. 153A on 28.03.2016. The assessment order dated 28.03.2016 was revised by Ld. Pr. Commissioner of income Tax (Central)

Surat ['PCIT' in short] under section 263 vide his order dated 22.03.2018. The Ld. PCIT while passing order under section 263 directed the Assessing Officer for making fresh verification of fact with regards to purchase of land and expenses thereon of Rs. 18.79 Crore, which was accepted by AO, without making verification of admissibility. In pursuant upon the direction of Ld. PCIT the Assessing Officer initiated proceedings for fresh assessment and passed made additions of Rs. 18.23 Crore in the assessment order dated 04.12.2018 passed under section 143(3) rws 263. In the meantime, the assessee challenged the order of Ld. PCIT before Tribunal in ITA No.289/SRT/2018. The Tribunal in its order dated 13.12.2019 quashed the assessment order under section 263 dated 22.03.2018.

3. The assessee challenged the addition in the assessment order dated 04.12.2018 passed under section 143(3) rws 263 before ld CIT(A). The Ld. CIT(A) accepted the appeal of assessee by taking view that order of Ld. PCIT was challenged before the Hon'ble Tribunal in ITA No. 289/SRT/2018, wherein the order of Ld. PCIT under section 263 was quashed in order dated 13.12.2019. It was held that once the order passed under section 263 does not survive therefore the addition made in pursuant of direction 263 will also not survive. Aggrieved by the order of Ld. CIT(A) the Revenue has filed present appeal before the Tribunal.
4. We have heard the submissions of Ld. Commissioner of Income-tax. Departmental Representative (CIT-DR) of the Revenue and Ld. Authorized Representative (AR) of assessee. The Ld. CIT-DR of the Revenue supports the order of Assessing Officer and would submits that the appeal is filed to keep the issue alive.
5. On the other hand, Ld. AR of the assessee submits that once the order passed under section 263 has beenquashed therefore subsequent action initiated in

pursuance thereto is *void ab initio*. The Ld. CIT(A) appreciated the fact and deleted the addition in quantum assessment, which were made in pursuance of order under section 263.

6. We have considered the rival submissions of both the parties and perused the order of authorities below. There is no dispute that order passed by Ld. PCIT dated 22.03.2018 has been quashed by Tribunal in ITA No.289/SRT/2018 in order dated 13.12.2019. The Ld. CIT(A) while deleting the addition followed the decision of Hon'ble Tribunal dated 13.12.2019 (*supra*). Therefore, we do not find any merit in the grounds of appeal raised by Revenue and affirm the order of Ld. CIT(A).
7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the court at the close of Virtual court hearing on Thursday, 10th February, 2022.

Sd/-

(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Surat, Dated: 10/02/2022
Dkp. Out Sourcing P.S

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-Surat-4
4. CIT
5. DR
6. Guard File

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

By order

Assistant Registrar, ITAT, Surat