

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT**

**BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.466/SRT/2019**

**(निर्धारणवर्ष / Assessment Year: (2008-09)**

**(Virtual Court Hearing)**

Income Tax Officer, Ward-5, Vapi Range, Room No. 713, 7 <sup>th</sup> Floor, Fortune Square-Ii, Above TBZ, Daman-Chala Road, Chala, Vapi,	<b>Vs.</b>	M/s Ketan Ishwarlal Shah 576/2797, Nehru Street Nr. Hitent Studio, Vapi-396191
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ASMPS 5062 Q</b>		
<b>(Appellant )</b>		<b>(Respondent)</b>

Assessee by : Shri Rajesh M.Upadhyay, A.R

Respondent by : Shri H.P.Meena, – CIT-DR

**सुनवाईकीतारीख/ Date of Hearing : 13/01/2022**

**घोषणाकीतारीख/Date of Pronouncement: 24/02/2022**

**आदेश / ORDER**

**PER DR. A. L. SAINI, ACCOUNTANT MEMBER:**

Captioned appeal filed by the Revenue pertaining to assessment year 2008-09, is directed against the order passed by Learned Commissioner of Income Tax (Appeals)-Valsad [‘CIT(A)’ for short] dated 09.07.2019, which in turn arises out of an assessment order passed by the Assessing Officer (“AO” for short) u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide order dated 31.08.2018.

2. Grounds of appeal raised by the Revenue are as follows:-

*“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the order u/s 143(3) r.w.s. 263 of the I.T. Act stating that the revision order u/s 263 of the I.T. Act which is the basis for order u/s 143(3) r.w.s. 263 of the I.T. Act has been quashed by the Hon'ble ITAT vide its order dated 17.12.2018 and that the order u/s 143(3) r.w.s. 263 of I.T. Act becomes invalid and void-ab-initio so the adjudication of the grounds raised by the assessee becomes infructuous?”*

3. At the outset, Shri Rajesh M Upadhyay, Ld. Authorized Representative (AR) for the assessee begins by pointing out that Tribunal in assessee's own case in ITA No.372/SRT/2018, dated 17.12.2018 has quashed the order passed by Ld. Principal Commissioner of Income Tax under section 263 of the Act. Therefore the consequential order passed by AO u/s 143(3) r.w.s. 263 of the Act becomes infructuous and therefore should be cancelled.

4. On the other hand, Ld. CIT-DR for the Revenue relied on the order passed by Ld. PCIT u/s 263 of the Act.

5. We have heard both the parties and perused the materials available on record. We note that Ld. CIT(Appeals) has allowed the appeal of the assessee observing as follows:-

*“3.3.Decision:*

*After considering the submissions of the appellant, it is noticed that the Honourable ITAT, Surat Bench has passed the appellate order vide ITA No.372/SRT/2018 for A./Y 08-09 on 17.12.2018 and quashed the order passed u/s 263 of the Act dated 29.03.2018. The relevant part of the ITAT order is as under.*

*‘We are of the considered view that the AO had made detailed enquiries and after applying his mind accepted the claim of the assessee, which is also plausible view. Therefore, we find that twin conditions were not satisfied for invoking the jurisdiction under section 263 of the Act. Therefore, in absence of the same, the Ld. PCIT was not correct in exercise the jurisdiction under section 263 of the IT Act and cancelling the assessment and accordingly, we quash the impugned order passed under section 263 of the Act.’*

*In view of the above jurisdictional ITAT order, the appeal filed before the undersigned becomes infructuous as the order passed u/s 263 of the Act got quashed by Hon'ble ITAT Surat bench. Hence, the set aside assessment order u/s 143(3) r.w.s. 263 of the Act becomes invalid and void-ab-initio. Accordingly, the addition of Rs.36,16,042/- made in the order u/s 143(3) r.w.s. 263 of the Act is not sustainable and hereby **deleted**.”*

6. Having gone through the order of Ld. CIT(A) we have observed that since this Tribunal has quashed the order passed by Ld. PCIT u/s 263 of the Act vide order of the Tribunal in ITA No.372/SRT/2018 for A.Y 2008-09, dated 17.12.2018. Therefore, the order passed by Assessing Officer u/s 143(3) r.w.s. 263

of the Act does not have leg to stand. When the foundation is removed, the superstructure falls. Hence, we note that there is no infirmity in the order passed by Ld. CIT(A). That being so, we decline to interfere in the order passed by Ld. CIT(A) therefore order passed by the Ld. CIT(A) is hereby accepted and grounds of appeal raised by Revenue is dismissed.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 24/02/2022 by placing the result on the notice board.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat/दिनांक/ Date: 24/02/2022  
Dkp Outsourcing Sr.P.S.

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

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**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat