

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH
(Conducted Through Virtual Court)
**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Mahavir Prasad, Judicial Member**

ITA No. 1488 & 1489/Ahd/2019
Assessment Year:2009-10 & 2010-11

DCIT , Central Circle-3, Vadodara (Appellant)	Vs	Shri Kalpeshkumar B Verma “Triveni”, 106, Swaminarayan Society, Near Sardargunj, Anand PAN: ABCPV 5892N (Respondent)
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Appellant by : Shri V.K. Singh, Sr. D.R.
Respondent by : Shri Hemant Suthar, A.R.

Date of hearing : 21-03-2022
Date of pronouncement : 25 -03-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeals have been filed by the Revenue against the order passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad, (in short referred to as CIT(A)), dated 07-06-2019, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the “Act”) pertaining to Assessment Year (A.Y) 2009-10 & 2010-11.

2. At the outset itself, ld. Counsel for the assessee submitted in writing before us that the department’s appeal before us is against the order of the Ld. CIT(A) passed in appeal against orders passed u/s. 143(3) r.w.s. 263 of the Act. That the Ld.CIT(A) had allowed the assessee’s appeal noting that since the order passed u/s. 263 of the

Act had been setting aside by the ITAT, the assessment orders passed as a consequence had been rendered infructuous. It was further pointed out that the order of the ITAT setting aside the order of the Ld. PCIT passed u/s. 263 of the Act had been upheld by the Hon'ble High Court vide its order dated 10th Feb., 2020. Copies of the order of the High Court were enclosed. The contents of the submissions so filed before us dated 22.03.2022 are as under

The appeals filed by the Revenue Department against the order of the Ld. CIT(A)-12 Ahmedabad dated 15.07.2019 in appeal against the orders passed u/s. 143(3) r.w.s. 263 of the I.T. Act.

The Ld. CIT(A) had allowed the appeals holding the assessment orders as infructuous on account of setting aside of the orders of the Ld. Pr. CIT passed u/s. 263 by the Hon'ble ITAT in ITA Nos. 1244 & 1245/Ahd/2018 dated 18.02.2019. The copy of the order of the Hon'ble Tribunal is enclosed.

It is further submitted that the appeals of the Revenue Department filed before the Hon'ble High court against the order of the Hon'ble ITAT is also dismissed in Tax Appeal Nos. 761 & 762 of 2019 dated 10.02.2020. The copy of the orders of the Hon'ble High Court is enclosed.

Considering the above, the present appeals filed by the Revenue Department may please be dismissed as infructuous.

3. Ld. D.R. was unable to controvert the above.

4. We have heard both the parties and have also gone through the orders of the authorities below.

5. The brief facts of the case are that the assessee is an individual deriving income from salary, house property, business and profession, capital gain and other sources. A search action u/s 132 was carried out at the residential premises of the assessee on 26/04/2013, consequent to which notice u/s 153A was issued to the assessee. In response, the appellant filed his return of income u/s 153A declaring total income at Rs.8,27,030/- on 30/01/2015. The AO passed the assessment order in the case of the assessee making an addition of Rs.3000/-, thereby assessing the total income at Rs.8,30,030/-. Subsequently, the PCIT(Central), Surat passed an order dated 16/03/2016 u/s 263 of the IT Act, setting aside the said assessment, and directed the AO to make fresh assessment in light of the issues highlighted in his order pertaining to allowance of interest expense of Rs.57,37,042/-. Consequent to the order of the PCIT (Central), Surat, the AO passed an order dated 30/10/2018 u/s 143(3) r.w.s. 263, disallowing an amount of Rs.57,47,042/- being the claim of the appellant.

6. The assessee carried the matter in appeal before the Ld. CIT(A) and as pointed out by the ld. Counsel for the assessee before us as above, The Ld. CIT(A) held the said assessment order to be infructuous, Noting that the order passed u/s. 263 ld. PCIT stood quashed by the ITAT vide its order in ITA Nos. 1244 & 1245/Ahd/2018 dated 18th Feb., 2019.

7. Ld. Counsel for the assessee has also placed before us copies of the orders of the Hon'ble High Court upholding the order of the ITAT quashing the order passed by the Ld. PCIT u/s. 263 of the Act, in Tax Appeals No. 761 & 762 of 2019 dated 10th Feb., 2020.

8. In view of the above, since the order u/s. 263 of the Ld. PCIT, as a consequence of which assessment order was passed u/s. 143(3) which came in appeal before the ld. CIT(A), does not survive, We see no reason to interfere in the order of the Ld. CIT(A) holding the assessment order to be infructuous.

9. In effect, both the appeals of the Revenue are accordingly dismissed.

Order pronounced in the open court on 25-03-2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER True Copy
Ahmedabad : Dated 25/03/2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद