

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA No.7078/Del/2018
Assessment Year: 2013-14

Sh. Ram Gopal, Prop. GMH Laboratories and M/s. Jagdamba Medical Hall, Plot No. 171/3, HSIDC, Karnal	Vs.	ACIT, Circle Karnal
PAN :ABFPG9454L		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Vijay Kataria, Sr. DR

Date of hearing	09.05.2022
Date of pronouncement	09.05.2022

ORDER

PER SAKTIJIT DEY, JM:

The assessee has filed the present appeal against order dated 27.08.2018 of learned Commissioner of Income Tax (Appeals), Karnal, for the assessment year 2013-14.

2. When the appeal was called for hearing none appeared on behalf of the assessee.

3. On perusal of record, it is noticed, on earlier occasions when the appeal was listed for hearing none appeared on behalf of the

assessee, despite the fact that the orders passed by the Bench adjourning the matter to subsequent dates were uploaded in the official website. Since, the assessee has been granted sufficient opportunity of being heard, we do not find any valid reason for adjourning the matter any further. Accordingly, we proceed to dispose of the appeal ex-parte qua the assessee after hearing learned Departmental Representative and based on the materials on record.

4. We have heard learned Departmental Representative and perused the materials on record. Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee had filed its return of income declaring total income of Rs.1,68,730/-. Assessment in case of the assessee was completed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') vide order dated 26.08.2015 determining the total income of Rs.24,28,380/-. Post completion of assessment, learned Principal Commissioner of Income Tax (PCIT), Karnal, called for and examined the assessment records of the assessee. Upon such examination, he was of the view that the assessment order passed is erroneous and prejudicial to the interest of the Revenue and accordingly, issued a show-cause notice under section 263 of the

Act. Ultimately, learned PCIT passed an order on 23.08.2016 setting aside the assessment order with a direction to the Assessing Officer to pass a fresh assessment order keeping in view the observations made in the order passed under section 263 of the Act. The order passed under Section 263 of the Act was challenged by the assessee before the Tribunal.

5. During the pendency of the aforesaid appeal before the Tribunal, the Assessing Officer, in compliance with the directions of learned PCIT in the order passed under section 263 of the Act, completed the assessment by making number of additions, which resulted in determination of total income at Rs.1,11,79,670/-. Though, the assessee preferred appeal against the aforesaid assessment order before learned Commissioner (Appeals), however, he was unsuccessful. Being aggrieved, the assessee is before us.

6. The facts on record reveal that the order passed under section 263 of the Act, which was subject matter of appeal before the Tribunal in ITA No. 5477/Del/2016, was disposed of vide order dated 14.03.2018. While disposing of the appeal, the Tribunal held that keeping in view the ratio laid down in the various judicial precedents, it cannot be said that there is any

error in the order of the Assessing Officer. Accordingly, the Tribunal held the order passed under section 263 of the Act as unsustainable and set it aside. Admittedly, the present appeal before us arises out of consequential proceeding in pursuance to the revision order passed under section 263 of the Act by learned PCIT. Thus, when the order passed under section 263 of the Act has been set aside by the Tribunal in the order referred to above, the consequential proceedings cannot have any independent existence in absence of the revision order passed under section 263 of the Act. That being the legal position, the assessment order and order of learned Commissioner (Appeals) impugned in the present appeal, deserves to be quashed. Accordingly, we do so.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 9th May, 2022

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 9th May, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi