

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.2860/Del/2019  
Assessment Year: 2008-09

DCIT, Hisar Circle, Hisar	<b>Vs.</b>	Smt. Vidyawati, Green Kothi, Jahaj Pul, Hisar
<b>PAN :AAHPW2844H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Toufel Tahir, Sr. DR
Respondent by	Sh. V. Rajakumar, Advocate

Date of hearing	25.05.2022
Date of pronouncement	25.05.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

This is an appeal by the Revenue against order dated 28.01.2019 of learned Commissioner of Income Tax (Appeals), Hisar, for the assessment year 2008-09.

**2.** The effective grounds raised by the Revenue read as under:

*1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) has erred by deleting the addition of Rs. 7,10,40,144/- being amount received as interest on enhanced compensation by the assessee in respect of land acquired by state government which was added by the A.O. consequent to order dated 17.12.2014 passed u/s 263 of the Income Tax act,1961 by Commissioner of Income Tax, Hisar. The order of Commissioner of*

*Income Tax, Hisar in this case was set aside by the Hon'ble ITAT vide order dated 26.11.2018 passed in ITA No 885/Del/2015 and appeal is being filed by the Department against this order of ITAT before the Hon'ble High Court of Punjab & Haryana.*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A), Hisar has erred in allowing appeal of the assessee without considering the clear findings that interest of Rs. 7,10,40,144/- received on enhanced compensation as per section 28 of land Acquisition Act is taxable under the Income Tax Act, 1961*

**3.** When the appeal was called for hearing none appeared on behalf of the assessee. However, considering the nature of dispute, we proceed to dispose of the appeal ex-parte qua the assessee after hearing learned Departmental Representative and based on the materials available on record.

**4.** Briefly the facts are, the assessee is a resident individual. 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 23.12.2010. Post completion of assessment, learned CIT in exercise of power conferred under section 263 of the Act called for and examined the assessment records of the assessee and while doing so was of the view that the assessment order is erroneous and prejudicial to the interest of Revenue as the Assessing Officer has not examined the taxability of the capital gain on receipt of enhanced compensation on land acquisition and secondly has not examined the taxability of the interest income in the year of

receipt, keeping in view the decision of the Hon'ble Supreme Court in case of CIT Vs. Ghanshyam Das HUF. Accordingly, he set aside the assessment order passed under section 143(3) of the Act by directing the Assessing Officer to complete the assessment afresh, keeping in view the observations made in the order passed under section 263 of the Act. Against the order passed under Section 263 of the Act, assessee preferred an appeal before the Income Tax Appellate Tribunal.

**5.** During the pendency of the aforesaid appeal before the Tribunal, the Assessing Officer passed a fresh assessment order implementing the directions given by learned CIT in order passed under section 263 of the Act. Against the assessment order so passed, assessee preferred an appeal before learned Commissioner (Appeals)

**6.** In course of hearing of the said appeal, learned Commissioner (Appeals) found that the order passed under section 263 of the Act, in the meanwhile, has been set aside by the Tribunal and the assessment order has been restored. Accordingly, he deleted the additions made by the Assessing Officer with the following observations:

5. ***Appellate decision: I have carefully considered the facts of the case, assessee's submission, assessment order and find***

**that** the present appeal filed against the order u/s 143(3) r.w.s. 263(1) passed by ACIT, Hisar Circle, Hisar order dated 30.07.2015 vide which the AO has made addition keeping in view of the observation of CIT, Hisar issued vide set aside order dated 17.12.2014.

- 5.1. The assessee filed appeal before the Hon'ble ITAT, Delhi against the order of CIT, Hisar passed u/s 263(1) of the Act. The Hon'ble ITAT vide his order in ITA No. 885/Del/2015 dated 26.11.2018 for the A.Y. 2008-09 set aside the order with the following observation:-

“5. We have considered the submissions of both the parties and carefully gone through the material available on the records. In the present case, it is an admitted fact that the Id. CIT, Hisar passed the impugned order by exercising his powers u/s 263 of the Act, against the assessment order dated 26.03.2014 which was passed by the AO in consequence of the directions given by the Ld. CIT, Hisar vide order dated 28.03.2013. The said order dated 28.03.2013 of the Ld. CIT, Hisar, was set aside by the ITAT Delhi Bench 'H', New Delhi vide order dated 20.05.2016. Therefore, the assessment order dated 26.03.2014 passed in consequence to the order dated 28.03.2013 considered by the Ld. CIT, Hisar while passing the impugned order is not maintainable. Therefore, the impugned order passed by the Ld. CIT, Hisar deserves to be set aside. In that eventuality, this appeal of the assessee becomes infructuous.

6. In the result, the appeal of the assessee is dismissed as infructuous. (Order pronounced in the Open Court on 26.11.2018)

“5.2 Respectfully following the decision of Jurisdictional ITAT, Delhi, vide which the Hon'ble ITAT has set aside the order of CIT, Hisar passed u/s 263(1) and found that the re-opening was not sustainable in the eyes of law. The order passed u/s 143(3) r.w.s. 263 passed by the Assessing Officer of the Act has no legs to stand. The additions made by the Assessing Officer as per the directions u/s 263 order also cannot be sustained now. Therefore, ground of appeal of the assessee is accepted.”

- 7.** We have considered rival submissions and perused the materials on record. The observations made by learned Commissioner (Appeals), while deciding assessee's appeal as reproduced above and ground no. 1 raised by the Revenue are

self-explanatory. It is a fact on record that the present appeal filed by the Revenue arises out of consequential order passed by the Assessing Officer in pursuance to the directions given by learned CIT in an order passed under section 263 of the Act. Undisputedly, the order passed under section 263 of the Act was subject matter of appeal before the Tribunal and vide order dated 26.11.2018 passed in ITA No. 885/Del/2015, the Tribunal has set aside the order passed under section 263 of the Act. The aforesaid factual position remains uncontroverted before us. Thus, as rightly observed by learned Commissioner (Appeals), once the order passed under section 263 of the Act has lost its existence by virtue of the order passed by the Tribunal, the assessment order passed in consequence thereof cannot have any independent existence. Therefore, learned Commissioner (Appeals) was justified in deleting the additions made. Accordingly, we dismiss the grounds raised by the Revenue.

**8.** In the result, the appeal is dismissed.

***Order pronounced in the open court on 25<sup>th</sup> May, 2022***

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

Dated: 25<sup>th</sup> May, 2022.

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi