

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.351/Ahd/2021
Assessment Year : 2012-13

The ITO, Ward-1 Anand.	Vs	Shri Haresh Mansukhbhai Dalwadi Prop: Mahadev Steel Traders Gopi Talkies Road Nr.IOC Petrol Pump Lotia Bhagol, Anand 388001 PAN : ACAPD 4945 P
---------------------------	----	---

(Applicant)	(Responent)
Assessee by :	None
Revenue by :	Shri Abhimanyu Singh Yadav, Sr.DR

सुनवाई की तारीख/Date of Hearing : 02/06/2022
घोषणा की तारीख /Date of Pronouncement: /06/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Revenue against order dated 30.7.2021 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre ("NFAC" for short) under section 250 of the Income Tax Act, 1961 ("the Act" for short) for the Asst.Year 2012-13.

2. The grounds raised by the Revenue in the appeal read as follows:

"[i] Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(Appeals) is justified in deleting the addition of

Rs.41,39,533/- made on account of long-term capital gain holding that the order u/s.143(3) r.w.s. 263 of the Act has no legal sanctity, keeping in view of the fact that the decision of the Hon'ble ITAT in quashing the order u/s 263 of the Act has not been accepted by the Revenue and further appeal u/s 260A of the Act before the Hon'ble High Court is being filed.

[ii] It is therefore prayed that the order of the Ld. CIT(A) may be set aside and that of the AO may be restored to the above extent."

3. At the time of hearing of this appeal, written submissions filed by Shri Mukund Bakshi, Authorised representative of the assessee brought to the notice of the Bench. In his submission, it is submitted that in the assessment order dated 29.10.2015, the ld.Pr.CIT had passed order under section 263 of the Act whereby order of the AO passed under section 143(3) was directed to be revised. Against this 263-order, the assessee had filed an appeal before the Tribunal in ITA No.1207/Ahd/2018. The same was decided by the Coordinate Bench of this Tribunal by an order dated 22.2.2021 quashing the order of the Pr.CIT dated 23.3.2018. In the meanwhile, the ld.AO passed giving effect order under section 143(3) read with section 263 of the Act on 22.11.2018, which was challenged by the assessee before the Commissioner of Income-tax (Appeals). The ld.CIT(A) vide order dated 30.7.2021 (impugned by the Revenue herein) was pleased to hold that since the ITAT has quashed the order under section 263 of the Act passed by the Pr.CIT, the giving effect order passed by the AO was not sustainable, and accordingly, the appeal of the assessee was allowed.

4. By way of the present appeal, the Revenue challenged this order of the ld.CIT(A) on the ground that decision of the ITAT to set aside the 263-order was not accepted by the Revenue, and further appeal was filed by the Revenue before the Hon'ble Gujarat High

Court. The Id.AR thus pleaded that mere filing of the appeal before the Hon'ble High Court against the order of the ITAT would not make order of the Id.CIT(A) defective or unsustainable, which is under challenge before the Tribunal. It is therefore prayed that the appeal of the Revenue is devoid of any merit for consideration, and the same requires to be dismissed as not maintainable. However, this factual position of the matter has not been disputed by the Id.DR and could not produce any appeal details filed before the Hon'ble High Court of Gujarat.

5. After going through the orders, we would take note of the observation and conclusions of the Id.CIT(A) made in the impugned order as follow:

“5. Decision: I have perused the reply dated 12.03.2021 filed online in ITBA by the appellant with reference to the assessment order. I have also carefully studied the ITAT order dated 22.02.2021 in ITA No. 1207/AHD/2018. The Hon'ble ITAT, 'B' Bench, Ahmedabad, placing reliance on the ratio laid down by the Hon'ble ITAT, Mumbai in their order dated 02.01.2018 in the case of Anil L.Taodarwal, Mumbai vs. Pr.CIT-19, in ITA No.3498/Mum/2017 and considering the totality of facts held that the revision proceedings initiated by the Ld.PCIT u/s.263 of the Act are not sustainable in the given facts and circumstances. Hence, the order u/s.263 of the Ld. Commissioner of Income Tax is quashed.

5.1 In view of the decision held by the Hon'ble ITAT in its order referred to above, quashing the order u/s.263 of the Ld. Pr.CIT, the appellant has petitioned for setting aside the assessment made by the AO consequent to order u/s.263.

5.2 Going by the decision held in the appellate order of the Hon'ble ITAT the said assessment order passed u/s.143(3) r.w.s.263 has no legal sanctity as on date. Consequently the entire addition of Rs.41,39,533/- made under long term capital gains in the assessment order u/s.143(3)r.w.s.263 stands deleted and what remains is the total income returned by the appellant. Hence, the grounds of appeal enumerated in Paragraph 3 above, raised by the appellant in this appeal have become infructuous as the addition made in the said assessment order ceased to exist consequent to

quashing of the order u/s.263 based on which the assessment was carried out and finalised.

5.3 In the given facts and circumstances the grounds of appeal which effectively hovers on the point that addition of Rs.41,39,533/- made by considering the jantri value of property at Rs.77,96,000/- instead of the sale consideration taken by the appellant at Rs.32,00,001/- is erroneous in law and in facts is no more legally viable for adjudication. Accordingly, there would be no cause to examine any other aspect of the appeal, including other statutory procedures, deficiency in documents or the merits of the case, etc. Besides, the Assessing Officer is bound to give effect to the aforementioned order of the ITAT in which case the sole addition made in the assessment order stands cancelled. In compliance with the dictum in the above order of the Hon'ble ITAT B Bench, Ahmedabad in the appellant's own case, the AO is directed to delete the addition of Rs.41,39,533/- made under long-term capital gain. Consequently, the grounds agitated in this appeal are deemed allowed.

6. On consideration of the order of the Id.CIT(A), we find no infirmity in his order, more so, factual aspect has not been disputed, nor anything has been placed before us by the Revenue. It is the bounden duty of the subordinate authority to give consequential effect unless the order of the ITAT is stayed or suspended or set aside by the higher judicial forum. In this connection, it is worth to take note of an observation from the judgment of Hon'ble Supreme Court in the case of Kamalakshi Finance Corpn Ltd., AIR 1992 SC 711. The same reads as follows:

"...The principles of judicial discipline require that the orders of the higher appellate authorities should be followed by the subordinate authorities. The mere fact that the order of the appellate authority is not 'acceptable' to the Department and is the subject-matter of an appeal cannot be ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws."

7. In view of our above and the ruling of the Hon'ble Supreme Court's judgment in the case of Kamalakshi Finance Corpn Ltd.

cited (supra), we uphold order of the ld.CIT(A) and dismiss the appeal of the Revenue on this very primary point.

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

Order pronounced in the Court on 22nd June, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 22/06/2022