

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.86/Del/2020
Assessment Year: 2008-09

ACIT Range-1 Gurgaon	Vs	Jindal Steel & Power Ltd., 12, Bhikaji Cama Place, New Delhi PAN No.AAACJ7097D
(APPELLAN		(RESPONDENT)

Appellant	Ms. Aashma Paul, CIT (DR)
Respondent	Sh. Salil Kapoor, Advocate Shri Sumit Lal Chandani, Advocate

Date of hearing:	04/07/2022
Date of Pronouncement:	04/07/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-1, Gurgaon dated 31.10.2019 pertaining to A.Y.2008-09.

2. The substantive grievance of the revenue read as under :-

“1. In the facts and circumstances of the case, the Ld. CIT(A) is not justified in deleting the addition of Rs.22,98,00,000/- made on

account of disallowances u/s. 14A of the Act relying upon the judgment of the Hon'ble ITAT.

2. *In the facts and circumstances of the case, the Ld. CIT(A) is not justified in deleting the addition of Rs.4,08,72,802/- made on account of difference of iron ore as per M.B. Shah Commission Report relying upon the judgment of Hon'ble ITAT."*

3. At the very outset the Counsel for the assessee stated that appeal of the revenue becomes nonest as the basis for framing the assessment order dated 30.12.2018 has been demolished by this Tribunal in ITA No.2403/Del/2017 order dated 10.12.2018 and in ITA No.2902/Del/2018 order dated 04.06.2019. Though the DR strongly relied upon the assessment order but could not bring any distinguishing decision in favour of the revenue.

4. We have given a thoughtful consideration to the orders of the authorities below. The impugned assessment order is dated 30.12.2018 framed u/s. 143 (3) r.w.s. 263 of the Act. The underlying facts show that reassessment order was framed on 31.03.2016 by the AO under section 143 (3) r.w.s. 147 of the Act. The notice u/s. 148 was challenged by the assessee. However, in the meantime the Pr. CIT assumed jurisdiction u/s. 263 of the Act and set aside the order framed u/s. 147 of the Act. The action of the Pr. CIT was challenged before the Tribunal alongwith the challenge to the notice u/s. 148 of the Act. The Tribunal was pleased to order as under :-

“17. There is one more reason why the notice issued u/s 148 of the Act is bad in law. Facts on record show that in the original assessment order dated 27.12.2010 additions/ disallowance were made including the issue of 80 IA and 80IB deduction. This assessment order was challenged before the CIT (A) who vide order dated 01.07.2011 partly allowed appeal. This means that the original assessment order was merged with the order of the CIT(A). Though the present proceedings are in respect of the assessment order framed pursuant to the order u/s 263 of the Act but the same is nothing but change of opinion.

18. The Hon’ble High Court of Bombay in the case of Prima Paper and Engineering industry 364 ITR 222 has held that after the issue of deduction u/s 80 IA of the Act was raised by the Assessing Officer during original proceedings and the same was also duly represented by assessee then reassessment proceedings cannot be initiated on this issue. The Hon’ble High Court held that since the Assessing Officer had applied his mind to the issue of deduction claimed u/s. 80IA the reassessment proceedings cannot be initiated in respect thereof.

19. A similar view was taken by Hon’ble High Court of Gujarat in the case of Parixit Industries Private Limited 352 ITR 349 wherein the Hon’ble High Court held that where notice for reassessment is issued on the basis of material at the time of original assessment, the said notice was a case of second thought and was liable to be quashed.

20. Considering, the facts relating to the reopening of assessment from all legal angles we are of the opinion that the notice issued u/s.148 of the Act is bad in law and therefore, assessment framed pursuant to the said notice deserves to be quashed.”

5. However, in the meantime the AO framed the assessment u/s. 143 (3) r.w.s. 147 of the Act on 31.03.2016 which was again subject to the revisionary power of the Pr. CIT u/s. 263 of the Act which order of the Pr. CIT was again challenged before the Tribunal and this Tribunal in ITA No.2902/Del/2018 decided as

under :-

“6. We have carefully considered the rival contentions and also perused the orders of the lower authorities as well as the order of the coordinate bench in assessee’s own case in ITA NO. 2403/Del/2017 for Assessment Year 2008-09 dated 10.12.2018 which held that notice issued u/s 148 on is bad in law and therefore, apparently the order passed by the Id AO on 31.03.2016 based on such notice was also quashed. The provisions of section 263 of the income tax act and be applied for the purpose of revision only on the valid order. As the order of assessment itself has become invalid no proceedings u/s 263 can be concluded on such order. In short, as the order itself does not exist, same cannot be subject to revision u/s 263 of The Income Tax Act. As the Pr. CIT has revised the impugned order dated 31.03.2016 u/s 263 which is also a proceeding based on an assessment order which has already been quashed. Therefore, the apparent corollary is that the order passed by the Pr. CIT also becomes infructuous and not a valid order subsisting at present in the eye of the law. We also failed to understand the argument of the learned authorised representative that dismissing the appeal of the assessee will render it remedy less. The coordinate bench has already held that reopening of the assessment is invalid, therefore, we do not have any option but to dismiss the appeal of the assessee is infructuous. We are also aware that the assessee will always have a remedy the moment the reopening of assessment proceedings is held by superior court as valid to contest the revision of such order. In view of this the present appeal filed by the assessee is also infructuous and hence dismissed.”

6. Considering the facts as mentioned here in above we are of the considered view that since the challenge to the notice u/s. 148 of the Act has been decided in favour of the assessee all subsequent orders framed becomes nonest. We, therefore, have no hesitation in holding the impugned order under appeal as nonest.

7. In the result, the appeal filed by the revenue is dismissed.
8. Decision announced in the open court on 04.07.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .07.2022

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	04.07.2022
Date on which the typed draft is placed before the dictating Member	05.07.2022
Date on which the typed draft is placed before the Other member	05.07.2022
Date on which the approved draft comes to the Sr.PS/PS	05.07.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	05.07.2022
Date on which the fair order comes back to the Sr. PS/ PS	05.07.2022
Date on which the final order is uploaded on the website of ITAT	05.07.2022
Date on which the file goes to the Bench Clerk	05.07.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	