

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. Nos. 1891, 1892 & 1893/KOL/2019
Assessment Years: 2009-10, 2010-11 & 2011-12**

Deputy Commissioner of Income Tax,.....Appellant
Circle-36, Kolkata,
Room No. 806, 8th Floor,
Aayakar Bhawan Poorva,
110, Shanti Pally,
Kolkata-700107
-Vs.-

Shri Satya Prakash Sharma,.....Respondent
Room No. 9, 5th Floor,
20B, Abdul Hamid Sarani,
Kolkata-700001
[PAN: ALSPS5479C]

Appearances by:

Smt. Ranu Biswas, Addl. CIT (DR), appeared on behalf of the Revenue
Shri Siddarth Agarwal, Advocate, appeared on behalf of the assessee

Date of concluding the hearing : August 24, 2022

Date of pronouncing the order: August 24, 2022

O R D E R

Per Bench:-

The present three appeals are directed at the instance of Revenue against the separate orders of Id. Commissioner of Income Tax (Appeals)-10, Kolkata dated 31.05.2019 passed for the assessment years 2009-10, 2010-11 & 2011-12.

2. The Id. Counsel for the assessee at the very outset submitted that assessment orders were passed in these assessment years under section

263/147/143(3) of the Income Tax Act. In other words, he submitted that assessments were framed in pursuance of 263 order passed on 31.03.2018 in all these appeals. The assessee has challenged the order passed by the ld. Commissioner under section 263 in ITA Nos. 2574 to 2576/KOL/2018.

3. The appeals of the assessee against the order dated 31.03.2018 passed by the ld. CIT in these assessment years were allowed by the Tribunal on 22nd November, 2019. The Tribunal has quashed the order of the ld. Commissioner passed under section 263.

4. Thus according to the ld. Counsel for the assessee, no fresh assessment orders could be passed under the directions of ld. Commissioner's order dated 31.03.2018 passed under section 263 of the Income Tax Act. The ld. D.R., on the other hand, was unable to controvert this contention of the ld. Counsel for the assessee.

5. We have duly considered the rival contentions and gone through the record carefully. Ld. Counsel for the assessee has placed on record the copy of the Tribunal's order passed in ITA Nos. 2574 to 2576/KOL/2018. On due consideration of the record, we find that jurisdiction in the ld. Assessing Officer was infused by the directions issued by the ld. Commissioner vide order dated 31.03.2018. The moment this order is quashed, therefore, all directions would extinguish and the ld. Assessing Officer will not have any jurisdiction to pass the orders in pursuance of the direction under section 263. In other words, the moment order passed under section 263 dated 31.03.2018 is vacated the ld. Assessing Officer consequently would be denuded from his powers to give effect to this order and, therefore, the assessment orders are not sustainable in the eyes of law. If assessment orders are not sustainable, there cannot be any subsequent proceeding at appellate stage. For this

sole reason, we do not find any merit in these appeals of the Revenue.
These are dismissed.

6. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open Court on August 24, 2022.

**Sd/-
(Girish Agrawal)
Accountant Member**

**Sd/-
(Rajpal Yadav)
Vice-President (KZ)**

Kolkata, the 24th day of August, 2022

*Copies to : (1) Deputy Commissioner of Income Tax,
Circle-36, Kolkata,
Room No. 806, 8th Floor,
Aayakar Bhawan Poorva,
110, Shanti Pally, Kolkata-700107*

*(2) Shri Satya Prakash Sharma,
Room No. 9, 5th Floor,
20B, Abdul Hamid Sarani, Kolkata-700001*

- (3) Commissioner of Income Tax (Appeals)-10, Kolkata
(4) CIT- , Kolkata
(5) The Departmental Representative
(6) Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.