

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

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.76/Del./2019
(ASSESSMENT YEAR : 2008-09)**

DCIT, Hisar Circle,
Hisar.

vs.

Vidyawati,
Green Kothi, Jahaj Pul,
Hisar – 125 001 (Haryana).

(PAN : AAHPW2844H)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V. Rajakumar, Advocate
REVENUE BY : Shri T Kipgen, CIT DR

Date of Hearing : 13.02.2023
Date of Order : 15.02.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals), Hisar dated 22.10.2018 pertaining to the Assessment Year 2008-09.

2. The grounds of appeal taken by the assessee read as under :-

“1. "Whether on the facts and in the circumstances of the case & in Law, the Ld. CIT (Appeals) has erred by deleting the addition of Rs.4,08,27,617/- being amount received by the assessee in respect of the land acquired by the State Govt. by following the order of the Hon'ble ITAT which was added by the AO in consequence to order u/s 263 of the Act dated 28.03.2013 of the CIT and thereby ignored the fact that the department has contested further before the Hon'ble High Court of P&H against the order of the Hon'ble ITAT.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT (Appeals) has erred in granting relief to the assessee ignoring the merits of the case.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT (Appeals) has erred in allowing appeal of the assessee without considering the clear findings recorded by the A.O. in para 4.8 of the Assessment order that the land acquired by HUDA clearly falls within the municipal limit of Hisar and the land was not used for agricultural purposes as such the first & 2nd conditions of section 10(37) of the I.T. Act are not fulfilled by the assessee.”

3. At the outset, in this case, ld. Counsel of the assessee submitted that the present proceedings have arisen pursuant to section 263 order of the Income-tax Act, 1961 (for short 'the Act') passed by the ld. CIT which has been quashed by the ITAT, hence the proceedings subsequent to the said 263 order do not survive. Ld. DR of the Revenue could not rebut this proposition.

4. Upon careful consideration, we note that the ITAT in ITA No.2771/Del/2013 for AY 2008-09 vide order dated 20.05.2016 has duly quashed the said 263 order, hence these proceedings have become infructuous and are liable to be dismissed as such. In this regard, we may gainfully refer to the order of ld. CIT (A) in this regard as under :-

“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 26.03.2014 vide which the AO has made addition keeping in view of the observation of CIT, Hisar issued vide set aside order dated 28.03.2013.

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. 2771/Del/2013 dated 20.05.2016 for the A.Y. 2008-09 quash the order with the following observation:-

"In view of the above, action of CIT is not tenable in the eyes of law, when the case has already been decided by CIT(A). Secondly, when Hon'ble Punjab & Haryana High Court has directed compensation, enhanced compensation and interest thereon against bank guarantee and the assessee being dissatisfied, has filed SLP before Hon'ble Supreme Court, which is still pending, it cannot be considered as income. Respectfully following the judgment of Hon'ble jurisdictional High court in the case of CIT vs. New Delhi Television Ltd. 39 Taxmann.com 135(Del), relied upon by the Ld. A.R. and on the basis of facts and circumstances of the present case, the reopening made by Ld. CIT u/ s 263(1) of the Act is not sustainable in the eyes of law."

5.2 Respectfully following the decision of Jurisdictional ITAT, Delhi, vide which the Hon'ble ITAT has quashed the order of CIT, Hisar passed u/s 263(1) and 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 appear the directions of 263 order, cannot sustained now. Therefore, ground of appeal of the assessee is accepted.

6. The appeal of the assessee is allowed.

5. In the light of the above, it is abundantly clear that the ld. CIT (A) passed the order in consonance with the ITAT order which has quashed the 263 order, hence this appeal by the Revenue is liable to be dismissed and the same is dismissed as such.

6. In the result, the Revenue's appeal stands dismissed.

Order pronounced in the open court on this 15th day of February, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 15th day of February, 2023
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Hisar.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.