

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA No. 3289/MUM/2022
Assessment Year: 2012-13

ACIT, Cir-4(2)(1),
Room No. 642, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Appellant

Vs. M/s Gehna Jewellers Pvt. Ltd.,
5, Kakad Palance, Turner Road,
Bandra,
Mumbai-400050.

PAN No. AADCG 8796 M
Respondent

Assessee by : Mr. V.C. Shah
Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 16/02/2023
Date of pronouncement : 17/02/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 31.10.2022 passed by the Ld. Commissioner of Income-tax (Appeals)- National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

- i. *Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in setting aside order u/s 143(3) r.w.s. 263 dated*



31.08.2017 on the basis of tribunals decision in ITA No. 3530/MUM/2017 and thereby allowing assessee's appeal.

- ii. 'Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing assessee's appeal by setting aside order u/s 143(3) r.w.s. 263 dated 31.08.2017, without appreciating the fact that the Revenue has preferred appeal against the tribunals decision setting aside order dated 24.03.2017 u/s 263 of the IT Act, 1961 before Hon'ble Bombay High Court, which is still pending.*
- iii. "The appellants crave leave to amend or alter any ground or add new ground which may be necessary."*

2. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) has quashed the assessment order with the finding that base order u/s 263 of the Act dated 04.03.2017 has been set aside by the Income-tax Appellate Tribunal (ITAT), Mumbai 'G' Bench in its order dated 22.11.2017. Therefore, consequent order passed u/s 143(3) r.w.s. 263 dated 31.08.2017 is infructuous.

2.1 Before us, the Ld. Departmental Representative (DR) could not controvert that all the grounds on which proceedings u/s 263 was invoked, have already been quashed by the Tribunal (supra). Since, the order u/s 263 passed by the Ld. PCIT has already been quashed and therefore, consequent order passed u/s 143(3) r.w.s. 263 of the Act cannot survive. We do not find any infirmity in the order of the Ld. CIT(A) on the issue-in-dispute. The grounds raised by the Revenue are accordingly dismissed.



3. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 17/02/2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 17/02/2023
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai