

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 165/Srt/2022 (Assessment Year: 2012-13)

(Physical hearing)

Jupax Distributors Pvt. Ltd., 58A, Raja Basant Roy Road, Kolkata-700029. PAN No. AAACJ 6952 F	Vs.	A.C.I.T., Circle-4, Surat. (Old A.O.: ITO, Ward 12(2), Kolkata (WB))
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Ramesh Malpani, CA
Respondent represented by	Shri Ashok B Koli, (CIT-DR)
Date of hearing	23/12/2022
Date of pronouncement	27/02/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-4, Surat (in short, the Id. CIT(A) dated 21/04/2022 for the Assessment year (AY) 2012-13. The assessee has raised following grounds of appeal:

- “1. That on the facts and circumstances of the case as well as in law, the Id. CIT(A) has erred in dismissing the appeal of appellant by holding the same as infructuous, whereas the same has not been infructuous under the law.*
- 2. That on the facts and in the circumstances of the case as well as in law, the Id. CIT(A) has erred in dismissing all the grounds of appeal by holding the appeal filed before him as infructuous.*
- 3. Appellant prays for deciding the appeal of the appellant on merits as per various grounds of appeal raised before Hon'ble CIT(A) as mentioned in para 3 of appeal order of CIT(A) and also in Form No. 35.”*

2. Brief facts of the case are that the assessee is a company, filed its return of income for the A.Y. 2012-13 showing total income of Rs.

89541/- . The case was selected for scrutiny. During the assessment, the Assessing Officer noted that as per information available in the return of income, the assessee company was incorporated on 06/07/1995. During the year under consideration, the reserve and surplus of assessee was increased by Rs. 10.08 crores i.e. from Rs. 13.00 crores to Rs. 23.08 crores. The Assessing Officer further noted that the assessee has not furnished details of the investors about the share capital and share premium. Summon under Section 131 of the Income Tax Act, 1961 (in short, the Act) was issued to the signatory director of the assessee company for his personal appearance and to produce the details of investors. The Assessing Officer recorded that no details were furnished nor books of account were produced, therefore, the source of capital raised and premium received against share capital remained unexplained as the assessee failed to discharge its onus. The Assessing Officer, accordingly, treated Rs. 10.50 crores as cash credit and added to the total income of the assessee. The Assessing officer also made disallowance under Section 14A of the Act of Rs. 3,23,060/- by invoking provisions of Rule 8D on his observation that as per balance sheet as on 31/03/2012, the assessee company has made investment of Rs. 36,12,000/- in equity shares and no suo-moto disallowance under Section 14A is made by the assessee. The assessment order was passed on 02/03/2015 under Section 144/143(3) of the Act.

3. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). During the appellate stage, the Id. CIT(A) recorded that the assessment order was set aside by the learned Principal Commissioner of Income Tax (in short, the Id. Pr. CIT) by invoking his jurisdiction under Section 263 of the Act vide order dated 13.06.2016 and in order giving effect is passed under Section 143(3) r.w.s. 263 of the Act on 27/06/2016 and again second assessment order dated 27/06/2016 was again set aside by the Id. Pr.CIT by exercising his jurisdiction under Section 263 dated 14/03/2019 and further third assessment order dated 27/12/2019 is passed by making total addition of Rs. 10,50,89,540/-. The Id. CIT(A) by holding that the assessment order dated 02/03/2015 which is the impugned before him has already been set aside, therefore, the appeal have become infructuous and accordingly dismissed. Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before the Tribunal.
4. We have heard the submissions of learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue and have gone through the orders of lower authorities carefully. The Id. AR of the assessee submits that a very short but crucial aspect/ issue is involved in the present appeal. The Assessing Officer while passing the assessment order made additions/disallowances under Section 14A of

Rs. 3,23,060/- as well as addition under Section 68 of the Act on account of share premium and share application of Rs. 10.50 Crore. No doubt, the said order was passed under Section 144 on 02/03/2015. Aggrieved by the additions in the assessment order, the assessee challenged the addition before the Id. CIT(A). During the pendency of the appeal before Id CIT(A), the Id. Pr. CIT exercised his jurisdiction under Section 263 of the Act and set aside the assessment order vide his order dated 13/06/2016. The Id. Pr. CIT while setting aside the assessment order dated 02/03/2015 held that the assessment order was passed without making enquiry and verification which would have been made and the assessment order is erroneous in so far as prejudicial to the interests of revenue. However, in order giving effect with the direction of Id. Pr. CIT, a fresh assessment order under Section 143(3) r.w.s. 263 dated 27/06/2016 was passed wherein no addition either under Section 68 or disallowance under Section 14A was made. Thereby the explanation of assessee was accepted. The said order was further revised by the Id. Pr.CIT vide his order dated 14/03/2019 passed under Section 263 of the Act wherein it was held that the assessment order is erroneous in so far as prejudicial to the interests of revenue for want of enquiry as per Explanation (2)(c) below Section 263(1) of the Act. Further in direction of such order, the Assessing Officer in a fresh assessment order dated 27/12/2019 passed under Section 143(3)/263

of the Act made addition of Rs. 10.50 crores under Section 68 of the Act, against which the appeal is pending before the Id. CIT(A). The Id. AR of the assessee submits that when appeal was pending before the Id. CIT(A), the Id. Pr.CIT has no jurisdiction under Section 263 on the issues which was pending adjudication before the appellate commissioner, thus, both the revision order passed by Id PCIT are liable to be set-aside. Such jurisdiction is barred as per clause (c) of Explanation (1) to Section 263 of the Act. To support his submission, the Id. AR of the assessee relied upon the following decisions:

- (i) Smt. Renuka Philip Vs ITO (2019) 101 taxmann.com 119 (Mad)
 - (ii) CIT Vs Vam Resorts & Hotels (P) Ltd. (2019) 111 taxmann.com 62 (Allahabad)
 - (iii) CIT Vs Nirma Chemical Works P Ltd. (2009) 309 ITR 67 (Guj)
 - (iv) CIT Vs Haryana paper Distributors P Ltd. (2009) 412 ITR 515 (Guj)
5. On the other hand, the Id. CIT-DR for the revenue supported the order of Id. CIT(A). The Id. CIT-DR submits that once the assessment order has been set aside by the Id. Pr. CIT by exercising his jurisdiction under Section 263, the assessment order is merged with the order of Id. Pr.CIT. The Id. CIT-DR for revenue submits that it has been brought on record that in subsequent/second revision order is also passed on 14/03/2019 and in order giving effect to said order, the Assessing Officer has already made addition in the fresh assessment order dated 27/12/2019 passed under Section 143(3)/263 of the Act. In alternative submission, the Id. CIT-DR for the revenue submits that in the present

appeal, the assessee has challenged the order of Id. CIT(A) dated 21/04/2022, thus the scope of present appeal is limited against the order dated 21/04/2022 and the Tribunal has no jurisdiction to adjudicate the validity of order passed under Section 263 of the Act. In other words, the present appeal is not against the order passed by the Id. Pr.CIT under Section 263 of the Act.

6. We have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. We find that the Id. representatives of the parties have explained the fact correctly which we have recorded above. Only issue for our adjudication is whether the appeal of assessee pending before the Id. CIT(A) have become infructuous or not on setting aside the original assessment order. Considering the fact that the issues identified by the Id. Pr. CIT while revising the assessment order was directly and substantially being the same which were subject matter of appeal before the Id. CIT(A), thus, the Id PCIT ought not to have adjudicated such issues. Though in order giving effect, the contention of assessee which were the subject matter of appeal was accepted by the Assessing Officer himself. We instead of making any finding on the order of Id. Pr.CIT dated 13/03/2016, direct the Id. CIT(A) to adjudicate the appeal of assessee on merit, without being influence of additions in subsequent assessment orders or from any of our observations.

7. We further direct that in case any appeal arising out of third assessment order passed in consequence of second revision order, is pending before the Id. CIT(A), may be clubbed together and adjudicated in a consolidated order to avoid further conflicting decisions. In the result, ground of appeal raised by the assessee assessment order allowed for statistical purposes.

8. In the result, the appeal of assessee is allowed for statistical purposes only.

Order pronounced in the open court on 27th February, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 27/02/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat