

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.348/Mum/2023  
(Assessment Year :2011-12)**

M/s. Mahavir Enterprises The Emerald, 3 <sup>rd</sup> Floor Plot No.195B, Sector-12 Vashi, Navi Mumbai- 400703	Vs.	ACIT, 28(2) Mumbai 3 <sup>rd</sup> Floor, Tower No.6 Vashi Railway Station Complex, Vashi, Navi Mumbai- 400 703
<b>PAN/GIR No. AAKFM7869D</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Subodh Ratnaparkhi
Revenue by	Smt. Usha Shrote
<b>Date of Hearing</b>	<b>15/05/2023</b>
<b>Date of Pronouncement</b>	<b>16/05/2023</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 26/12/2022 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 263 for the A.Y.2011-12.

2. The only ground raised by the assessee reads as under:-

*“The Hon. CIT(A), NFAC, Delhi erred in dismissing the appeal, which should have been held to be allowed,*

*as the appeal was against the assessment order passed u/s 143(3) r.w.s. 263 of the IT Act, 1961 on 30.12.2016 and the Hon. CIT(A) understood and appreciated that the order u/s 263 dt. 15.12.2015 stood set aside by the order of the Hon. Tribunal dt. 26.12.2016 and accordingly the original assessment u/s 143(3) dt. 13.01.2014 stood restored. The Hon. CIT(A) is in error in holding the appeal to be dismissed and the appeal against the order u/s 143(3) r.w.s. 263 dt. 30.12.2016 be held to be allowed.”*

3. In the present case, the appeal is arising out of set aside proceedings in pursuance of order passed u/s.263 dated 15/12/2016 by ld. CIT. Subsequently, before the Tribunal in the appeal filed by the assessee against the said order passed u/s.263, the Tribunal has set aside the order and the original assessment order passed u/s.143(3) dated 30/12/2016 has been restored. In the first appeal, the ld. CIT (A), after taking note of this fact has made following observations:-

*“3.2 The matter has been examined. I have perused the decision of Hon'ble ITAT, Mumbai 'B' Bench dated 28.12.2016, ITA No. 920/Mum/2016, AY 2011-12 in the case of appellant in which Hon'ble ITAT has restored the original order of AO u/s 143(3) dated 13.01.2014 and allowed the appeal of the assessee against the order of CIT u/s 263 of the Act. The order under appeal dated 30.12.2016 u/s 143(3) r.w.s. 263 of the Act is consequent to the order of the CIT u/s 263 of the Act. Since the CIT order dated 15.12.2015 has been set aside and appeal is allowed, therefore, this appeal has become infructuous.*

*4. In the result, the appeal is dismissed as being infructuous.”*

4. Before us, ld. Counsel submitted that he has a very strong apprehension that the Assessing Officer will misinterpret the order of the ld. CIT(A) interpreting the word “dismissed” as if the appeal has been decided against the assessee. Therefore, he submitted that ld. CIT (A) should have held “allowed”

5. In our view, such apprehension is completely misconceived, because, once the ld. CIT (A) has categorically noted that the impugned assessment order dated 30/12/2016, passed u/s. 143(3)/263, consequent to the order of the ld. CIT u/s.263 which has been set aside and reversed by the ITAT, therefore, the present appeal arising out of order u/s. 143(3)/263 has become infructuous and is dismissed, there is no way that department will treat the order as if assessee’s appeal has been decided against and thereby create any demand against the assessee and take any kind of action for recovery of demand. Such an apprehension is ill founded and in our opinion, there is no grievance to the assessee after the order of ld. CIT (A), so as to file an appeal before ITAT. We really frown upon such kind of mistrust and apprehension by the Ld. Counsel that AO will read “dismissed” as if demand created by order u/s.

143(3)/263 will be enforced and he will recover the demand. Such frivolous arguments cannot be entertained.

6. However, to allay this perception of the Id. Counsel, we direct the Id. AO to pass order giving effect to the Id. CIT(A) order dated 09/12/2022, within six months and consequently the entire demand arising out of impugned assessment order u/s.143(3) / 263 should be vacated.

**7. In the result, appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 16<sup>th</sup> May , 2023

**Sd/-**  
**(PADMAVATHY S)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 16/ 05/2023  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**