

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND MS. PADMAVATHY S, AM

आयकर अपील सं/ I.T.A. No.817/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT (Exemption)-2(1) Room No. 608, 6 th Floor, MTNL Building, Cumballa Hill, Mumbai-400026.	बनाम / Vs.	The J. K. Trust Bombay Ground Floor, New Hind House, Ballard Estate, Mumbai-400001.
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आयकर अपील सं/ I.T.A. No.45/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2012-13)

The J. K. Trust Bombay Ground Floor, New Hind House, Ballard Estate, Mumbai-400001.	बनाम / Vs.	DCIT (Exemption)-2(1) Room No. 608, 6 th Floor, MTNL Building, Cumballa Hill, Mumbai- 400026.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATT0611L		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Madhur Aggarwal
Revenue by:	Shri Ankush Kapoor (DR)

सुनवाई की तारीख / Date of Hearing: 14/06/2023

घोषणा की तारीख /Date of Pronouncement: 28/06/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeal preferred by the revenue as well as the assessee against the order of the Commissioner of Income Tax (Appeals)/NFAC, dated 17.01.2023 for assessment year 2012-13.

2. At the outset, the Ld. AR of the assessee Shri Madhur Aggarwal drawing our attention to the grounds of appeal raised by assessee submitted that Ld. CIT(A) erred in not deciding the legal issue raised by the assessee wherein assessee has brought to the notice of the Ld. CIT(A) that the impugned order of AO was pursuant to the Ld. CIT(E)



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order u/s 263 of the Income Tax Act, 1961 (hereinafter “the Act”); and since Ld. CIT(E) order has been quashed by the Tribunal, therefore, the impugned AO’s order u/s 143(3) r.w.s. 263 of the Act dated 30.10.2017 which was giving effect to the order of Ld. CIT(E) is null in the eyes of law. Before, we appreciate the legal issue, we would like to reproduce the grounds of appeal raised by the assessee which reads as under: -

“1. On the facts and circumstances of the case and in law, the Hon’ble CIT(A) while passing order u/s 250 of the Income Tax Act, 1961 (‘the Act’) dated 17.01.2023 failed to appreciate that the order passed by the Ld. AO u/s 143(3) r.w.s. 263 of the Act dated 30.10.2017 stood void in light of the Hon’ble Mumbai ITAT’s order dated 25.07.2018 which annulled the revisional order passed by Ld. CIT u/s 263 of the Act. The respondent prays that the department appeal (Appeal No. 817/Mum/2023) be dismissed being infructuous in nature.”

3. Brief facts relating to the legal issue are that the original assessment in the case of the assessee for AY. 2012-13 was completed by the AO u/s 143(3) of the Act on 11.11.2014 at ‘Nil’ income. Later on, the Ld. Commissioner of Income Tax (Exemption) [hereinafter “CIT(E)”] passed revisional order u/s 263 of the Act on 29.03.2017 by which he set aside certain issues back to the file of the AO, which action of the Ld. CIT(E) was in-turn challenged by the assessee before this Tribunal; and the Tribunal was pleased to quash the revisional order of Ld CIT(E) u/s 263 of the Act by order dated 25.07.2018.



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4. Meanwhile, AO had already given effect to the order of the Ld. CIT(E) passed u/s 263 of the Act on 30.10.2017 which action was challenged by the assessee before the Ld. CIT(A)/NFAC, who was pleased to allow the appeal on merit by deleting the addition of Rs.8,63,30,820/-. But the grievance of assessee is that Ld. CIT(A)/NFAC has not adjudicated the legal issue raised (supra) before him and therefore, has preferred an appeal ITA. No. 45/Mum/2023 against the action of the Ld. CIT(A) for not adjudicating the legal issue (supra). Whereas, the revenue aggrieved by the action of the Ld. CIT(A) deleting the addition on merits has preferred appeal ITA. No.817/Mum/2023 before us.

5. Having heard both the parties and after perusal of the records, we find that the original scrutiny assessment in respect of the assessee for AY. 2012-13 was framed by the AO u/s 143(3) of the Act on 11.11.2014 which was interdicted by the Ld. CIT(E) exercising his revisional powers u/s 263 of the Act vide order dated 29.03.2017 which has been quashed by the Tribunal vide order dated 25.07.2018. And meanwhile, AO had given effect to the Ld. CIT(E) order u/s 263 of the Act by passing re-assessment order dated 30.10.2017, which has been assailed by assessee before Ld CIT(A) on both legal as well as merits. The Ld. CIT(A) by passing the impugned order had allowed the assessee's appeal on merits but didn't bother to adjudicate the legal issue. So aggrieved by the action of Ld. CIT(A) both assessee as well as revenue is before us. First of all, we take up the legal issue which we find merit. Since the revisional order passed by Ld. CIT(E) dated



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29.03.2017 has been quashed by this Tribunal, the AO's order dated 30.10.2017 which was giving effect to the order of the Ld. CIT(E) is null in the eyes of law. This issue is squarely covered by the legal Maxim "*Sublato Fundamento credit opus*" meaning in case foundation is removed, the super-structure falls. In the case of Badarinath Vs. Tamilnadu AIR 2000 (SC) 3243 SC the Hon'ble Supreme Court has held that once the basis of proceeding is gone, all consequential order and acts would fall on the ground automatically which is applicable to judicial and quasi-judicial proceedings. Since we have decided the legal issue in favour of the assessee and hold that the AO order giving effect to Ld. CIT(E) order as non-est in eyes of law, therefore, revenue appeal against the action of Ld. CIT(A) deleting addition made by the AO also become infructuous/academic.

6. In the result, appeal of the assessee is allowed and appeal of the revenue is dismissed.

Order pronounced in the open court on this 28/06/2023.

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 28/06/2023.
Vijay Pal Singh, (Sr. PS)



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai