

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

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.1895/Mum/2023

(Assessment Year: 2015-16)

ACIT -2(1)(2)
Room No.561,
Aayakar Bhavan,
Maharishi Karve Marg,
Mumbai-400 020

Vs.

The Bombay Dyeing and
Manufacturing Company
Limited
Neville House,
J.N. Heredia Marg,
Ballard Estate,
Mumbai-400 001

(Appellant)

(Respondent)

PAN No. AA ACT2328K

Assessee by : Shri Chaitanya Joshi &
Ms. Sukanya Jayaram, ARs
Revenue by : Shri S. Srinivasu, CIT DR

Date of hearing: 05.09.2023
Date of pronouncement : 08.09.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.1895/Mum/2023 is filed by the learned Asst. Commissioner of Income Tax, 2(1)(1), Mumbai (the learned AO) against the appellate order passed by National Faceless Appeal Centre, Delhi [the Id. CIT (A)] for A.Y. 2015-16 dated 28th March, 2023, wherein the appeal filed by the assessee against the assessment order passed on 31st October, 2021 by NFAC, Delhi under Section 143(3) read with section 263 of the Income-tax Act, 1961 (the Act) was allowed holding that when the tribunal has quashed the order passed under Section 263 of the Act, consequent order passed by the learned

Assessing Officer under Section 143(3) read with section 263 of the Act dated 31st October, 2021, cannot exist and therefore, allowing the appeal of the assessee the assessment order was annulled.

02. The learned Assessing Officer is aggrieved with that is in appeal before us.
03. Briefly stated fact shows that Assessee Company engaged in the business of manufacturing and export of textile etc. and development of real estate. It filed its return of income on 30th November, 2015 at ₹ nil. Assessment under Section 143(3) of the Act was made on 29th December, 2017, assessing the total income of ₹59,09,64,070/-. Subsequently, against that assessment order assessee preferred an appeal before the learned CIT (A).
04. However, on another aspect the Pr. Commissioner of Income Tax issued notice under Section 263 of the Act which culminated into an order under Section 263 of the Act dated 18th March, 2020, holding that assessment order passed by the learned Assessing Officer is erroneous and prejudicial to the interest of the Revenue. The learned CIT directed the learned Assessing Officer to pass a fresh assessment order after making due enquiries and verification.
05. Assessee challenged order u/s 263 of The Act before the co-ordinate Bench. The co-ordinate Bench vide order dated 13th September, 2021 in ITA No. 30/Mum/2021 for



A.Y. 2015-16 has held that order passed under Section 263 of the Act is not proper and therefore, quashed.

06. Meanwhile, the learned Assessing Officer passed an assessment order pursuant to that direction under Section 263 of the Act on 31st October, 2021.
07. Such Assessment order was challenged before the learned CIT (A), who held that when the order under Section 263 of the Act itself has been quashed, consequential order passed by the learned Assessing Officer cannot exist and therefore, the learned CIT (A) allowed the appeal of the assessee. Now Id. Ao is in appeal before us against that appellate order.
08. After hearing the parties, we find no merit in the appeal of the learned Assessing Officer since the assessment order which was passed pursuant to order of the learned PCIT under Section 263 of the Act has already been quashed, therefore, subsequent order made on that basis cannot survive. It may be true that Revenue might have not accepted the decision of the co-ordinate Bench and has challenged it before the Hon'ble High Court. But that cannot go into the way of disposal of this appeal. Merely, because the Revenue has not accepted the decision of the co-ordinate Bench, without pointing out any material on record or submitting that Assessment order is sustainable, we are not inclined to upset the order of Id. CIT (A). We find no infirmity with the order of the learned CIT (A) in allowing the appeal of the assessee.



09. Accordingly, we confirm the order of the learned CIT (A) and dismiss the appeal of the learned Assessing Officer.

Order pronounced in the open court on 08.09.2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 08.09.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai