

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
ITA No. 2177/Mum/2023
(A.Y: 2015-16)

ITO – 19(2)(2), Room No. 503, 5 th Floor, Piramal Chambers, Lalbaug, Mumbai -400012.	Vs.	Mukesh Bhoormal Jain 9/23, Kotwala Niwas, 3 rd Khetwadi lane, Girgaon S.O, Mumbai-400004.
PAN/GIR No. : AAAPJ7585K		
Appellant	..	Respondent

Appellant by :	Smt.Sayogita Nagpal CIT DR
Respondant by :	Shri.Vimal Punmiya.AR

Date of Hearing	05.10.2023
Date of Pronouncement	09.10.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order of the National Faceless Appeal Centre (NFAC), Delhi /CIT (A) passed u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

1 Whether on the facts and circumstances of the case and in law the assessee had failed to substantiate the identity genuineness and creditworthiness of the lenders and hence, the Pr. CIT 19 was right in invoking the provisions of section 263 of the Act?"

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2 "Whether on the facts and circumstances of the case and in law it needs to be appreciated that the Revenue has not accepted the decision of the Hon'ble ITAT quashing the order u/s.263 passed by the Pr.CIT-19, Mumbai, when the Ld. PCIT had categorically observed that the assessee had failed to discharge the onus as regards to establishing the genuines of unsecured loan received during the year. ?"

3 "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in ignoring the decision of the Hon'ble Karnataka High Court in the case of Rajmandir Estates Private Ltd vs PCIT 386 ITR 162 (cal) which has been affirmed by Hon'ble supreme court that the CIT is entitled to pass the revision order u/s 263 of the Act on the ground that the AO did not make any proper inquiry while accepting the explanation of the assessee.?" "Whether on the facts and circumstances of the case and in law it needs to be appreciated that the issue involved has not reached finality and pending for decision before the Hon'ble Bombay High Court.?"

4 "The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary?"

2. The brief facts of the case are that, the assessee has filed the return of income for the A.Y 2015-16 on 24.09.2015 disclosing a total income of Rs. Nil and the return of income was processed u/s 143(1) of the Act. Whereas the case was selected for scrutiny and the Assessing Officer (A.O) has made the addition u/sec 68 of the Act of Rs.5,49,04,773/- on account of Long Term Capital Gains on sale of shares and addition u/sec 69C of the Act of Rs.16,47,143/- on

account of commission paid and total income was assessed at Rs.5,65,51,920/- vide order U/sec143(3) of the Act dated 28-12-2017. Aggrieved by the order, the assessee has filed the appeal with the CIT(A) and the additions of the Assessing Officer were confirmed by the CIT(A) and the assessee appeal was dismissed.

3. Subsequently, the Pr.CIT on perusal of the records and information found that as per col no 31(a) of Form no. 3CD, the assessee has obtained the loans from 62 parties aggregating to Rs.7,46,21,368/- and no confirmations were filed and source of funds provided by the lenders were not explained and the assessee has failed to discharge the onus of genuineness of the loan transactions and further the Assessing officer has not applied mind and has not carried out necessary enquires. Whereas the Pr.CIT was not satisfied with the explanations and submissions of the assessee and is of the opinion that the order passed by the AO is erroneous and prejudicial to the interest of the revenue, and accordingly set aside the assesment order passed U/sec 143(3) of the Act dated 28-12-2017 and issued

directions to the AO vide order U/sec263 of the Act dated 26-02-2021. In compliance to the directions of the Pr.CIT, the AO has issued notice u/sec 142(1) of the Act and called for the details of loan creditors along with the confirmations substantiating the genuineness of the loan transactions and the assessee has filed the submissions on various dates duly supported with the evidences dealt in the order. Finally the AO was not satisfied with the explanations and details and made addition of Rs.2,83,67,000/-as unapproved secured loans creditors and assessed the total income of Rs. 8,49,18,920/- and passed the order u/sec143(3) r.w.s 263 of the Act dated 29.03.2022.

4. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the assessing officer and observed that since the revision order u/s 263 of the Act was quashed by the Honble Tribunal and therefore the consequential order passed U/sec143(3) r.w.s263 of the Act cannot survive and the additions made by the A.O become null and void and allowed the assessee appeal. Aggrieved

with the CIT(A) order, the revenue has filed an appeal before the Honble Tribunal.

5. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in allowing the assessee appeal though the assessee has not substantiated with the proper evidences on the disputed issue in the proceedings. Per Contra the Ld. AR submitted that the CIT(A) has considered the observations of the Honble Tribunal in quashing the order U/sec 263 of the Act and allowed the grounds of appeal and the Ld.AR supported the order of the CIT(A).

6. We have heard the rival submissions on perused the material on record. The Ld.DR submitted that the CIT(A) has erred in allowing the assessee appeal though the assessee has not substantiated the sources of unsecured loans in the assessee proceedings. The Ld.AR mentioned that the revision order u/sec 263 of the Act was quashed by the Honble Tribunal and therefore the consequential order passed by the A.O, as per directions of the Pr.CIT become infructuous. At this juncture, we considered it appropriate to consider the findings of the CIT(A) relied on the decision of the Honble Tribunal in

granting the relief dealt at Page 16 Para 6 of the order read as under:

“6. I have considered the facts and circumstances of the case, submissions of the appellant and material available on record and various case laws. Appellant is an individual. Assessment order u/s 143(3) of the I.T. Act was passed on 28.12.2017, determining total income at Rs.5,65,51,920/- after making additions of Rs.5,49,04,773/- u/s.68 of the I.T. Act on account of denial of exemption u/s.10(38) of I.T Act claimed against long term capital gain on sale of shares of penny stock companies. AO also made addition of Rs.16,47,143/- u/s 69C on account of commission paid to entry provider. However, later order u/s 263 of the I.T. Act dated 26.02.2021 was passed by the Pr. CIT on issue of genuineness of unsecured loan. Pr. CIT set aside the order passed u/s 143(3) of the I.T. Act and directed the AO to make a fresh order after verifying the genuineness of unsecured loan. Accordingly, AO passed order u/s 143(3) r.w.s 263 of the I.T. Act on 29.03.2022 determining total income at Rs.8,49,18,920/- after making addition of Rs.2,83,67,000/- as unexplained credits u/s 68 of the I.T. act. Aggrieved by the order appellant filed this appeal. Appellant had also filed an appeal against the revision order passed by Pr.CIT, u/s 263 of the I.T. Act in the ITAT. During the course of appeal proceedings, the appellant has submitted the copy of the order of the Hon'ble ITAT, Mumbai, dated 25.08.2022 passed against the order u/s 263 of the I.T. Act for AY 2015-16. The Hon'ble ITAT, Mumbai has held that the order of the AO passed u/s 143(3) of the I.T. Act is neither erroneous nor prejudicial to the revenue warranting revision u/s 263 of the Act. Accordingly, the Hon'ble ITAT has quashed the order passed u/s.263 of the I.T. Act. As the order u/s

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143(3) rws 263 was passed on account of the order u/s.263 of the I.T. Act which now has been quashed, hence the order passed u/s 143(3) rws 263 of the I.T. Act is null and void. Thus, there is no need to adjudicate the appeal on merits. Accordingly, the appeal of the appellant is hereby allowed”.

7. We find that the order U/sec 263 of the Act was quashed by the Hon'ble Tribunal and the CIT(A) has relied on the findings of the ITAT order and observed that the consequential order passed U/sec143(3) r.w.s 263 of the Act becomes null and void. We considered the facts and decisions as discussed above and are of the view that the CIT(A) has passed a reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 09.10.2023.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 09.10.2023

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai