

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)  
&  
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 1131/KOL/2023  
Assessment Year: 2018-2019**

***MSTC Ltd.,.....Appellant  
Plot No. CF-18/2, Street No. 175,  
AA-1C, New Town, Kolkata-700156  
[PAN: AACCM0021E]***

***-Vs.-***

***Principal Commissioner of Income Tax,...Respondent  
Kolkata-1,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700069***

**Appearances by:**

*Shri Prasun Bhattacharya, A.R., appeared on behalf of the  
assessee*

*Shri Abhijit Kundu, CIT, appeared on behalf of the  
Revenue*

**Date of concluding the hearing : January 16, 2024**

**Date of pronouncing the order : January 17, 2024**

**O R D E R**

**Per Rajpal Yadav, Vice-President (KZ):-**

The present appeal is directed at the instance of assessee  
against the order of ld. Principal Commissioner of Income Tax,

Kolkata-1 dated 4<sup>th</sup> September, 2023 passed under section 263 of the Income Tax Act for A.Y. 2018-19.

2. The grievance of the assessee is that ld. CIT has erred in taking cognizance under section 263 of the Income Tax Act, 1961.

3. With the assistance of ld. Representatives, we have gone through the record carefully. It emerges out that ld. Assessing Officer has passed an assessment order under section 143(3) of the Income Tax Act, 1961 on 24.05.2021. This order has been treated by the ld. CIT as suffering from an apparent error, which has caused a prejudice to the interest of revenue and, therefore, action under section 263 of the Income Tax Act has been taken.

4. Dissatisfied with the assessment order, the assessee has filed an appeal before the ld. CIT(Appeals). The ld. CIT(Appeals) has decided the appeal of the assessee vide order dated 06.03.2023. Dissatisfied with the order of ld. CIT(Appeals), the assessee carried the matter in appeal before ITAT vide ITA No. 425/KOL/2023. This appeal was heard on 14<sup>th</sup> June, 2023 and ITAT vide its order dated 28.06.2023 set aside the assessment order to the ld. Assessing Officer for verification and re-adjudication the issues. In compliance to the directions of the ITAT, the ld. Assessing Officer has passed the fresh order under section 254/250/143(3) of the Income Tax Act, 1961 on 16.08.2023.

5. A perusal of the above details would indicate that on the day when Id. Principal Commissioner passed the order under section 263 of the Act pointing an apparent error in the assessment order dated 24.05.2021 passed under section 143(3) was not in existence because on an appeal of the assessee, this order was set aside by the ITAT and in pursuance of the Tribunal's order, the Id. Assessing Officer has already passed a fresh order giving effect to the order of the ITAT, therefore, Id. Commissioner cannot term any error causing prejudice to the interest of revenue in the assessment order dated 24.05.2021. There is no foundation to the Id. Commissioner to take action under section 263 against an order, which is already set aside on an appeal by the second appellate authority. Therefore, we are of the view that this 263 order passed by the Id. Principal Commissioner is not sustainable. Hence it is quashed.

**6. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on 17/01/2024.

Sd/-

**(Girish Agrawal)**  
**Accountant Member**

Sd/-

**(Rajpal Yadav)**  
**Vice-President (KZ)**

***Kolkata, the 17<sup>th</sup> day of January, 2024***

*Copies to :(1) MSTC Ltd.,  
Plot No. CF-18/2, Street No. 175,  
AA-1C, New Town, Kolkata-700156*

(2) *Principal Commissioner of Income Tax,  
Kolkata-1,  
Aayakar Bhawan,  
P-7, Chowringhee Square, Kolkata-700069*

(3) *CIT- , Kolkata;*

(4) *The Departmental Representative*

(5) *Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***