

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL**

**INDORE SMC BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.391/Ind/2023**  
**(Assessment Years:2009-10)**

ITO-1(1) Indore	vs.	Shri Motilal Mukati (L/h of Ramchandra Mukati 9, Kabir Khedi, Near Sukhliya Indore
(Appellant / Revenue)		(Assessee/Respondent )
<b>PAN: BMHPR 7699A</b>		
Revenue by	Shri Ashish Porwal, Sr. DR	
Assessee by	Shri S.N. Agrawal, AR	
Date of Hearing	20.02.2024	
Date of Pronouncement	21.02.2024	

**ORDER**

This appeal by the Revenue is directed against the order dated 14.08.2023 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2009-10. The revenue has raised following grounds of appeal:

- "1. The demand order is illegal, is time barred, void ab-initio, not tenable in law and therefore liable to be quashed.*
- 2. The Id ITO 1(4) erred in confirming the demand u / s 143 (3) read with Section 263.*
- 3. The appellant carves leave to add or amend or modify the grounds of appeal"*

2. I have heard the Ld. DR as well as Ld. AR and careful perused the impugned order of the CIT(A). The AO has passed an ex-parte order u/s 143(3) r.w. section 263 on 20.11.2018 in pursuant to the revision order u/s 263 dated 15.03.2018 whereby the AO has made an addition of Rs.39,65,742/- on account of long term capital gain. The assessee challenged the action of the AO before the CIT(A) and pointed out that the order passed u/s 263 by the Pr. CIT has been quashed by this tribunal vide order dated 28.06.2021 in ITANo.438/Ind/2018. By considering this fact the CIT(A) has deleted the addition made by the AO and directed the AO to restore the original assessment order passed u/s 143(3) r.w. section 147. The relevant finding of CIT(A) in para 6 & 6.1 are as under:

*"6. The impugned order and submissions of the appellant have been considered thoroughly. I have also perused order of Hon'ble ITAT, Indore Bench in ITA No. 438 / (ln(d / 2018)) dated 28/6 / 2021 (consolidated order), -MARTME wherein the Hon'ble Tribunal has quashed the order dated 20/11 / 2018 passed under section 263 of the Act by the CIT-V, New Delhi, with the following remarks:-*

*"...32. We, however, note that this valuation was carried at the insistence of the Id. AO to verify the physical existence of the property and overall value of investment. It is not a case of 'no' enquiry nor incomplete enquiry rather the Ld. AO to the best of his ability had made detailed enquiry and made proper application of mind and had examined this issue of deduction u/s 54F of the Act.*

*33. In the given facts and circumstances invoking provisions of section 263 of the Act on this issue so as to give direction to revise the assessment order was unjustified and uncalled for. Therefore, since the assessment orders in question are neither erroneous nor prejudicial to the interest of revenue, Ld. Pr. CIT erred in assuming jurisdiction u/s 263 of the Act and was thus not justified in setting aside the order passed by the Ld. AO u/s 143(3) r.w.s. 147 of the Act. Thus, grounds of appeals raised in*

*five appeal in ITANos.870 to 874 / (ln(d / 2019)) also stands allowed.*

*34. Thus, all the grounds raised in the instant appeals are allowed, impugned order u/s 263 of the Act are hereby quashed and the respective assessment orders u/s 143(3) r.w.s. 147 are restored.*

*35. In the result, all these appeals raised by the assesses namely Kamal Kishore Mukati, Dilip Mukati, Vishnu Mukati, Ashok Mukati, Akash Mukati, Shankarlal Mukati, Babulal Mukati, Kailash chandra Mukati, Tulsi Bai Mukati, Radheyshyam Mukati, Motilal Mukati, Motilal Mukati (L/H Ramchandra Mukati), Subhash Mukati (L/H Badrilal Mukati) vide ITANo.870/Ind/2019, 871/Ind/2019, 872 / (ln(d / 2019)) 873 / (ln(d / 2019)) 870/Ind/2019, 433/Ind/2018, 434 / (ln(d / 2018)) 436 / (ln(d / 2018)) 442 / (ln(d / 2018)) 435/Ind/2018, 437/Ind/2018, 438/Ind/2018, 425 / (ln(d / 2018)) respectively are allowed."*

*6.1 In view of the above facts and respectfully following the directions of the Hon'ble ITAT, Indore Bench, as reproduced above, the AO is directed to restore original assessment order u/s 143(3) / 147 dated 19/1 / 2016 The grounds raised by the appellant, regarding the issue, are allowed.*

3. Ld. DR has not disputed that the revision order passed u/s 263 dated 20.11.2018 has already been quashed by the tribunal vide order dated 28.06.2021. Therefore, the order passed by the AO in pursuant to u/s 263 would not survive when the revision order itself has been quashed by this tribunal. Accordingly in the facts and circumstances of the case I do not find any error or illegality in the impugned order of the CIT(A) same is upheld. It is further noted that tax effect in the appeal of the revenue is also less than threshold limit of Rs.50,00,000/- as apparent from the quantum of addition deleted by the CIT(A) on account of long term capital gain of Rs.39,65,742/-. Ld. DR has not disputed the tax effect below

the threshold limit of Rs.50,00,000/- for filing the appeal before this Tribunal. Accordingly the appeal of the revenue is also not maintainable due to low tax effect as per circular no. 3 of 2018 dated 11.07.2018.

4. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on 21 .02.2024.

Sd/-

(VIJAY PAL RAO)

JUDICIAL MEMBER

Indore; दिनांक Dated : 21 /02/2024

*Patel/Sr. P.S.*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT  
(DR)/Guard file.

By order  
**Sr. Private Secretary**

**ITAT, Indore**