

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.994/Ahd/2023  
(Assessment Year: 2013-14)

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| Assistant Commissioner of Income Tax,<br>Circle-2(1)(1),<br>Vadodara | Vs. | True Sparrow Systems Pvt. Ltd.<br>Kothi Pole, Raopura,<br>Vadodara-390001 |
| <b>[PAN No.AACCT7101J]</b>   |     |   |
| <b>(Appellant)</b>   | ..  | <b>(Respondent)</b>   |

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| <b>Appellant by :</b> | Dr. Darsi Suman Ratnam, CIT DR   |
| <b>Respondent by:</b> | Shri Parimalsinh B. Parmar, A.R. |

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| <b>Date of Hearing</b>       | 03.04.2024 |
| <b>Date of Pronouncement</b> | 17.04.2024 |

**ORDER**

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Center (in short “NFAC”), Delhi vide order dated 12.10.2023 passed for Assessment Year 2013-14.

2. The Revenue has taken the following grounds of appeal:-

*“1. Whether on the facts and in the circumstances of the case and in law, the Hon’ble CIT(A) erred in deleting the disallowance of assessee’s claim u/s 10AA of the Act of Rs.5,93,30,777/- holding that since the proceedings u/s 263 have been quashed on legal grounds, the addition made by the AO cannot be sustained on merits, without appreciating the fact that revenue’s appeal against the said decision of the Hon’ble ITAT is pending for decision before the Hon’ble High Court?*

*2. The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.*

*It is prayed that the order of the CIT(A) on the above issues be set-aside and that of the Assessing Officer be restored.”*

3. The brief facts of the case are that the assessee is engaged in the business of providing information technology services. The assessee claimed deduction under Section 10AA of the Act in the return of income for the impugned assessment year. One of the conditions for claiming deduction under Section 10AA of the Act was to furnish Audit Report in Form 56F duly certified by Chartered Accountant. The case of the assessee was selected for scrutiny under Section 143(3) of the Act and the Assessing Officer after verifying all details and conditions for claiming deduction under Section 10AA of the Act, accepted the returned income filed by the assessee, vide order dated 30.11.2016. Thereafter, the PCIT vide order under Section 263 of the Act dated 26.03.2019 set-aside the assessment order on the ground that the Ld. Assessing Officer had not examined the aspect that the assessee had failed to file Form 56F within the stipulated timeline, and hence the assessee had not satisfied the requisite conditions for claiming deduction under Section 10AA of the Act.

4. The assessee had filed appeal against the 263 order passed by Ld. PCIT. The ITAT vide order dated 22.04.2022 had quashed the order under Section 263 of the Act for A.Y. 2013-14 with the following observations:-

*“The Ld. PCIT has initiated 263 proceedings only on account of an inadvertent error on part of the chartered accountant of the assessee by filling form 56G instead of form 56F in support of claim of deduction u/s 10AA of the Act. This error had also been rectified by the assessee during the course of 263 proceedings where revised form 56F for claiming deduction u/s 10AA of the Act was produced before PCIT during 263 proceedings. We are therefore of the view that there is sufficient compliance if correct form 56F has been filed during the course of revisionary proceedings there is no material objective to be achieved by directing revision of original assessment order once the procedural lapse for which revisionary proceedings has been initiated has been rectified during 263 proceedings.*

*Ongoing through the records of the case, it is seen that the issue of deduction u/s 10AA of the Act has been dealt in detail by the Ld. AO during the course of assessment proceedings. On a perusal and comparison of Form 56G (earlier filed with the Ld. AO during assessment proceedings) and Form 56F filed before Ld. Pr. CIT, it is seen that contents of exemption filed are similar. Therefore, in our considered view, in the instant case though there may be*

*procedural breach, but on aspect of claim of deduction u/s 10AA, the issue has been analyzed by the Ld. AO in detail during the assessment proceedings and relief granted accordingly. Even in the 263 proceedings, the Ld. Pr. CIT has not challenged the assessee's eligibility to claim deduction u/s 10AA of the Act nor has he pointed out any error in the findings of the Ld. AO with regards to the assessee's claim u/s 10AA of the Act. In our considered view, the Ld. Pr. CIT erred in law and in facts in invoking section 263 of, the Act to revise the order of the Ld. AO."*

5. Meanwhile, the Assessing Officer passed order under Section 143(3) of the Act, pursuant to direction of Ld. PCIT under Section 263 of the Act. In appeal against the aforesaid order, the Ld. CIT(A) allowed the appeal of the assessee on the ground that since the proceedings under Section 263 of the Act have been quashed on legal grounds by ITAT, the additions made by the Ld. Assessing Officer cannot be sustained on merits. While passing the order the Ld. CIT(A) made the following observations:-

*"Grounds No.1 &2:- The grounds have been filed in respect of addition of Rs.5,93,30,777/- in respect of disallowance of deduction u/s 10AA of the Act made by the Ld. AO u/s 263 r.w.s. 143(3) pursuant to the assessment proceedings for the relevant assessment year in the case of the assessee being set aside by Ld. PCIT.*

*Thereafter, the Ld, AO made the requisite addition since appellant had failed to furnish form 56F in violation of conditions of section 10AA of the Act.*

*The appellant had approached Hon'ble ITAT against the order u/s 263 of Ld. PCIT, Vadodara. Now, vide order dated 22.04.2022, the Hon'ble ITAT, Ahmedabad has quashed the proceedings u/s 263 by stating that the twin conditions of section 263 of the Act viz. order passed being erroneous and prejudicial to the interest of the revenue are not satisfied from the facts of the case.*

*Since, the proceedings u/s 263 have been quashed on legal grounds, the additions made by the Ld. AO cannot be sustained on merits thereof.*

*In view of the above, grounds no.1&2 are hereby allowed."*

6. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A), allowing the appeal of the assessee.

7. Before us, the Counsel for the assessee submitted that Ld. CIT(A) has correctly observed that since the 263 order in pursuant to which the 143(3) order was passed, which is on subject matter of present appeal, has itself been

- 4 -

quashed by ITAT vide order dated 22.04.2022, then there is no basis / ground for sustaining the additions made by the Assessing Officer in the assessment order. The Ld. CIT(A) has correctly taken cognizance of the above fact and accordingly allowed the appeal of the assessee by observing since the proceedings under Section 263 of the Act have itself been quashed on legal grounds, the additions made by Ld. AO cannot be sustained on merits. Accordingly, there is no infirmity in the order of Ld. CIT(A) so as to call for any interference.

8. On going through the facts of the instant case, we observe that the Ld. CIT(A) has correctly observed that since 263 order, on the basis of which the subsequent assessment order was framed under Section 143(3) of the Act, has been itself quashed by ITAT in assessee's own case vide order dated 22.04.2022, then the additions made by the Assessing Officer are not liable to be sustained.

9. In the result, the appeal of the Department is dismissed.

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| <b>This Order pronounced in Open Court on</b> | <b>17/04/2024</b> |
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 17/04/2024

TANMAY, Sr. PS

**TRUE COPY**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad