

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM**

ITA No. 3577/Mum/2023
(Assessment Year: 2011-12)

Income Tax Officer Ward 9(2)(1) Room No.601A, Aaykar Bhavan M.K. Marg, Mumbai-400 020 (Appellant)	Vs.	Carnation Agro Estate Pvt. Ltd. Shop No.21, Anuradha Society, Near Fire Brigade Station, IRLA Bridge, S.V. Road, Andheri (W), Mumbai-400 058 (Respondent)
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PAN No. AADCC8897M

Assessee by	:	Shri Amit Agarwal, AR
Revenue by	:	Ms. Madhu Malati Ghosh, CIT DR
Date of hearing:		23.04.2024
Date of pronouncement :		25.04.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 3577/Mum/2023 is filed by the Income Tax Officer, Ward – 9 (2) (1), Mumbai (the learned AO) for A.Y. 2011 – 12 against the appellate order passed by National faceless appeal Centre NFAC Delhi (the learned CIT – A) dated 11th August, 2023 raising following grounds of appeal:-

"1. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in setting-aside the revisionary order dated 24.03.2021 passed by the Ld. PCIT-1, Mumbai u/s 263 of the Act?*

2. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the decision of the Ld. PCIT in treating the order u/s 143(3) r.w.s. 147 dated 13.12.2018 as erroneous and prejudicial to the interest of the revenue is not justified, especially when the Ld. PCIT in para nos. 5.2, 5.3, 5.4, 5.5, 7 and 8 of the order u/s 263 dated 24.03.2021 have elaborately given facts and findings which were remained to verified thoroughly by the Assessing Officer while passing the assessment order dated 13.12.2018?*

3. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the Ld. PCIT had not pointed out in order u/s 263 about what sort of verification was required to be made by the Assessing Officer while passing the assessment order dated 13.12.2018 despite the fact that the PCIT vide para nos. 5.4, 5.5 and 7 of the order dated 24.03.2021 u/s 263 have given categorical findings about what issues remained to be verified and examined by the Assessing Officer while passing the assessment order dated 13.12.2018?*

4. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in setting-aside the order u/s 263 ignoring the provisions contain in Explanation 2 clause (4) below section 263(1) of the Act, that any assessment made without conducting requisite enquiry and verification by the AO is erroneous so far as prejudicial to the interest of the revenue?*

5. *Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in setting-aside the order u/s 263 dated 24.03.2021 without going into the merits of the issues regarding identity, credit worthiness and genuineness of loan availed of Rs. 1.82 crore from the entities Multiventure Financial Pvt. Ltd. and Prakhyat Infraprojects Pvt. Ltd."*

02. Brief facts of the case shows that assessee is a company engaged in agricultural and other activities. It filed its return of income for A.Y. 2011-12 on 27th September, 2011 at a total loss of ₹ 42,393 which was processed under section 143 (1) on 15th January, 2012. The case of the assessee was reopened by issue of notice under section 148 of the Act on 28th March, 2018 and assessment under section 143 (3) read with section 147 of the Act was completed on 13th December, 2018 at a total loss of ₹ 42,393/-. Subsequently, the principal Commissioner of income tax, Mumbai – 1 has set-aside the assessment order dated 13th December, 2018 as per order under section 263 of the income tax act dated 24th

March, 2021. Subsequently in pursuance of that order the learned assessing officer passed an assessment order on 26th March, 2022 wherein the total income of the assessee was assessed at ₹ 9,957,607/-.

03. Aggrieved by that assessee preferred an appeal before the learned CIT – A. The assessee submitted that this order of the assessment is passed in pursuance to the order passed by the learned PCIT under section 263 of the Income Tax Act. The assessee preferred an appeal against the order before the coordinate bench in ITA No. 437/Mum/2017 wherein as per order dated 28th February, 2023 the order of the revision passed under section 263 of the act has been set-aside.
04. The learned CIT – A based on this held that the foundation on which the assessment order is based is no longer intact held that when the foundation is removed the superstructure collapses. Therefore, he held that the assessment order cannot survive, and he directed the learned AO to delete all the additions/disallowances made in connection with giving effect to the revisionary order passed under section 263 after the verification of the facts of the case and perusal of the aforesaid order of the ITAT.
05. The learned AO is aggrieved with that and has preferred this appeal.
06. The learned departmental representative supported the order of the learned assessing officer and submitted that

the order passed by the learned assessing officer remains intact.

07. The learned authorized representative referred to paragraph number six of the order of the learned CIT – A and stated that when the 263 order itself has been quashed by the ITAT, the subsequent order of the AO passed in pursuance of the order under section 263 of the act also does not survive.
08. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts clearly shows that the impugned assessment order dated 26/3/2022 giving effect to the order dated 24th March, 2021 passed by the principal Commissioner of income tax – one Mumbai under section 263 of the Act was challenged by the assessee before the coordinate bench in ITA No. 437/Mum/2017. The coordinate bench by order dated 28th February, 2023 has set-aside the revisionary order. As the assessment order has the foundation of revisionary order under section 263 of the act which itself has been set-aside by the coordinate bench, the subsequent assessment order passed by the learned AO has been correctly set-aside by the learned CIT – A. Of course, if the learned assessing officer challenges the order of the coordinate bench for quashing the revisionary order passed under section 263 of the act and if same is upset by the higher appellate forum, naturally, thereafter the assessment proceedings may revive, however, nothing has



been pointed out before us showing that the order of the tribunal has been reversed. Thus, we confirm the order of the learned CIT – A. In the result, all the grounds raised by the learned assessing officer are dismissed.

09. In the result, appeal filed by the learned AO is dismissed.

Order pronounced in the open court on 25.04.2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 25.04. 2024

Sudip Sarkar, Sr.PS/Dragon

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