

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 07/Ind/2024**  
**Assessment Year: 2015-16**

Income-tax Officer, 3(4), Bhopal	<b>बनाम/ Vs.</b>	Sahita Construction Co., 174, Neelkanth Colony, Bhagya Villa, Idgah Hills, Bhopal
(Revenue /Appellant)		(Assessee /Respondent)
<b>PAN: AAQFS2422J</b>		
Assessee by	Shri S.S. Deshpande, CA & Ld. AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	06.05.2024	
Date of Pronouncement	08.05.2024	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 23.11.2023 passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 30.03.2022 passed by learned NFAC, Delhi ["AO"] u/s 143(3) r.w.s. 263 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2015-16, the revenue has filed this appeal on following ground:

*"On the facts and circumstances of the case, the Ld. CIT(A) erred in allowing the appeal of the assessee without going into the merits of the case and merely relying upon the order of the Hon'ble ITAT quashing the order u/s 263*

*of the Income-tax Act, 1961, which is arbitrary and unreasonable and, therefore, not acceptable to the Department.”*

2. The background facts leading to present appeal are such that the return filed by assessee for relevant AY 2015-16 was subjected to scrutiny assessment and the AO completed assessment vide order dated 11.09.2017 u/s 143(3). Thereafter, the PCIT-1, Bhopal [“PCIT”] passed revision-order dated 25.03.2021 u/s 263 whereby the said assessment-order dated 11.09.2017 passed by AO was set aside and the AO was directed to make a *de novo* assessment. The assessee contested revision-order passed by PCIT before ITAT, Indore in *ITA No. 119/Ind/2021* whereupon the ITAT, vide order dated 07.02.2022, quashed the revision-order. However, pursuant to the direction given by PCIT in revision-order, the AO passed a consequential assessment-order dated 30.03.2022. The assessee challenged this consequential assessment-order in first-appeal whereupon the CIT(A) quashed the consequential assessment-order and allowed assessee’s appeal by holding thus:

*“5. In the present case, appellant has filed appeal against the assessment order passed by the AO u/s 143(3) r.w.s. 263 of the Income-tax Act, 1961, on 30.03.2022. Said assessment was completed as per the direction of Pr. CIT-1, Bhopal, contained in order passed u/s 263 of the act dated 25.03.2021. Vide his reply dated 01.11.2023, appellant informed that order was of PCIT was challenged before the ITAT Indore Bench. The ITAT Indore Bench in its order dated 07.02.2022 in appeal no. ITA No.-119/IND/2021 had quashed the order of Pr. CIT passed U/S 263, holding that the order of AO was neither erroneous nor prejudicial to the interests of revenue. Thus, the entire proceeding initiated in compliance to the order passed u/s 263 became null and void. Appellant enclosed copy of ITAT’s order passed in the case.*

*5.1 The ITAT vide its order No.119/Ind/2021 for assessment year 2015-16 dated 7.02.2022 has held as under :-*

*"11. We, therefore, respectfully following the judicial precedents and the finding of Coordinate Bench Delhi in the case of Rakesh Kumar (supra) hold that Ld. Pr. CIT is quashed. Thus, in our considered view assessment order dated. 11.09.2017 u/s 143(3) of the Act is neither erroneous nor prejudicial to the interests of revenue and the same is restored. All the grounds raised by the assessee are allowed."*

*5.2 Appellant has raised various grounds in the present appeal, however, substantive ground raised by the appellant is that whether AO was justified in making the assessment when the order u/s 263 being the basis on which present proceeding was initiated was quashed by the ITAT. Since the order of PCIT-1 Bhopal dated 25.03.2021 passed u/s 263 of the Income-tax Act, 1961, was quashed by the Tribunal vide its order dated. 07.02.2022 consequential order passed by the AO u/s 143(3) r.w.s. 263 of Income-tax Act, 1961, does not survive and thus appellant succeed on this ground.*

*Since substantive ground raised by the appellant has been allowed in preceding para remaining ground raised by the appellant becomes academic in nature and need no adjudication.*

*6. In the result, the appeal is treated as 'allowed'."*

3. Now, the revenue has filed present appeal assailing the order passed by CIT(A).

4. Ld. DR for revenue/appellant instantly agrees that the CIT(A) has passed a proper order holding that when the order of PCIT dated 25.03.2021 passed u/s 263 itself was quashed by ITAT vide its order dated 07.02.2022, the consequential assessment-order passed by AO u/s 143(3) r.w.s. 263 does not survive. Therefore, although Ld. DR dutifully supported the present appeal filed by revenue yet fairly agreed that the present appeal is meritless. In that view of matter, we uphold the order of CIT(A) and this appeal filed by revenue is dismissed. We may be hastened to add here that if at all the revenue is agreed by order dated 07.02.2022 passed by ITAT quashing the revision-order passed by PCIT u/s 263, the proper remedy would be to file an appeal before High Court challenging the said order of ITAT.

5. Resultantly, this appeal is dismissed.

Order pronounced in open court on 08.05.2024.

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 08.05.2024

CPU/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order

Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore