

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
MS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO.3684/MUM/2023
ASSESSMENT YEAR :2016-17.

ITO, CUMBULLA HILLS,
Office of the Income Tax Officer(E)-1(4),
6th Floor, 612, MTNL Building,
Cumbulla Hills, Peddar Road,
Mumbai – 400 026

---- Appellant

Vs.

Kampani Charitable Trust,
141, Maker Chambers III,
Nariman Point,
Mumbai – 400 021.
PAN: AAATK-0149-C

--- Respondent

Appellant by : Dr.K.Shivram & Shri Rahul Hakani

Respondent by : Shri P.D.Chougule, Sr.DR

Date of Hearing : 06/05/2024

Date of Pronouncement : 06/05/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The Revenue has filed this appeal challenging the order dated 24/08/2023 passed by CIT(A) and it relates to the Assessment Year 2016-17, wherein the CIT(A) had allowed the appeal of the assessee on noticing that the revision order passed by PCIT had been quashed by ITAT.

2. The ld.A.R submitted that the impugned assessment order has been passed by the Assessing Officer in order to give effect to the revision order passed by CIT(E) u/s. 263 of the Act. In the mean time, the assessee had challenged the revision order passed by CIT(E) by

filing appeal before the Hon'ble ITAT, Mumbai. The Hon'ble ITAT was pleased to quash the revision order passed by CIT(E), vide its order dated 13/05/2022 passed in ITA No.699/Mum/2021. When the assessee brought this factual position before CIT(A), he has quashed the assessment order passed by Assessing Officer u/s. 143(3) r.w.s. 263 of the Act. The ld.AR submitted that the order so passed by CIT(A) is in accordance with law and hence, the same does not require any interference.

3. The ld. D.R, however, submitted that the order dated 13/05/2022 (referred supra) passed by Hon'ble ITAT has since been challenged by the Revenue by filing appeal before Hon'ble Bombay High Court. Accordingly, he submitted that the order passed by ITAT has not attained finality.

4. We have heard the rival contentions and perused the record. The fact remains that the impugned revision order passed by CIT(E) has been set aside by the Tribunal, vide its order dated 13/05/2022 (referred above). In that case, the impugned assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 263 of the Act, does not survive in the eyes of law. It is also not shown to us that the order so passed by ITAT has been stayed. In the absence of any order staying operation of the order of ITAT, the same will continue to have effect till it is reversed by the Court of higher wisdom. Accordingly, we are of the view that the CIT(A) was justified in quashing the impugned order on the basis of the order passed by the Tribunal on the revision order passed u/s 263 of the Act. Accordingly, we uphold the order passed by CIT(A).

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 06th May , 2024.

Sd/-

(KAVITHA RAJAGOPAL)

JUDICIAL MEMBER

Mumbai, Date : 06th May, 2024

Vm

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "E" Bench, Mumbai
- 5) Guard file

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar

I.T.A.T, Mumbai