

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER,**

**ITA No.3938/Mum/2023 (AY 2013-14)**

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|---|-----|---|
| Dy CIT, Circle 3(4)<br>Room No. 481/2, 4 <sup>th</sup> Floor<br>Aaykar Bhavan<br>M.K. Road<br>Mumbai 400020 | vs. | Nuclear Power Corporation<br>of India Ltd.<br>16 <sup>th</sup> Floor, Ccentre-1, Word Trade<br>Centre, Cuffe Parade,<br>Mumbai 400005 |
| PAN/GIR No. : AAACN32154F   |     |   |
| Appellant   | ..  | Respondent  |

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|-----------------|-----------------------------|
| Appellant by :  | Shri Mans Kulkarni          |
| Respondent by : | Shri Sunil Shinde, Sr. A.R. |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 15.05.2024 |
| Date of Pronouncement | 16.05.2024 |

आदेश / O R D E R

**PER OM PRAKASH KANT, AM:**

This appeal by the Revenue is directed against order dated 28.07.2023, passed by the Id. Commissioner of Income Tax (Appeals) – National Faceless Appeal Centre (NFAC), Delhi (in short ‘the Id. CIT(A)) for AY 2013-14, raising following grounds:

*“I Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing the appeal of the assessee holding that the order passed u/s. 143(3) r.w.s. 263 of the Act rendered non-est due to quashing of the order passed u/s. 263 of the Act by the Hon’ble Tribunal ignoring the fact*

*that department has not accepted the decision of the Hon'ble ITAT and has filed appeal u/s. 260A before the Hon'ble Jurisdictional High Court against the order of the Hon'ble ITAT?*

*II. Whether there is any delay in filing of appeal (if yes, please attach application seeking condonation of delay)."*

2. We have heard rival submission of the parties and perused the relevant material on record. In the case the original assessment order passed by the Assessing Officer (AO) was held as erroneous in so far prejudicial to the interest of Revenue by the ld. Principal Commissioner of Income-tax (in short the PCIT) in his order dated 19.03.2018, passed u/s 263 of the Income Tax Act, 1961 (in short 'the Act') and directed the AO to pass a fresh assessment order. The impugned assessment order has been passed by the Assessing Officer in compliance to the order of ld. PCIT passed u/s 263 of Act dated 19.03.2018. However, the assessee challenged the order of the PCIT before the Income-tax Appellate Tribunal (ITAT), whereas the ITAT has quashed the order of the PCIT passed u/s 26e of the Act. The ld. CIT(A) has allowed the appeal of the assessee because the impugned assessment order being consequent to the order u/s. 263 of the Act , which has already been quashed by the ITAT and therefore the consequential order of the AO cannot survive. The relevant finding of the ld. CIT(A) is reproduced as under:

*"6.1 The ITAT vide its order No. 2902/Mum/2018 for AY r. 2013-14 dated 31.12.2018 has held as under:*

*"6. Respectful following the principle laid down by the Hon'ble Supreme Court in the case of Vatika Township (P) Ltd. (supra), we hold tht the amendment brought out in section 37(1) by inserting explanation 2 by Finance (No. 2) Act, 2014 w.e.f. 01.04.2015 is prospective and assessee's assessment yer being 2013-14 will not apply and hence, revision proceedings of CIT is without any basis and quashed. The appeal of assessee is allowed.*

6.2 *Since the order of CIT(LTU) dated 19.03.2018 passed u/s 263 of the Act has been set aside by the Tribunal, the consequential order of the AO passed u/s 143(3) r.w.s. 263 of the Act on 30.07.2018 does not survive. Accordingly, the present appeal filed against the order passed under section 143(3) r.w.s. 263 of the Act dated 30<sup>th</sup> July, 2018 become infructuous. Hence the present appeal is dismissed.”*

3. The impugned assessment order was passed consequent to the direction of the ld. PCIT vide order u/s. 263 dated 19.03.2018. Since the ITAT vide its order dated 31.12.2018 passed in ITA No. 2902/Mum/2018, has already quashed the proceedings u/s. 263 of the Act, thus, the consequent assessment proceedings u/s. 143(3) r.w.s. 263 of the Act cannot survive. The Revenue preferred this appeal merely for keeping the matter alive as the Revenue has preferred appeal against the order of ITAT ITA No. 2902/Mum/2018 where in the order u/s 263 of the Act has been quashed. Accordingly, we do not find any infirmity in the order of the ld. CIT(A) and we uphold the same. Grounds of appeal of the Revenue are accordingly dismissed.

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

Order pronounced in the open court on 16.05.2024.

Sd/-  
(RAJ KUMAR CHAUHAN)  
Judicial Member

Sd/-  
(OM PRAKASH KANT)  
Accountant Member

Place: Mumbai

Date: 16.05.2024

n.p

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,  
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)  
आयकरअपीलीयअधिकरण/ **ITAT, Bench, Mumbai.**