

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 171/MUM/2024  
(Assessment Year : 2015-16)**

Asstt. Commissioner Income Tax-8(3)(1), Aaykar Bhavan, Room no. 446, 4 <sup>th</sup> Floor, M.K. Road, New Marine Lines, Mumbai 400020.	Vs.	M/s. Tata Housing Development Company Limited E Block, Voltas Premises, T.B. Kadarm Marg, Chinckpoli, Mumbai 400033.
<b>PAN/GIR No. AAATO191Q</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Atul T. Suraiya a/w Shri. Nilay Jhaveri
Revenue by	Shri. Shekhar L. Gajbhiye,
<b>Date of Hearing</b>	<b>22/05/2024</b>
<b>Date of Pronouncement</b>	<b>27/05/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue against order dated 29/11/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) r.w.s. 263 for the A.Y.2015-16.

2. In the grounds of appeal, Revenue has raised following grounds:-

*“1. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding the order dated 27.06.2019 passed u/s.143(3) r.w.s.263 of the IT Act as infructuous, following the Hon'ble ITAT decision to quash order u/s.263 of the IT Act and thereby allowing the appeal of the assessee, without appreciating the fact that the Assessing Officer has not made any specific / not called for any details regarding "notional flats lying unsold in the assessee's closing stock" and the issue remained unexplained?*

*2. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding the order dated 27.06.2019 passed u/s.143(3) r.w.s.263 of the IT Act as infructuous, following the Hon'ble ITAT decision to quash order u/s.263 of the IT Act and thereby allowing the appeal of the assessee, without appreciating the fact that in light of explanation 2 to the Section 263 of the IT Act, any order passed without making inquiries or verification which should have been made is deemed to be erroneous and prejudicial to the interest of the revenue?*

*3. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding the order dated 27.06.2019 passed u/s.143(3) r.w.s.263 of the IT Act as infructuous, ignoring the ratio of Hon'ble Delhi High Court's decision in the case of Ansal Housing & Finance leasing Co. Ltd (354 ITR 180) which is applicable to the facts to this case?*

*4. Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in holding the order dated 27.06.2019 passed w/s.143(3) r.w.s.263 of the IT Act as infructuous, which is passed on the basis of order u/s.263 of the Act which is a valid order and is the lawful application of the provisions of the stated section in view of the factual matrix of the case?”*

3. Thus, from the bare perusal of the grounds it is seen that the Revenue is challenging the ITAT order quashing the order u/s 263. The assessment order has been passed giving effect to the order passed u/s. 263 by the ld. PCIT. In this case, order

u/s.263 was passed revising the earlier assessment order passed u/s. 143(3) completed on 29/12/2017 vide order dated 30/03/2019. The aforesaid order of the ld. PCIT was subject matter of challenge before the Tribunal and the Tribunal has quashed and set aside the order of the ld. PCIT. Once the order u/s 263 has been quashed, then assessment order passed in pursuance of 263 order has become infructuous. This precisely has been held by the ld. CIT(A) that once the Tribunal has allowed the appeal of the assessee and quashed the order u/s.263 which is basis of present assessment proceedings and therefore, the impugned order u/s.143(3) r.w.s. 263 has become infructuous. Accordingly, the appeal of the Revenue is dismissed.

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

Order pronounced on 27<sup>th</sup> May, 2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 27/05/2024  
Karuna, Sr. Ps.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**