

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

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER  
&  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No. 3845/MUM/2023  
(A.Y. 2009-10)**

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| Deputy Commissioner of<br>Income Tax, Central<br>Circle- 5(4)<br>R.N. 1927, 19 <sup>th</sup> Floor AIR<br>India Building, Nariman<br>Point, Mumbai- 400021 | Vs.                          | Konark Structural<br>Engineers Pvt Ltd<br>A 1, Hinal Heritage Patel<br>Wadi, S.V.P. Road,<br>Borivali (W) Mumbai-<br>400092 |
| <b>स्थायी लेखा सं./जीआइआर सं./</b>                                                                                                                         | <b>PAN/GIR No:AAACK9113B</b> |                                                                                                                             |
| <b>Appellant</b>                                                                                                                                           | <b>..</b>                    | <b>Respondent</b>                                                                                                           |

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| Appellant by :  | Shri. Mahaveer Jain        |
| Respondent by : | Shri. P.D. Chougule, SR-DR |

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| Date of Hearing       | 29.04.2024 |
| Date of Pronouncement | 30.05.2024 |

**आदेश / O R D E R**

**PER OMKARESHWAR CHIDARA:-**

1. The assessee company filed the return of income on 11.09.2009 declaring total income of Rs. 1,35,84,202/-. Consequently, the return was processed u/s 143(1) of the Income Tax Act. The case was selected for scrutiny and the scrutiny assessment was completed u/s 143(3) of the Income Tax Act on 31.12.2011 for the assessment year 2009-10. The case was re-

opened by issuing notice u/s 148 of the Income Tax Act and the same was completed by the then DCIT-12(3)(1) on 20.02.2015 u/s 143(3) r.w.s. 147 of the Income Tax Act and the total income was assessed at Rs. 1,37,02,130/-.

2. A proposal was sent to PCIT-12, Mumbai by the AO, in respect of bogus share premium of Rs. 4.40 crores as the same was not considered by him while passing the order u/s 143(3) r.w.s. 147 of the Income Tax Act on 20.02.2015. Information to this extent was received by AO from Investigation Wing of Income Tax kept, prior to completion of re-opened assessment.

3. The PCIT-12, Mumbai issued notice u/s 263 of the Income Tax Act and after giving an opportunity being heard, held that the assessment order passed u/s 143(3) r.w.s. 147 of the Income Tax Act passed by the AO on 20.02.2015 was incorrect because the information received from DGIT investigation vide letter dated 07.03.2014 was not considered by the AO. Hence, the PCIT came to conclusion that the order passed by the then AO was erroneous in so far as it is prejudicial to the interest of the revenue. Accordingly, the Ld. PCIT-12, Mumbai vide his order u/s 263 of the Income Tax Act dated 30.03.2017 set aside the assessment order dated 20.02.2015 passed by the then DCIT-12(3)(1), Mumbai with the direction that the AO should conduct proper enquiries with respect to share premium of Rs. 4.4 Crores received during this year. It was observed that the assessee company received a share premium from the Praveen Jain Group to the extent of Rs. 4.4 crores. As per the

direction of PCIT-12, Mumbai the AO initiated re-assessment proceedings and gave an opportunity of being heard to the assessee company. The AO issued notice u/s 142(1) of the Income Tax Act dated 25.05.2017 and again vide notice dated 23.10.2017 requesting the assessing company to submit the requisite details relating to share capital/share premium.

4. As mentioned above, the assessment wing of the Department received information from the DGIT (Investigation) stating that the assessee company, M/s Konark Structural Engineering's Pvt Ltd had taken accommodation entries of share capital/share premium of Rs. 4.4 crores during assessment year 2009-10 through various bogus concerns mentioned in page 2 of assessment order dated 27.12.2017. The Assessing Officer reproduced relevant portion of statement of Praveen Jain which establishes the fact that the assessee company has taken bogus share premium entry in his books and hence, the assessee company is a beneficiary of bogus accommodation entry transaction. Then, the assessing officer went on reproducing the statement on oath of Shri Praveen Kumar Jain given before the DDIT Investigation- 12(3)(1), Mumbai. The crux of this statement is that Praveen Jain has controlled more than 30 shell companies and through them has given accommodation entries to various companies and our assessee company is one amongst them. Based on the statement of Shri Praveen Jain, the assessing officer came to the conclusion that the assessee company received the accommodation entries and made an addition of Rs. 4.4 crores u/s 68 of the Income Tax Act.

5. This order of DCIT passed in terms of revision order u/s 263 of Income Tax Act is appealed against before the CIT(A)-53, Mumbai. After considering the submission of the assessee, the CIT(A) held that the assessment order is barred by limitation as held by the Hon'ble ITAT in its order dated 25.05.2018 ITA No. 5488/M/2017. In this order, Hon'ble ITAT had allowed the appeal of the appellant wherein it had challenged the section 263 proceedings of PCIT. The CIT(A) reproducing the relevant portion of Hon'ble ITAT order held at para 4.3 that the consequential order u/s 143(3) r.w.s. 263 of the Income Tax Act which is subject matter of appeal do not survive any longer. This is because the Hon'ble ITAT has held the section 263 order passed by the PCIT dated 30.03.2017 is barred by limitation accordingly the CIT(A) allowed the appeal of the assessee without adjudicating other grounds.

6. Now aggrieved by the order of CIT(A) dated 22.08.2013, the Department filed an appeal before ITAT and only ground to be adjudicated in this Department appeal is as follows :-

*“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in quashing the assessment order passed u/s 143(3) r.w.s. 263 of the Income Tax Act, 1961 in consequence to revisionary order passed by Pr. CIT (Central)-3, Mumbai without going into the merits of the case and without considering that the Revenue has not accepted the earlier decision of the Hon'ble ITAT dated 25.05.2018 quashing the order passed u/s 263 of the Act in this case and filed appeal before the Hon'ble Bombay High Court vide ITXA/292/2019 which is pending for adjudication?”*

7. From the above ground taken by the Department, it is evident that in the earlier year, the Assessee Company got an Order in its favour from the ITAT with regard to the Order passed by PCIT u/s 263 of the Income Tax Act and the Revenue did not accept the decision of Hon'ble ITAT dated 25.05.2018 and hence, filed an appeal before Hon'ble Bombay High Court as mentioned above. The AR has filed a copy of the Order of Hon'ble ITAT 'H' Bench Mumbai in assessee's own case where the Order of PCIT u/s 263 of the Income Tax Act was quashed.

8. The AR argued that the Order passed by the Principal Commissioner u/s 263 of the Income Tax Act was quashed by the Hon'ble ITAT and hence the consequential order passed by the AO u/s 143(3) r.w.s. 263 of the Income Tax Act will not survive and for this proposition, he relied on the decision of DCIT, Central Circle-7(2) Mumbai Vs. Mumbai Nasik Expressway Ltd. 91 ITR (Tribunal) 486 (ITAT Mumbai). The operative portion of the order relied by the AR is reproduced as follows:-

*As the order passed by the Pr.CIT-4, Mumbai u/s 263 of the Act, dated 22.03.2017 had been set-aside by the Tribunal, therefore, the CIT(A) taking cognizance of the said fact had quashed the assessment order passed by the A.O u/s 143(3) r.w.s 263, dated 31.08.2017. We have given a thoughtful consideration to the issue before us and find no infirmity in the view taken by the CIT(A) that now when the order passed by the Pr. CIT-4, Mumbai u/s 263 of the Act, dated 22.03.2017 had been quashed by the Tribunal, therefore, as a consequence thereto the assessment order passed by the A.O u/s 143(3) r.w.s 263, dated 31.03.2017 cannot survive on a standalone basis and had to meet the same fate. Our aforesaid view that when the very order passed u/s 263 of*

*the Act by the CIT/Pr. CIT is set-aside, then, the assessment framed pursuant to the said order cannot survive on a standalone basis is supported by the order of the ITAT, Delhi in the case of DCIT Vs. M/s Eastern India Power Tech Ltd., ITA 683/Del/2012. Also, a similar view had been taken by the ITAT Ahmedabad in the case of DCIT Vs. M/s The Grand Bhagwati Banquets and Hotels Ltd., ITA No. 2528/Ahd/2016. Accordingly, in the backdrop of our aforesaid deliberations, we concur with the view taken by the CIT(A) that now when the order passed by the Pr. CIT-4, Mumbai u/s 263 of the Act, dated 22.03.2017 in itself had been quashed by the Tribunal, therefore, as observed by him, and rightly so, the assessment order passed by the A.O in consequence thereto u/s 143(3) r.w.s 263, dated 31.08.2017 could not be sustained and was liable to be vacated. We, thus, in terms of our aforesaid observations finding no infirmity in the view taken by the CIT(A) uphold his order. The Ground of appeal No. 1 is dismissed.*

9. The DR relied on the grounds of appeal and argued that the issue of quashing Order u/s 263 of the Income Tax Act passed by PCIT has not attained finality as the Income Tax Department has filed an appeal before High Court and the same is pending.

10. Heard the submissions of both parties. When the Revision Order u/s 263 of the Act itself was quashed which is the basis for passing the present assessment order u/s 143(3) of the Income Tax Act, the consequential order will not have any legs to stand. The issue is also covered by the decision of DCIT, Central Circle- 7(2) Mumbai Vs. Mumbai Nasik Expressway Ltd. and the other cases-laws mentioned therein so, the consequential assessment order passed u/s 143 r.w.s. 263 of the Income Tax Act does not survive and hence quashed.

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

Order Pronounced in Open Court on 30.05.2024

Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-  
(OMKARESHWAR CHIDARA)  
ACCOUNTANT MEMBER

Place: Mumbai  
Date 30.05.2024  
Shubham P. Lohar

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)  
**आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai**