

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 86/MUM/2024 (A.Y: 2016-17)

ACIT – Circle – 2(1)(1) Room No. 575, 5 th Floor Aayakar Bhavan, M.K. Road Mumbai – 400020	v.	M/s. Anand Projects Ltd., 19/3, Sujata Building Rani Sati Marg, Malad (E) Mumbai – 400097 PAN: AACT1389G
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Kirit Kamdar
Department Represented by	:	Shri Ajay Chandra
Date of conclusion of Hearing	:	21.05.2024
Date of Pronouncement	:	21.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against the order dated 29.11.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2016-17.

2. The grievance of the revenue read as under: -

1. *The Ld. CIT(A) erred in holding the assessment order u/s.143(3) r.w.s. 263 of the Act dated 31.03.2022 as 'invalid' as on the date of passing order, the order was legally valid.*

2. *The Ld. CIT(A) erred in holding the assessment order u/s.143(3) r.w.s. 263 of the Act dated 31.03.2022 as 'invalid' and appeal as infructuous without deciding the various grounds 'on merit'.*

3. *The Ld. CIT(A) erred in holding the assessment order u/s.143(3) r.w.s. 263 of the Act dated 31.03.2022 as 'invalid' and appeal as infructuous. Revenue had filed appeal u/s 260A with ITXAL No. 12727/2023 on 04.05.2023 against order in ITA no. 813/Mum/2021 dated 29.06.2022 before the Hon'ble High Court.*

4. *On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in not deciding the grounds of appeal on merit.*

5. *The appellant craves the leave to add, amend, alter and/or delete any of the grounds of appeal as above.*

3. The root cause for the quarrel is the assessment order dated 31.03.2022 framed under section 143(3) r.w.s. 263 of Income-tax Act, 1961 (in short "Act"). Facts of the case in hand show that, the assessee filed its return of income declaring total income of ₹.29,52,15,120/- on 10.10.2016 under normal provisions and book profit under section 115JB of the Act at ₹.29,03,75,843/-. The assessment was framed under section 143(3) of the Act vide order dated 30.12.2018 wherein the return of income was accepted as such.

4. Invoking the powers conferred upon him by the provisions of section 263 of the Act the Ld. Pr.CIT set-aside the order passed by the Assessing Officer with certain directions. The assessee challenged the assumption of jurisdiction under section 263 by the Ld. Pr.CIT before the Tribunal and this Tribunal vide order dated 29.06.2022 in ITA No. 813/MUM/2021 has quashed the revision order under section 263 of the Act.

5. **SUBLATO FUNDAMENTO CADIT OPUS** meaning thereby in the case the foundation is removed the super structure falls.

6. The foundation for framing the order under section 143(3) of the Act was the order of the Ld. Pr.CIT under section 263 of the Act. Since the foundation has been removed by this Tribunal by quashing the order under section 263 of the Act, the super structure that is the present order must fall. We therefore do not find any reason to interfere with the findings of the Ld. CIT(A). Appeal filed by the revenue is dismissed.

7. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 21st May, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 21.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

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, Mum