

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

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

**I.T.A. No. 1067/Mum/2024
(Assessment Year: 2016-17)**

ACIT-14(1)(2), Room No. 455, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	Vs.	SEAHORSE MERCANTILE CO. PVT. LTD., Flat No. B/308, Wing B Sneha, Sneha Apna Ghar, Unit-II, Plot No. 30, Tandon Road, Andheri-400053. PAN : AAJCS1507L
Appellant)	:	Respondent)

Appellant/Assessee by : None
Revenue/Respondent by : Shri Dr. Kishor Dhule, CIT-DR

Date of Hearing : 12.06.2024
Date of Pronouncement : 20.06.2024

ORDER

Per Padmavathy S, AM:

This appeal by the Revenue is against the order of assessment passed by the Commissioner of Income Tax/ National Faceless Appeal Centre, Delhi [for short 'CIT(A)] dated 10.01.2024 for the AY 2016-17. The Revenue raised the following grounds of appeal:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in holding the assessment order passed u/s. 143(3) r.w.s 263 of Act as infructuous by placing reliance on the order of ITAT in case of assessee

passed against the order passed u/s. 263 of Act ignoring the fact that the Revenue has not accepted the decision of ITAT & appeal is pending before Hon'ble High Court.

2. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.”

2. The assessee is a private limited company engaged in the business of trading in shares and securities and DMS / TMS products (electoral voter list books), etc. the assessee filed the return of income for AY 2016-17 on 30.11.2017 declaring a total loss of Rs.1823/-. The assessment was completed under section 143(3) of the Income Tax Act, 1961 (the Act) assessing the income of the assessee at Rs.1,48,27,610. Subsequently the Principal Commissioner of Income Tax, Mumbai-6 (PCIT) exercised revisionary powers under section 263 of the Act holding the order of the AO as erroneous and prejudicial to the interest of the Revenue and accordingly set-aside the order of assessment by the AO for a denovo consideration. The AO subsequently passed an order under section 143(3) r.w.s. 263 of the Act wherein the AO made an addition of Rs. 390,88,00,000/-.

3. Aggrieved, the assessee filed appeal before the CIT(A). The CIT(A) deleted the addition made by the AO for the reason that the co-ordinate bench vide order dated 28.04.2023 in ITA No. 1286/Mum/2021 had quashed the order passed under section 263 by the PCIT. The relevant observations of the CIT(A) are extracted below:

“5.1 I have carefully perused the grounds of appeal and assessment order passed by the AO. Hon'ble ITAT, Mumbai vide its order dated 28.04.2023 in ITA No. 1286/Mum/2021/(A.Y 2016-17) in the case of appellant has allowed the appeal passed u/s 263 of the Act by Ld. PCIT-6 Mumbai. The relevant portion of the observation of Hon'ble ITAT is reproduced as under:

15. We further note that the learned CIT by referring to the assessment of other entities and the statements of other parties and referring to assessee's financials has tried to make out a case that business of the assessee was not genuine and was only a means to transfer funds from one entity to another so as to layer the transaction at multiple level and conceal the true nature. Furthermore learned CIT observed that the examination of the transactions give rise to the suspicion that there is no definite chain or value addition. Learned CIT further mentions that these statements point out that there was no actual business. In this regard we note that power under section 263 has to be exercised when an order by the assessing officer is erroneous as well as prejudicial to the interest of revenue. Learned CIT while exercising his power in his order has tried to make out a case that assessee's business is not genuine and the same is meant to layer transactions. In this regard we note that if the business is not genuine and the assessee has still returned Income, how the revenue is prejudiced is not clear. Moreover layering of transactions and routing of money is a matter of examination of unexplained funds of loans and advances et cetera. In the present case no case has been made out by the learned CIT about the existence of unexplained credits or advances in assessee's financials. In this view of the matter it cannot be said that in the exercise of power by the learned CIT satisfies the criteria that the order of the AO has been found by learned CIT to be prejudicial to the interest of revenue.

16. In the background of aforesaid discussion and precedents we are of the considered opinion that the jurisdiction power exercised by learned CIT is vitiated and not sustainable in law. Other aspects on merits of the case canvassed by the assessee and other aspects are of academic interest and hence we are not dealing with the same.

17. In the result, assessee's appeal is allowed as above.

5.2 In view of the above facts and decisions of Hon'ble ITAT, Mumbai, as the order of passed u/s 263 of the Act by the Ld. Pr.CIT-6, Mumbai has been allowed the appeal of the assessee, the impugned consequential order passed by the AO u/s 143(3) r.w.s. 263 of the Act has thus become infructuous.

5.3 Therefore, respectfully concurring with view of Hon'ble ITAT, Mumbai taken in the case of appellant for A.Y. 2016-17, I am of the view that this appeal has become infructuous as cause of action itself is not existing anymore.”

4. We heard both the parties and perused the material on record. The CIT(A) has allowed the appeal in favour of the assessee for the reason that the coordinate bench has quashed the revision order passed under section 263 by the PCIT. Since the very basis on which the AO passed the order under section 143(3) r.w.s 263 i.e. the order under section 263, does not survive consequent to the order of the Tribunal, in our considered view the CIT(A) has correctly treated the appeal against the order of the AO under section 143(3) r.w.s 263 as infructuous. Therefore, we see no reason to interfere with the decision of the CIT(A).

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

Order pronounced in the open court on 20-06-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai