

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.327/Mum/2024
(A.Y. 2015-16)**

Assistant Commissioner of Income Tax-20(1) Lal Baug, Parel, Piramal Chambers, Maharashtra – 400012	Vs.	Manjudevi Chandan Maljain, Flat No. 2201/2202, 22 nd Floor, Ashok Tower, D Wing, De Babasaheb Ambedkar Road, Parel, Maharashtra -400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJPJ5077F		
Appellant	..	Respondent

Appellant by :	Rakesh Joshi
Respondent by :	Ajay Modi

Date of Hearing	15.05.2024
Date of Pronouncement	09.07.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order of ld. CIT(NFAC) of the Income Tax Act, 1961 for A.Y. 2015-16. The revenue has raised the following grounds before us:

“1. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in holding that disallowance of business expenses amounting to Rs.16,79,794/- and considered as income from other sources and the reasons assigned for doing so are wrong and contrary to the facts and the provision of the law.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing appeal filed by the assessee on the basis of order passed by the Hon'ble ITAT and simply stating that the Hon'ble ITAT, Mumbai who has vide order ITA No. 987/Mum/2021 dated 02.09.2022 quashed the revision order u/s. 263 passed by the PCIT.

Further the department has filed an appeal before High Court u/s. 260A against ITAT order vide no. 987/Mum/2021 for AY. 2021 and matter is subjudice.

3. The appellant craves leave to amend or alter or add a new ground which may be necessary.

4. On the facts and in the circumstance of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.

5. It is therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the Assessing Officer may be restored to the above.”

2. In the case of the assessee order u/s 263 of the Act was passed by the ld. Pr. CIT, Mumbai -20 on 12.02.2021 holding that order passed u/s 143(3) dated 16.11.2017 as erroneous and prejudicial to the interest of revenue on account of transactions entered into by the assessee in respect of shares of penny stock of M/s Vishwajyoti Finance Ltd. and the entire sale transactions of Rs.96,92,619/- should have been added as unexplained cash credit u/s 68 of the Act. Consequently, the AO passed order u/s 143(3) r.w.s 263 of the Act on 30.03.2022 and made addition of Rs.16,79,794/- on account of disallowance of expenditure claimed by the assessee as business expenses.

3. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that ITAT vide ITA No. 987/M/2021 dated 02.09.2022 has quashed the said revision order passed by the PCIT u/s 263 of the Act dated 30.03.2022. Therefore, order passed u/s 143(3) r.w.s. 263 of the Act has become ineffective.

4. The ld. D.R. is fair enough to could not controvert this undisputed fact that impugned order has been quashed by the ITAT as referred by the ld. counsel.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed above we have perused the order of ITAT vide ITA No. 987/Mum/2021 dated 02.09.2022. The relevant extract of the decision of ITAT is reproduced as under:

“5. We hold that the ld. AO had made adequate enquiries on the gain on sale of shares of Vishwajyoti Finance Ltd during the course of assessment proceedings, on which fact, there is no dispute before us. As stated supra, the ld. PCIT had not brought any evidence on record as to why the cost of such shares would not be allowable as deduction. The ld. PCIT had merely relied on the assessment order framed for the Asst Year 2014-15. We find that the reliance placed by the ld. DR on the decision of Hon’ble Jurisdictional High Court in the case of Belazio Construction P Ltd vs ITO reported in 111 taxmann.com 45 (Bom HC) is not applicable to the facts of the instant case before us as it was rendered in the context of validity of reopening of assessment u/s 147 of the Act based on information obtained in earlier scrutiny assessment year. We hold that the ld. AO on examination of all the details filed before him, had taken a plausible view on the issue. Hence we have no hesitation in quashing the revision order passed by the ld. PCIT u/s 263 of the Act in the facts and circumstance of the instant case. Accordingly, the grounds raised by the assessee are allowed.”

6. It is evident from the order of the ITAT as elaborated above that impugned order of the ld. Pr. CIT passed u/s 263 has been quashed, therefore, we don’t find any merit in the ground of appeal filed by the revenue. Since, order passed u/s 263 of the Act on the basis of which assessment order was passed by the assessing officer is no more valid, therefore, both the ground of appeal of the revenue are dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 09.07.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai
Date 09.07.2024
Rohit: PS

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.