

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No.4578/Mum/2023
(Assessment Year: 2013-14)

Income Tax Officer-8(1)(1) Office of the Income Tax Officer- 8(1)(1), Room No. 651, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	Sandeep Estate Development Private Limited 23, Chanchal Smruti CHS Ltd., 25, G. D. Ambedkar Marg, Wadala, Mumbai-400 031
PAN/GIR No. AAACS 5329 K		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Shri Parsoon Kabra
Date of Hearing	:	07.05.2024
Date of Pronouncement	:	01.08.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2013-14.

2. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('Id.DR' for short) and on perusal of the materials available on record.

3. The Revenue has raised the following grounds of appeal:

(i) *On the facts and the circumstances of the case and in law, whether the Id. CIT(A) is justified in quashing the assessment order passed u/s. 143(3) r.w.s. 263 of the Income Tax Act, 1961 (Act) pending the appeal filed u/s. 260A of the Act before Hon'ble Bombay High Court against the decision of the Hon'ble ITAT quashing proceedings u/s. 263 of the Act vide order having ITA No. 3637/Mum/2018*

(ii) *On the facts and the circumstances and in law, pending the appeal filed u/s. 260A of the Act before Hon'ble Bombay High Court against the decision of the Hon'ble ITAT quashing proceedings u/s. 263 of the Act vide order having ITA No. 3637/Mum/2018, ld. CIT(A) ought to have deferred the decision in appeal of the assessee.*

4. The Revenue has challenged this appeal on the ground that the ld. CIT(A) has quashed the assessment order pursuant to the decision of the Tribunal holding the section 263 proceeding invalid. Briefly stated the assessee company is engaged in the business of property development and has commenced a SRA project at Dharavi in the name "Kamaraj Nagar SRA CHS Ltd." during the year under consideration. The assessee has filed its return of income dated 30.09.2013, declaring total income at Rs.52,200/-. The case was selected for scrutiny and assessment was completed u/s. 143(3) of the Act dated 28.03.2016, declaring total income at Rs.2,11,35,700/-. The learned Pr. Commissioner of Income Tax ('ld. PCIT' in short), Mumbai had invoked the revisionary powers u/s. 263 of the Act for the reason that the assessment order passed by the A.O. is erroneous and prejudicial to the interest of the Revenue vide order dated 23.03.2018, thereby setting aside the assessment order.

5. The assessee was in appeal before the Tribunal, challenging the order of the ld.PCIT passed u/s. 263 of the Act and the Tribunal vide order dated 25.02.2019 in ITA No. 3637/Mum/2018 had set aside the order of the ld. PCIT and had restored the assessment order passed u/s. 143(3) of the Act.

6. Parallely, the assessee was in appeal before the ld. CIT(A), challenging the consequential assessment order passed u/s. 143(3) r.w.s. 263 of the Act dated 14.12.2018. The ld. CIT(A) vide order dated 02.11.2023 had allowed the appeal filed by the assessee on the ground that since the Tribunal has quashed the order passed u/s. 263 of the Act,

the consequential order passed u/s. 143(3) r.w.s. 263 of the Act would not stand on its own, thereby holding the same to be infructuous.

7. The Revenue is in appeal before us, challenging the order of the Id. CIT(A) on the ground that as the Revenue has challenged the order of the Tribunal quashing the section 263 proceeding, before the Hon'ble Jurisdictional High Court, there has been no finality in the said proceeding and that the Id. CIT(A) has erred in allowing the appeal on the basis of the Tribunal's order in the revisionary proceeding.

8. We have heard the Id. DR and perused the materials available on record. It is observed that the impugned order before us is the basis of the consequential order passed in section 263 proceedings. The Id. CIT(A) has held that since the revisionary order u/s. 263 of the Act has been quashed, the consequential order which is the very edifice of the impugned order u/s. 143(3) r.w.s. 263 of the Act would not survive in the eyes of law, is according to us has rightly been held so by the Id. CIT(A). We do not find any justification in the Revenue's objection, merely on the ground that the order u/s. 263 of the Act is pending before the Hon'ble Jurisdictional High Court for adjudication. We, therefore, find no infirmity in the order of the Id. CIT(A) and hence dismiss the grounds raised by the Revenue.

9. In the result, the appeal filed by the Revenue is dismissed.
Order pronounced in the open court on 01.08.2024.

Sd/-

(B R Baskaran)
Accountant Member

Mumbai; Dated : 01.08.2024

Sd/-

(Kavitha Rajagopal)
Judicial Member

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai