

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
एवं

श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष

Before

**PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 408/KOL/2024
Assessment Year: 2012-13**

ITO, Kolkata.....Appellant

Vs.

***Amritrashi Infra Private Limited.....Respondent
[PAN: AAKCA 2544 E]***

Appearances:

Department represented by: Abhijit Kundu, CIT DR.

Assessee represented by: None.

Date of concluding the hearing : September 30th, 2024

Date of pronouncing the order : October 15th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the Revenue pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 19.01.2024 arising out of the assessment order framed u/s 143(3)/263 of the Act dated 30.12.2019.

1.1. The brief facts of the case of the appellant are that the assessee company filed its return of income on 30.03.2013 for the AY 2012-13 declaring a total income of Rs. 1,634/-. The case of the assessee was selected

for scrutiny and order u/s 143(3) of the Act was passed determining the total income at Rs. 45,66,01,634/-. An order u/s 263 of the Act was passed by setting aside the order passed and *de novo* assessment has been given by the AO. Giving effect to the order u/s 263 of the Act, an order was passed determining the total income at Rs. 12,000/-. The Department initiated proceedings u/s 143(3) of the Act, notice was issued to the assessee. Assessee informed the AO that the matter was pending before the ITAT for adjudication to determine the legality of the order passed u/s 263 of the Act by the Id. Pr. CIT. The AO in consequent to the order passed and by giving effect to the order u/s 263 of the Act, held that share premium and share capital received during the year amounting to Rs. 45,65,00,000/- as treated as unexplained cash credit u/s 68 of the Act and added to the total income of the assessee. The appellant has put the said order before the Id. CIT(A) wherein Id. CIT(A) after considering the legal aspect i.e. order passed u/s 263 of the Act has been quashed by the hon'ble 'B' Bench of ITAT, Kolkata in ITA No. 838/KOL/2019 allow the appeal of the assessee by holding that in view of the order passed by the ITAT, order passed u/s 263 of the Act has become infructuous and hence, any order passed giving effect to the order passed u/s 263 of the Act became *void ab initio*.

Being aggrieved and dissatisfied with the appellate order the Revenue has preferred the present appeal on the ground that Id. CIT(A) has to adjudicate the matter on merit.

2. None appeared on behalf of the assessee. On perusal of the record, it appears to us that the impugned order passed on the basis that order passed u/s 263 of the Act has been declared *null and void* by the ITAT, Kolkata and it is a fact that the Id. CIT(A) in its order has clearly held which is essential to reproduce herein below:

“4.1. Being aggrieved by the order u/s. 263 of the Act dated 14.03.2019 the appellant preferred appeal before Hon'ble ITAT, 'B' Bench, Kolkata. The Hon'ble ITAT vide its order ITA No. 838/Kol/2019 dated 12.08.2020 quashed the order u/s. 263 of the Act dated 14.03.2019. The relevant part of the Hon'ble ITAT's order is placed here under:

“58. However, we note that the Ld. CIT(A) has made a bald statement that the AO’s assessment order attracts Explanation 2(c) u/s. 263 of the Act. However, he failed to spell out in his impugned order how the action of AO while framing the assessment order is not in accordance to any order, direction or instruction issued by the Board under section 119 of the Act. So, the deeming fiction as envisaged in Explanation (2) u/s. 263 of the Act cannot be used to interfere with the order of AO. This action of Ld. Pr. CIT is bad for nonapplication of mind. In the light of the aforesaid discussion and case laws cited supra, we find merit in the appeal filed by the assessee, therefore, we allow the appeal of assessee on the ground that since the Ld. Pr CIT has exercised his revisional jurisdiction u/s. 263 without satisfying the condition precedent as stipulated in section 263 of the Act. Therefore, we hold that the impugned action of the Ld. Pr. CIT is without jurisdiction and, therefore, is null in the eyes of law and consequently it is quashed and since we allowed ground number 2&3 of the original grounds raised by the assessee, the other additional grounds are left open. As discussed the impugned order of Ld Pr CIT is quashed.”

3. Keeping in view the above facts that the order passed u/s 263 of the Act, on that basis the AO has passed order has already been quashed being the subsequent order passed u/s 143(3) of the Act read with Section 263 of the Act, no doubt becomes *ab initio void*. We do not find any merit in this appeal. Accordingly, the appeal is hereby dismissed.

4. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 15th October, 2024.

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 15.10.2024

Bidhan (P.S.)

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Copy of the order forwarded to:

1. **ITO, Kolkata.**
2. **Amritrashi Infra Private Limited, 3/A, Raaj Enclave, 483, Parnashree Pally, PO-Parnashree, Behala, Kolkata, West Bengal, 700060.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata