

2023 SCC OnLine Guj 2809

In the High Court of Gujarat at Ahmedabad  
(BEFORE BIREN VAISHNAV AND BHARGAV D. KARIA, JJ.)

Principal Commissioner of Income Tax 1

*Versus*

Elecon EPC Projects Ltd.

R/Tax Appeal No. 577 of 2023 and R/Tax Appeal No. 578 of 2023

Decided on September 2, 2023

Advocates who appeared in this case:

Mr. Nikunt K. Raval(5558) for the Appellant(s) No. 1  
for the Opponent(s) No. 1

The Order of the Court was delivered by

BIREN VAISHNAV, J.:— Both these appeals, under Section 260A of the Income Tax Act, have been filed by the Revenue challenging the common order dated 24.02.2023 passed in the respective appeals by which the appeals of the Revenue are dismissed.

2. The substantial question of law raised by the Revenue for consideration of this court is as under:

A. Whether on the facts and circumstances of the case and in law, the Tribunal was right in quashing the order u/s. 143(3) r.w.s. 263 of the Act passed by the Assessing Officer, which is based on the order u/s. 263 of the Act which is a valid order and is the lawful application of the provisions of the stated section in view of the factual matrix of the case?

3. Facts in brief indicate that a return of income was filed by the assessee. The assessment was finalized under Section 143(3) of the Act on 22.03.2016 making certain additions. On an appeal having been filed by the assessee, the appellate authority granted relief. On verification of records, the revisional authority having found that the assessment orders were erroneous and prejudicial to the interest of Revenue, the Principal CIT-II, Vadodara vide order dated 27.03.2018 set aside the assessment order with a direction to verify the contentions of the assessee. On verification thereof, the Assessing Officer passed a fresh order of assessment under Section 143 r.w. Section 263 of the Act on 21.12.2018.

4. That order of assessment was carried in appeal before the CIT(A) by the assessee. It was the case of the assessee before the appellate authority that in light of the fact that the assessee's appeal before the ITAT, Ahmedabad wherein Revision proceedings under Section 263 of

the Act was under challenge and that the Tribunal vide order dated 13.07.2022 had set aside the order under Section 263 of the Act of 27.03.2018, the consequential order of assessment under Section 143 r.w. Section 263 of the Act would no longer stand.

5. In the background of these facts, the CIT(A) held as under:

"5.1 I have considered the submission of the assessee carefully. The order under impugned appeal was passed u/s. 143(3) r.w.s. 263 of I.T. Act. As duly submitted by the appellant, that jurisdictional ITAT vide its order dated 13.07.2022 has quashed the proceeding initiated by Pr. CIT u/s. 263 of I.T. Act. Therefore, having considered the above facts since ITAT has quashed the proceeding u/s. 263 of I.T. Act, the consequential order passed u/s. 143(3) r.w.s. 263 of I.T. Act has become infructuous, therefore, the order passed by the AO u/s. 143(3) r.w.s. 263 of I.T. Act which is the subject matter of impugned appeal is hereby treated as infructuous, null and void. As a result, the appeal filed by the assessee is allowed."

6. The Revenue carried these orders to the Income Tax Appellate Tribunal (for short 'the Tribunal'). The Tribunal noticed the following sequence of events:

- (a) That the original assessment orders in both these cases under Section 143(3) of the Act dated 22.03.2016 were set aside by the Principal CIT under Section 263 of the Act on 27.03.2018.
- (b) Those orders were challenged by the assessee before the Tribunal in ITA Nos. 1402 & 1403/Ahd/2018 and the Tribunal vide a common order dated 13.07.2022 quashed the orders under Section 263 of the Act.
- (c) In the meanwhile, on 21.12.2018, the Assessing Officer passed an order under Section 143 r.w. Section 263 of the Act giving effect to the order of 27.03.2018.

7. Since the original order of 27.03.2018 was already quashed and set aside by the Tribunal in ITA Nos. 1402 & 1403/Ahd/2018, the Tribunal observed as under:

"4. Heard both the parties, perused orders of the authorities below, and order of the Tribunal dated 13.7.2022 cited (supra). We find that both appeals of the Revenue do not survive, more so, the Id. DR was unable to point out any new facts or contest the above submissions of the Id. counsel for the assessee before us. Thus, both appeals of the Revenue are dismissed."

8. In light of the order passed by this court in Tax Appeal No. 479 of 2023 on 22.08.2023, wherein this court held as under, no substantial question of law arises.

"6. Perusal of the orders would indicate that in the present appeal, the subject matter is the assessment order passed in consonance

with the directions issued by the PCIT, Surat, in exercise of powers under Section 263 of the Act. That order of the Principal CIT, Surat, has already been set aside by the ITAT itself on 23.08.2021. That being so, the order under Revision being quashed has become final and the consequential order of assessment dated 28.06.2019 would not stand.

7. Pendency of an appeal against the revisional proceedings would not be a ground for this appeal to be kept pending. Though the assessee had brought it to the notice of the Assessing Officer to keep the proceedings in abeyance, the Assessing Officer proceeded to finalize the assessment. The Revenue, did not, before the ITAT also make a request to keep the appeal pending or in abeyance on the ground that this Court was seized of an appeal against the revision proceedings. In absence of this, the Tribunal could not be faulted in holding that once the Section 263 proceedings were set aside by itself, the consequent assessment order giving effect to the revision order is void ab initio. If the Revenue were to succeed in the pending appeal before this Court, the Assessing Officer will have to undertake a fresh exercise in light of the directions therein. On this ground too, no useful purpose can be served to entertain this appeal on the count of the other appeal pending. Hence, no substantial question of law is involved.

8. Accordingly present Tax Appeal is dismissed. No order as to costs."

9. In view of the above, appeals being devoid of merits are accordingly dismissed. No costs.

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