आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.928 and 929/PUN/2015
निर्धारण वर्ष / Assessment Years : 2007-08 and 2008-09

Asst.Commissioner of Income Tax, Circle -14, Pune, 2nd Floor, PMT Commercial Complex, Swargate, Pune – 411 037.	.... अपीलार्थी / Appellant

बनाम v/s

Mundra Steel & Alloy Private Limited, E-15, MIDC, Jejuri Tal Purandar, Dist. Pune.	.... प्रत्यर्थी / Respondent

PAN : AABCM1587A.

अपीलार्थी की ओर से / Appellant by : Shri Hitendra Ninawe.
प्रत्यर्थी की ओर से / Respondent by: Shri Vipin Gujarathi.

सुनवाई की तारीख / Date of Hearing : 19.04.2017		घोषणा की तारीख / Date of Pronouncement: 17.05.2017

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

These two appeals of the Revenue are emanating out of the common order of Commissioner of Income Tax (A) – 7, Pune dated 24.03.2015 for the assessment years 2007-08 and 2008-09.

2. Before us, at the outset Ld.AR submitted that though the appeals filed by the Revenue are for different assessment years but the facts and issues involved in both the appeals are identical except for the assessment year and the amounts involved and therefore the submissions made by him while arguing one appeal would be equally applicable to the other appeal also and therefore, both the appeals can be heard together. The aforesaid submission of the Ld A.R. has not

been objected to by Ld.DR. We therefore for the sake of convenience proceed to dispose of both the appeals by a consolidated order. However, we proceed with narrating the facts for assessment year 2007-08.

3. The relevant facts as culled out from the material on record are as under :-

3.1. Assessee is a company stated to be engaged in the business of manufacturing of MS Ingots. Assessee filed its return of income for A.Y. 2007-08 on 31.10.2007 declaring total loss of Rs.17,57,445/-. The assessment was framed u/s 143(3) of the Act on 31.12.2009 and the total income was determined at Rs.11,04,195/-. Thereafter Ld. CIT vide order passed u/s 263 of the Act set aside the assessment order framed by the AO u/s 143(3) of the Act and directed the AO to re-examine the issue with reference to survey report of DDIT (Taxation), Pune and decide the issue afresh in accordance with the directions contained therein. Pursuant to the directions of Ld.CIT, order was re-framed by AO u/s 143(3) r.w.s 263 vide order dt.07.12.2011 and the total income was determined at Rs.1,25,50,750/-. Aggrieved by the order of AO, assessee filed appeal before Ld. CIT(A) who vide order dt.24.03.2015 noted that since the order passed by Ld. CIT u/s 263 of the Act was set aside by ITAT, Pune vide order dt.20.09.2013, consequential order passed by AO u/s 143(3) r.w.s. 263 of the Act does not survive and therefore requires no adjudication. The relevant observation of Ld. CIT(A) reads as under :-

> "*Since the order passed by the learned CIT-I, Pune u/s 263 of the I.T. Act is set aside by the ITAT, Pune Bench vide order dated 20.09.2013, ITA Nos.1709 & 1710/PN/2011, the assessment orders passed by the Assessing Officer consequent to such orders has lost its base and the same do not survive. Therefore, the present appeal filed by the appellant against such assessment orders have become infructuous and need not be adjudicated by this office.*"

Aggrieved by the order of Ld. CIT(A), Revenue is now in appeal before us and has raised the following grounds :

> *"1. Whether on the facts and circumstances of the case and in law the Hon'ble Commissioner of Income Tax (Appeals) was justified in following the order of ITAT which quashed the order u/s 263 passed by the Commissioner of Income Tax ?*
>
> *2. Whether on the facts and circumstances of the case and in law the Hon'ble Commissioner of Income Tax (Appeal) was justified in not going to the facts and merits of the case as the purchases claimed by the were in fact non-genuine ?*
>
> *3. For the facts and such other reasons as may be urged at the time of hearing, the order of the Ld.Commissioner of Income Tax (Appeals), Pune may be vacated and that of the Assessing Officer be restored."*

4. Before us, at the outset, Ld.A.R. submitted that against the order passed by Ld. CIT u/s 263, the matter was carried by the assessee before the Tribunal. The Tribunal vide order dt.20.09.2013 in ITA No.1709 & 1710/PN/2011 for A.Ys. 2007-08 and 2008-09 had held the powers exercised by Ld. CIT u/s 263 to be bad-in-law. He placed on record the copy of the aforesaid order of the Tribunal. He therefore submitted that in such a situation, no interference of Ld. CIT(A) is called for. He thus supported the order of Ld. CIT(A). Ld.D.R. did not controvert the submissions made by Ld.A.R. but however supported the order of AO.

5. We have heard the rival submissions and perused the material on record. We find that against the order of Ld.CIT that was passed u/s 263 of the Act, assessee had carried the matter before the Tribunal. We find that the Co-ordinate Bench of the Tribunal in ITA No.1709 & 1710/PN/2011 has held that the order passed by the AO u/s 143(3) were not erroneous and therefore the powers exercised by Ld. CIT u/s 263 of the Act setting aside the order passed by AO u/s 143(3) of the Act to be bad-in-law and accordingly quashed the order

of Ld. CIT for A.Ys. 2007-08 and 2008-09. Before us, Revenue has not placed any material on record to demonstrate that the aforesaid order of the Co-ordinate Bench of the Tribunal has been set aside by the Higher Judicial Authorities. In such a situation, we find no reason to interfere with the order of Ld. CIT(A) and hence, **the grounds of the Revenue are dismissed.**

6. **In the result, the appeal of the Revenue for A.Y. 2007-08 is dismissed.**

7. As far as appeal for AY 2008-09 is concerned, since both the parties before us have submitted that the facts of the case for the assessment year 2007-08 and 2008-09 are identical, we, therefore, for the reasons stated herein while disposing of the appeal for A.Y. 2007-08 and for similar reasons, dismiss the grounds of Revenue in A.Y. 2008-09 also. **Thus the grounds of Revenue in A.Y. 2008-09 are dismissed.**

8. **In the result, the appeal of Revenue for A.Y. 2008-09 is dismissed.**

9. **In the result, both the appeals of Revenue are dismissed.**

Order pronounced on the 17th day of May, 2017.

Sd/-	**Sd/-**
(**VIKAS AWASTHY**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 17th day of May, 2017.

Yamini

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-7, Pune
4. CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

सहायक रजिस्ट्रार/ Assistant Registrar,
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.