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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (L.) NO. 20200 OF 2024
WITH
INTERIM APPLICATION NO. 2229 OF 2026

Principal Commissioner of Income Tax 2 Mumbai ...Appellant/Applicant
Versus
The Bombay Dyeing and Manufacturing Co. Ltd. ...Respondent

Ms. Samiksha Kanani for Appellant.
Mr. Madhur Agrawal i/b. Mr. Atul Jasani for Respondent.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.
DATE: 28 AUGUST 2026

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (for short, "**the Act**") has been filed by the Revenue challenging the order dated 08 September 2023 passed by the Income Tax Appellate Tribunal, Bench at Mumbai (for short, "ITAT") in Income Tax Appeal No. 1895/Mum/2023. The assessment year in question is A.Y. 2015-16.

2. By the impugned order, the Tribunal has dismissed the Revenue's appeal directed against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 28 March, 2023, whereby the appeal filed by the respondent/assessee against the assessment order passed on 31 October 2021 by the NFAC, Delhi, under Section 143(3) read with section 263 of the Act, was allowed. By the said order, the learned CIT (Appeals) held that,

once the Tribunal had quashed the order passed under Section 263 of the Act, the consequential order passed by the learned Assessing Officer under Section 143(3) read with Section 263 of the Act dated 31 October 2021 would not survive. Accordingly, the appeal filed by the assessee was allowed and the assessment order was annulled.

3. Learned counsel for the appellant/Revenue submits that as the order dated 13 September 2021 passed by the ITAT, whereby the order dated 18 March 2020 passed by the Principal Commissioner of Income Tax under Section 263 of the Act was quashed, is in fact the subject matter of challenge before this Court in Income Tax Appeal No. 938 of 2024. It is, therefore, her submission that, since the said order passed by the ITAT quashing the order under Section 263 of the Act is under challenge before this Court, the present appeal also needs to be admitted on the questions of law as urged for consideration in the present appeal and be tagged along with Income Tax Appeal No. 938 of 2024.

4. A request has been opposed on behalf of the respondent/assessee. Before we proceed to consider the rival contentions, we may observe that the following questions have been raised for consideration by the Revenue in the present appeal:-

> "A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal has not erred in upholding the order under of the Ld. CIT(A), the FAA holding that the order holding that the order section 143(3) read with section 263 of the Act dated 31.10.2021 does not survive, having been made without having any legally existed valid foundation, ignoring the fact that the revenue's appeal against the order of the Hon'ble Tribunal quashing the order u/s 263 is pending with Hon'ble Bombay High Court in ITXAL 39391/2022 ?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal has not erred in deciding the appeal ignoring the Revenue's appeal pending under section 260A without waiting for the final decision of the Hon'ble Bombay High Court in ITXAL 39391/2022 ?

C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal has not erred in not waiting for the decision in appeal in ITXAL 39391/2022 pending with the Hon'ble Bombay High Court to be adjudicated before deciding up the impugned appeal?

D. Whether on the facts and in the circumstances of the case and in law, the order of Hon'ble Tribunal does not deserve to be set aside, being contrary to law and judicial discipline?"

5. It is clear from a plain reading of the questions of law that the sole basis of the Revenue's contention is the pendency of the income tax appeal (new Income Tax Appeal No. 938 of 2024) before this Court, which arises from the order passed by the ITAT under Section 263 of the Act.

6. Mr. Agrawal, learned counsel for the respondent/assessee, has opposed the present appeal, contending that the observations made by the Tribunal in the impugned order are clear in regard to the legal consequences which would be brought about in view of setting aside of the order under Section 263 of the Act. He submits that once the order dated 18 March 2020 itself had been set aside by the Tribunal, the Assessing Officer had no jurisdiction to pass an order under Section 143(3) read with Section 263 of the Act.

7. In this view of the matter, according to him, the Assessing Officer had no jurisdiction to proceed and pass the assessment order in question. It is his submission that therefore, the Principal Commissioner of Income Tax as also Income Tax Appellate Tribunal have adopted a correct approach of the matter in

rejecting the Department's appeal.

8. We have given due consideration to the rival contentions. We find that, initially, an order was passed under Section 263 of the Act on 18 March 2020. It is not in dispute that, in the proceedings before the ITAT in Income Tax Appeal No. 30/Mum/2021, being the appeal filed by the Department, the Income Tax Appellate Tribunal quashed the order dated 18 March 2020 passed under Section 263 of the Act. Once this was the clear position on record, we are in agreement with Mr. Agrawal that the Assessing Officer could not have proceeded to pass an assessment order under Section 143(3) read with Section 263 of the Act, for the reason that the order dated 18 March 2020 passed under Section 263 of the Act itself was not in existence being quashed by the Tribunal.

9. We are also of the opinion that the assessee was correct in its approach in assailing the said order before the Commissioner of Income Tax (Appeals), who passed an order under Section 250 of the Act dated 28 March 2023, allowing the assessee's appeal on the ground that the Assessing Officer ought not to have proceeded to pass the assessment order under Section 143(3) read with Section 263 of the Act. Aggrieved by the said order, the Department preferred an appeal before the Tribunal, which, vide the impugned order, also correctly rejected the Department's appeal, observing as follows:-

> "08. After hearing the parties, we find no merit in the appeal of the learned Assessing Officer since the assessment order which was passed pursuant to order of the learned PCIT under Section 263 of the Act has already been quashed, therefore, subsequent order made on that basis cannot survive. It may be true that Revenue might have not accepted the decision of

> the co-ordinate Bench and has challenged it before the Hon'ble High Court. But that cannot go into the way of disposal of this appeal. Merely, because the Revenue has not accepted the decision of the co-ordinate Bench, without pointing out any material on record or submitting that Assessment order is sustainable, we are not inclined to upset the order of Id. CIT (A). We find no infirmity with the order of the learned CIT (A) in allowing the appeal of the assessee."

10. Thus, merely because the Revenue is in appeal against the order dated 13 September 2021 passed by the Tribunal, whereby the order dated 18 March 2020 passed by the PCIT under Section 263 of the Act was quashed and set aside, would not bring about a situation where, in the absence of any subsisting order under Section 263 of the Act, the Assessing Officer would nonetheless have jurisdiction to proceed to pass the assessment order dated 31 October 2021.

11. For the aforesaid reasons, we find that the appeal does not give rise to any substantial question of law. The appeal is, accordingly, dismissed. We, however, clarify that, in the event the Revenue succeeds in Income Tax Appeal No. 938 of 2024, the legal consequences would follow and a fresh assessment order in that regard would be required to be passed in accordance with law. All contentions of the parties in the pending appeal are expressly kept open.

12. No costs.

(DR. NEELA GOKHALE, J.) **(G. S. KULKARNI, J.)**