



**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.410/Ahd/2025
Assessment Year: 2015-16**

Deputy Commissioner of Income Tax, Circle – 3(1)(1), Ahmedabad Room No.506, 5 th Floor, Ayakar Bhavan Vejalpur, Ahmedabad – 380 015 (Appellant)	Vs.	Rayon Reality Private Ltd. Nr. K S Lokhandawala Compound, O/S Dariyapur Darwaja, Dariapur, Ahmedabad – 380016. [PAN – AAECK1876D] (Respondent)
Assessee by	Shri Kushal Fofaria, AR	
Revenue by	Shri Rignesh das, CIT-DR	
Date of Hearing	12.06.2025	
Date of Pronouncement	18.06.2025	

ORDER

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

This appeal is filed by the Revenue against the order of National Faceless Appeal Centre, Delhi (in short ‘the CIT(A)’) dated 10.12.2024 for the Assessment Year (A.Y.) 2015-16.

2. The brief facts of the case are that the original assessment for the A.Y. 2015-16 was completed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) on 24.11.2017 at total income of Rs. NIL, as per return. Thereafter, the Ld. PCIT Ahmedabad-3, vide order under Section 263 of the Act dated 28.03.2021, had set aside the assessment order with a direction to make requisite enquiries and proper verification in respect of the issues as mentioned in his order and, thereafter, complete the assessment *de novo*. In pursuance to the

direction of Ld. PCIT, the Assessing Officer (AO) had completed the assessment afresh under Section 143(3) read with Section 263 of the Act on 29.03.2022 at a total income of Rs.7,87,38,346/-.

3. The assessee had filed an appeal with the First Appellate Authority against this assessment order which was decided by the Ld. CIT(A) vide the impugned order and appeal of the assessee was allowed.

4. Now the Revenue is in second appeal before us. The following grounds have been taken in this appeal.

- (a) *The Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.7,87,38,346/- made by the AO on account of disallowance of excess depreciation on Wind Mill by stating that order of PCIT u/s 263 was quashed by Hon'ble ITAT and therefore consequential order u/s 143(3) r.w.s. 263 do not survive, without deciding the appeal on merits and not appreciating that the revenue had already filed an appeal before the Hon'ble high Court against order of Hon'ble ITAT quashing order u/s 263 and the same is pending before the Hon'ble High Court vide TA No. 660 of 2024.*
- (b) *The appellant craves leave to add, alter and/or to amend all or any the ground before the final hearing of the appeal.*

5. Shri Rignesh Das, Ld. CIT-DR appearing for the Revenue submitted that the Ld. CIT(A) had allowed the relief to the assessee for the reason that the order passed by the Ld. PCIT -3, Ahmedabad under Section 263 of the Act was set side by the Id. ITAT in ITA No.123/Ahd/2021 dated 25.01.2024. As a result, the Ld. CIT(A) had held that the consequential assessment order passed under Section 143(3) read with Section 263 of the Act has become null and void and accordingly he had allowed the relief to the assessee. The Ld. CIT-DR submitted that the Department has challenged the order of the ITAT and the matter was pending for adjudication before the Hon'ble High Court. He further submitted that the

Ld. CIT(A) had allowed relief to the assessee on technical ground only without examining the merit of the addition as made by the AO.

6. Per contra, Shri Kushal Fofaria, Ld. AR of the assessee strongly supported the order of the Ld. CIT(A). He submitted that when the order under Section 263 of the Act dated 28.03.2021 was quashed by the Ld. ITAT, the consequential assessment order does not survive. Accordingly, the Ld. CIT(A) had rightly allowed the relief to the assessee.

7. We have considered the rival submissions. The Ld. CIT(A) has given a finding that the Co-ordinate Bench of this Tribunal vide order in ITA No.123/Ahd/2021 dated 25.01.2024 had quashed the order u/s 263 of the Act dated 28.03.2021 passed by the PCIT, holding that the twin conditions for invoking revisionary power u/s 263 of the act were not satisfied. This fact has not been disputed by the Revenue. When the order under Section 263 stands set aside, the assessment order passed in consequence to the said order cannot survive. The Ld. CIT(A) had rightly held the consequential assessment order passed under Section 143(3) read with Section 263 of the Act dated 29.03.2022 was null and void. Further, when the order of the AO was held as void, there was no necessity for the Ld. CIT(A) to adjudicate the addition as made by the AO in the assessment order on merits. Therefore, the Ld. CIT(A) had rightly cancelled the assessment order passed under Section 143(3) read with Section 263 of the Act. We do not find anything wrong with the decision of the Ld. CIT(A). Merely because the Department had challenged the order of ITAT before the Hon'ble High Court, it does not change the legal position. No stay was granted by the Hon'ble High Court against the order of the Tribunal setting aside the order under Section 263 of the Act passed by the PCIT. In case the Hon'ble High Court decides the matter in favour

of the Revenue, the Department will be free to approach this Tribunal for restoration of the present appeal.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 18 th June, 2025.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Ahmedabad, the 18th June, 2025

*PBN/**

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

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By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*