IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1805 OF 2017

The Principal Commissioner of
Income Tax-(Central)-4 .. Appellant
v/s.
Lotus Energy (India) Ltd. .. Respondent

....

Mr. Suresh Kumar, for the Appellant.

Mr. Dharan Gandhi, a/w. Ms. Aanchal Vyas, for the Respondent.

....

CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 3rd AUGUST 2023

P.C:-

The Revenue is in appeal filed under Section 260A of the Income Tax Act, 1961 (for short "I.T. Act") against the judgment and order dated 14th December 2016, passed by the Income Tax Appellate Tribunal (Tribunal) in ITA No.4355/Mum/2011 whereby the Tribunal has quashed the order passed under Section 263 of the I.T. Act by the Commissioner of Income Tax, in allowing the Respondent/ Assessee's appeal.

2. The Assessment Year in question is A.Y. 2006-2007.

3. We have taken up the appeal for final hearing on the earlier occasion. Today, learned Counsel for the Assessee has brought to our notice an order dated 20th December 2016 passed by the Tribunal on the Assessee's appeal in ITA No.2708/Mum/2014, which pertained to the assessment year 2006-2007. The said appeal before the Tribunal was filed by the Assessee arising from an order passed by the Commissioner of Income Tax (Appeals) dated 21st January 2014, arising from an assessment order dated 30th August 2011 for the said assessment year, passed under Section 143(3) read with Section 263 of the I.T. Act. The Tribunal, in para 3 of the said order, has noted its order dated 14th December 2016, namely, the order as impugned in the present appeal whereby the Tribunal had set aside the order passed by the CIT under Section 263 of the I.T. Act. In this view of the matter, in para 4 of the said order, the Tribunal has recorded the following contentions of the Assessee:

> *"4. In view of the above, the learned Counsel for the assessee stated that the consequential assessment framed u/s 143(3) r.w.s. 263 of the Act dated 30-08-2011 will not survive and accordingly, the order of CIT(A) will not survive. We find from the above that the Tribunal has quashed the revision order of CIT-8, Mumbai dated 30-03-2011 and once the basic order is quashed, the consequential orders will not survive. Accordingly, we set aside the orders of the lower authorities and allow the appeal of the assessee.*
>
> *5. In the result, the appeal of the assessee is allowed."*

4. It is, thus, clearly seen that on the basis of the orders passed

by the Tribunal on the proceedings, which had arisen from the orders passed by the Commissioner of Income Tax under Section 263 of the Act the said appeal of the Assessee was allowed. It needs to be noted that the Revenue had assailed the order dated 20th December 2016 passed by the Tribunal on the Assessee's appeal (ITA No.2708/Mum/2014) before this Court in Income Tax Appeal No.299 of 2018. A Co-ordinate Bench of this Court, by an order dated 26th September 2019, permitted the Revenue to withdraw the said appeal considering the tax effect involved. The said order passed by this Court reads thus:

> *" In these Appeals the learned Counsel appearing for the Appellants on instructions seek to withdraw the Appeals. This for the reason that the tax effect involved in all these Appeals is less than the threshold limit of rupees one crore provided in the Central Board for Direct Taxes (CBDT) Circular No.17 of 2019 dated 8 August 2019.*
>
> *2. In the above view, all these appeals are disposed of as withdrawn.*
>
> *3. Refund of Court fees as per Rules."*

5. It is on the above backdrop, the present appeal is before us. Learned Counsel for the Assessee would submit that, in the above circumstances, the adjudication of the present appeal itself is rendered academic inasmuch as the effect of the order passed by the CIT exercising powers under Section 263 of the I.T. Act had percolated in an assessment order being passed by the Assessing Officer under Section 143(3) read with Section 263 of the I.T. Act, being order dated

30th March 2011. His submission is that the proceedings under the said order itself had ended in the Assessee's appeal being allowed and the challenge to the same being withdrawn by the Revenue, adjudication of the present proceedings, which arise from the proceedings under Section 263, is rendered completely academic and inconsequential.

6. Mr. Suresh Kumar, learned Counsel for the Appellant Revenue, will not dispute as to what has ultimately happened in the Revenue's appeal arising from the orders passed under Section 143(3). He, therefore, would not dispute on the contention as urged on behalf of the Assessee that the proceedings of the present appeal are rendered academic. The appeal is, accordingly, disposed of as infructuous, in view of the antecedents as noted by us.

7. Appeal stands disposed of. No costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**