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

INCOME TAX APPEAL NO. 247 OF 2018

Commissioner of Income Tax-(Exemption), Pune
3rd Floor, "C" wing, Room No.322,
PMT Building, Shankar Sheth Road,
Swargate, Pune-411 037 ... Appellant

Versus

Maharashtra Cricket Association,
5th Floor, Amar Avinash Corporate City,
10, Bund Garden Road, Pune – 411 001.
PAN : AAATM2192D
A.Y. 2009-10 ...Respondent

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Mr.Suresh Kumar with Mr.Akhileshwar Sharma, Advocate for appellant.

Mr.Mihir Naniwadekar with Ms.Rucha Vaidya and Mr.Shashwat Rai i/b Keystone Partners, Advocate for respondents.

CORAM : DHIRAJ SINGH THAKUR &
KAMAL KHATA, JJ.

DATE : 5th JANUARY, 2023.

<u>P C :</u>

1. The present appeal has been preferred under section 260A of the Income Tax Act, 1961 ('the Act') against the order dated 16th February 2017 passed by the Income Tax Appellate Tribunal, Pune Bench "B", Pune ('the Tribunal') in Income Tax Appeal

No.453/PUN/2015 for the Assessment Year 2009-10.

2. The following question of law has been framed for our consideration :

> Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that since the order u/s. 263 itself has been quashed the consequential order passed by the Assessing Officer u/s.143(3) r.w.s.263 of the Act does not survive, without appreciating the fact that appeal filed by the department against the orders made u/s.12AA and 263 of the Act are still pending before the High Court?

3. Briefly stated the material facts are as under :

3.1 The assessee is a Society, who filed its return of income for the assessment year 2009-10 declaring total income at Rs.NIL. The assessment was completed under section 143(3) of the Act and an assessment order was passed on 30th December 2011. The said order came to be set aside by the Commissioner of Income Tax, in exercise of its powers under section 263 of the Act.

3.2 The Assessing Officer was directed to pass a fresh order of assessment in accordance with the directions contained in the said order. Pursuant to the directions so issued, the Assessing Officer, in terms of section 143(3) read with section 263 of the Act, framed assessment vide order dated 27th February 2014.

3.3 An appeal was preferred by the assessee against the order dated 27th February 2014, before the Commissioner of Income Tax (Appeals)-1, Pune, who, vide order dated 31st October 2014, set aside the order, dated 27th February 2014, on the ground that the order passed by CIT-I, Pune, dated 30th July 2012 under section 263 of the Act had been set aside by the ITAT, Pune.

4. An appeal was preferred against the order dated 31st October 2014 before the Income Tax Appellate Tribunal, Pune Bench "B", Pune, who, vide order dated 16th February 2017, upheld the view expressed by the CIT(A)-1 by holding that the Revenue had not placed any material on record to demonstrate that the order of the Tribunal setting aside the order under section 263 of the Act passed by the CIT(A) has been set aside by a higher Judicial Forum. The present appeal has been preferred challenging the order, dated 16th February 2017 on the ground that an appeal was, in fact, filed against the order dated 16th February 2017 which was pending before the High Court, and therefore, it was not appropriate for the Tribunal to have allowed the appeal.

5. We are, however, informed that an Appeal being Income Tax Appeal No. 748 of 2015 (The Pr. Commissioner of Income Tax (Exemptions) Vs. Maharashtra Cricket Association) filed by the Revenue challenging the order dated 28th August 2015 was pending before the High Court. However, learned counsel for the respondent, Mr.Naniwadekar submits that the said appeal has since been rejected in terms of Rule 986 of the Bombay High Court (Original Side) Rules vide order dated 2nd June 2015 and therefore, no question of law arises.

6. Considering the aforementioned facts, we do not find any reason to interfere with the view expressed by the Tribunal. The appeal is without any merit, and is accordingly dismissed.

[KAMAL KHATA, J.] **[DHIRAJ SINGH THAKUR, J.]**