OD 2

ORDER SHEET
ITAT/5/2026
IA NO: GA/1/2026, GA/2/2026
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
AMRITRASHI INFRA PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
AND
The Hon'ble JUSTICE UDAY KUMAR
Date: 20th March, 2026.

Appearance:
Mr. Amit Sharma, Adv.
Mr. Abhishek Kr. Agrahari, Adv.
. . .for the appellant.

Mr. Subhas Agarwal, Adv.
Mr. Amit Shaw, Adv.
Ms. Sangita Das, Adv.
. . .for the respondent.

The Court: Heard learned counsel appearing for either of the parties.

There is a delay of 248 days in filing the appeal. We are satisfied with the explanation offered for not preferring the appeal within time. Therefore, the delay is condoned. The application being GA/1/2026 is allowed.

The following substantial questions of law have been suggested by the appellant.

"(i) Whether the Learned Tribunal has substantially erred in law in upholding the order of the Commissioner of Income Tax (Appeals) whereby the order under Section 143(3)/263 of the Income Tax Act, 1961 dated 30.12.2019 on the premise that the revisionary order under Section 263 of the Income Tax Act, 1961 on the basis of which was assessment order was passed, was already quashed by the Learned Tribunal?

(ii) Whether in the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the order under Section 263 of the Income Tax Act, 1961 vide order dated 12.08.2020 in ITAT No.838/Kol/2019 when it is apparent from the records that the earlier assessment order dated 07.12.2016 is erroneous and prejudicial to the interest of the Revenue inasmuch as the same has been passed by the assessing officer without making due and proper enquiry?

(iii) Whether the Learned Tribunal has substantially erred in law in holding vide order dated 12.08.2020 in ITAT No.838/Kol/2019 that revisionary powers under Section 263 of the Income Tax Act, 1961 had been wrongly exercised by the Learned PCIT, in the instant case, while ignoring the provision of the Explanation - 2 to the Section 263 of the Income Tax Act, 1961?

Perused the impugned order of the Tribunal dated 15th October, 2024. Learned Tribunal's order dated 15th October, 2024 read as under:

"Being aggrieved and dissatisfied with the appellate order the Revenue has preferred the present appeal on the ground that ld. CIT(A) has to adjudicate the matter on merit.

2. None appeared on behalf of the assessee. On perusal of the record, it appears to us that the impugned order passed on the basis that order passed u/s 263 of the Act has been declared *null and void* by the ITAT, Kolkata and it is a fact that the ld. CIT(A) in its order has clearly held which is essential to reproduce herein below:

> "4.1. Being aggrieved by the order u/s. 263 of the Act dated 14.03.2019 the appellant preferred appeal before Hon'ble ITAT, 'B' Bench, Kolkata. The Hon'ble ITAT vide its order ITA No. 838/Kol/2019 dated 12.08.2020 quashed the order u/s. 263 of the Act dated 14.03.2019. The relevant part of the Hon'ble ITAT's order is placed here under:
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> "58. However, we note that the Ld. CIT(A) has made a bald statement that the AO's assessment order attracts Explanation 2(c) u/s. 263 of the Act. However, he failed to spell out in his impugned order how the action of AO while framing the assessment order is not in accordance to any order, direction or instruction issued by the Board under section 119 of the Act. So, the deeming fiction as envisaged in Explanation (2) u/s. 263 of the Act cannot be used to interfere with the order of AO. This action of Ld. Pr. CIT is bad for nonapplication of

mind. In the light of the aforesaid discussion and case laws cited supra, we find merit in the appeal filed by the assessee, therefore, we allow the appeal of assessee on the ground that since the Ld. Pr CIT has exercised his revisional jurisdiction u/s. 263 without satisfying the condition precedent as stipulated in section 263 of the Act. Therefore, we hold that the impugned action of the Ld. Pr. CIT is without jurisdiction and, therefore, is null in the eyes of law and consequently it is quashed and since we allowed ground number 2 & 3 of the original grounds raised by the assessee, the other additional grounds are left open. As discussed the impugned order of Ld. Pr CIT is quashed."

3. Keeping in view the above facts that the order passed u/s 263 of the Act, on that basis the AO has passed order has already been quashed being the subsequent order passed u/s 143(3) of the Act read with Section 263 of the Act, no doubt becomes *ab initio void*. We do not find any merit in this appeal. Accordingly, the appeal is hereby dismissed.

4. In the result, the appeal filed by the Revenue is dismissed."

As the order passed under Section 263 of the Act, on the basis of which the AO has passed order has already been quashed being the subsequent order passed under Section 143(3) of the Act read with 263 of the Act, the whole proceedings have become void ab initio.

As such, no substantial questions of law arise from the impugned order of the Tribunal and the appeal and the connected application (GA/2/2026) are dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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