

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "A", KOLKATA**

**BEFORE SH. P.M.JAGTAP, VICE PRESIDENT &  
SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER**

**ITA No.1064/Kol/2017  
(ASSESSMENT YEAR-2012-13)**

Anandlok, DK-7/3, Salt Lake City, Kolkata-700091. PAN-AAATA5320P	<b>vs</b>	CIT(Exem.), 10B, Middleton Row, 6 <sup>th</sup> Floor, Kolkata-700071.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	Sh. Rajeeva Kumar, Adv.	
<b>Respondent by</b>	Sh. A.K.Nayak, CIT DR	
<b>Date of Hearing</b>	14.03.2019	
<b>Date of Pronouncement</b>	08.05.2019	

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

This appeal filed by the assessee against the order dated 14.03.2017 passed by CIT(E), Kolkata for AY 2012-13.

2. The only issue is to be decided as to whether CIT is justified in exercising his jurisdiction u/s 263 of the Income Tax Act, 1961 (in short "Act") in the facts and circumstances of the case.

3. According to CIT, the assessee claimed an expenditure under social welfare activities and the details were furnished only on 14.03.2015 at the fag end of the time barring period compelled the AO to pass order without examining the genuineness of expenses claimed under the above said head to the tune of Rs.6,27,58,553/-. Further an extensive enquiry was conducted regarding similar expenses during the course of subsequent assessment proceedings relating to AY 2014-15, wherein it was found that the said social welfare activities were bogus. The said extensive enquiry reached to the beneficiaries by issuing summons u/s 131 of the Act and even enquiries were made with the district administration of flood affected area by recording of statements of doctors. Taking into consideration all the

above, the CIT held that the claim of having incurring expenditure for social welfare activities by the assessee is bogus. A notice seeking justification was issued u/s 263 of the Act to the assessee. In explanation, it is noted that the assessee contended that the AO made sufficient enquiry regarding social welfare expenses on the basis of material produced by the assessee during the course of assessment proceedings u/s 147 of the Act and claimed the order of AO is neither erroneous nor pre-judicial to the interest of the Revenue. Not satisfied with the explanation submitted by the assessee, the CIT held the assessment order is erroneous and pre-judicial to the interest of the Revenue and directed the AO to examine the genuineness of the expenditure claimed under head social welfare expenses and compute the income thereon on the basis of fines.

4. Heard both parties and perused material available on record. Before us, it was submitted that all the details relating to the claim of expenditure under head social welfare activities were submitted on 14.03.2015 and the assessment order was passed on 26.03.2015. The Ld.AR argued that the AO conducted enquiry and his order cannot be held to be erroneous and prejudicial to the interest of the Revenue. The Ld.DR relied on the order of CIT and supported the reasons given by the CIT in his impugned order and placed reliance in the decision of *Gee Vee Enterprises vs ACIT [1975] 99 ITR 375 (Del.)* and argued the CIT has power u/s 263 even when enquiry conducted by the AO is inadequate which warrants initiation of 263 proceedings. On perusal of the assessment order dated.26.03.2015, we find no reference or discussion whatsoever regarding verification or examination of details of genuineness of social welfare activities. Therefore, we prima facie satisfied that the AO did not examine the details of such claim as observed by the CIT regarding the genuineness of such expenses. We are of the view that the AO ought to have made proper and adequate enquiries with regard to the aspects set out in the 263 proceedings. The enquiry with regard to the claim of computation of social welfare activities by the assessee during the course of previous year relating to assessment year

under consideration was inadequate and in the light of the decision of Co-ordinate Bench of this Tribunal in the case of *Subhlakshmi Vanijya Pvt.Ltd. 124 TTR 249 [Kol. Trib.]*. In our view, there has been failure on the part of the AO to make proper and adequate enquiries on the issue set out by the CIT in the 263 proceedings. The circumstances pointed out by the CIT and supported by the Ld.DR before us clearly warrant an enquiry by the AO. There has been a failure on the part of the AO to make necessary and proper enquiries before concluding the assessment. Further, we find that the Hon'ble High Court of Calcutta in the case of *Maithan International 375 ITR 128 (Cal.)* taken a view that jurisdiction u/s 263 of the Act to be invoked when the AO fails to make an enquiry which he ought to have made in the given facts and circumstances of the case. We, therefore, unable to accept the arguments of the Ld.AR for the assessee in this regard.

5. As we have already mentioned, at this stage that we need not go into the merits of the issues raised by the CIT in the 263 proceedings because in the impugned order the AO has only been directed to examine the issues on merits after affording the assessee opportunity of being heard. In the given circumstances, we are of the view that the assessee is at liberty to put forth of its claims on the merits of the issues before the AO in the assessment proceedings to be completed pursuant to the impugned order of CIT. In view of the aforesaid discussion, we feel appropriate to uphold the order of CIT u/s 263 of the Act and dismiss the appeal of the assessee.

6. Further, We are of the view that, exercise of Jurisdiction u/s 263 of the Act was fully justified. The decision of the Hon'ble High Court of Calcutta in the case of *CIT Vs. Maithan International 375 ITR 123 (Cal)*, dealt with this aspect of lack of enquiry with even more stringent conditions. The assessee in that case obtained loans aggregating to Rs.1.60 crore from six private limited companies ranging between Rs.7 lac to Rs.1.10 crore. These companies have filed their returns with nominal income. The AO mentioned in the assessment order that the Inspector was deputed to verify the fresh

loans received during the years, who verified such loans and gave a positive report. Keeping such report on record, the AO accepted the genuineness of the transactions. The CIT invoked the powers u/s 263 in which it was observed that the report given by the Inspector was very elementary and simply mentioned that he had verified bank passbooks, profit & loss account and balance sheets of these companies. In none of the reports he had commented on the issue of credit worthiness of the parties. The CIT opined that the AO was required to make proper investigation to determine whether the loan was really made by the third party or it had come out of the resources of the assessee himself. When the matter came up before the Tribunal, the order u/s 263 was set aside by observing that the AO did conduct enquiry and: "if there is an enquiry, even inadequate, that would by itself give occasion to the ld. CIT to pass order u/s 263 of the Act." Setting aside the order passed by the Tribunal, the Hon'ble jurisdictional High Court has laid down that : "CIT had reasons to hold that credit worthiness of the alleged lenders was not enquired into." It further went on to hold that a mere examination of the bank passbook, profit & loss account and balance sheet is not enough. When the requisite enquiry was not made, the Hon'ble High Court held that the order was to be considered as erroneous and prejudicial to the interests of the Revenue. It set aside the view of the Tribunal on inadequate enquiry by holding that: "If the relevant enquiry was not made, it may in appropriate cases amount to no enquiry and may also be a case of non-application of mind." It further observed that the question of inadequate enquiry should be understood in its proper perspective and: "if it can be shown that the inadequate enquiry led the AO or may have led into assumption of incorrect facts, that could make the order erroneous and prejudicial to the interests of the revenue." Setting a bad trend is also prejudicial to the Revenue.

7. In view of the same, we find no irregularity in the impugned order passed by the CIT and it does not require any interference from this

Tribunal, accordingly, the appeal filed by the Assessee fails and therefore, grounds raised thereon in support of the appeal are dismissed.

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

**Order pronounced in the open court on 08.05.2019.**

**Sd/-  
(P.M.JAGTAP)  
VICE PRESIDENT**

**Sd/-  
(S.S.VISWANETHRA RAVI)  
JUDICIAL MEMBER**

*Date:-08.05.2019  
\*Amit Kumar\**

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1. Appellant- Anandlok, DK-7/3, Salt Lake City, Kolkata-700091.
2. Respondent- CIT(Exem.), 10B, Middleton Row, 6<sup>th</sup> Floor, Kolkata-700071.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

**AR/H.O.O  
ITAT, KOLKATA**