

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No-3187/Del/2015  
(Assessment Year: 2010-11)**

<b>National Association of Software and Services Companies (‘NASSCOM’) international Youth Centre, 2<sup>nd</sup> Floor, Pt. Uma Shankar Dixit Marg, Chanakyapuri New Delhi AAATN2595Q</b>	<b>vs</b>	<b>CIT (Exemptions) 26<sup>th</sup> Floor, E-2, Block, Pratyaksh Kar Bhawan, Dr. S.P. Mukherjee Civic Centre New Delhi</b>
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Revenue by Sh. Gaurav Jain, Advocate &  
Sh. Deepesh Jain, Advocate  
Assessee by Sh. Nidhi Srivastava, CIT, DR

Date of Hearing 14.05.2019  
Date of Pronouncement 17.05.2019

**ORDER**

**PER K. NARSIMHA CHARY, J.M.**

Challenging the order dated 30/03/2015 passed by the Commissioner of Income Tax (Exemptions) (“CIT(E)”) u/s 263 of the Income Tax Act (“the Act”). The assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a registered society under the Societies Registration Act, 1860 and has been the prayer premier trade body and the Chamber of Commerce of the IT/BPO Industries in India. The main object of the assessee society is to drive of technology of services market by taking up the role of strategic advisor to the Information Technology Industry. It was set up under 1988 and a nonprofit organization.

3. For the Assessment Year 2010-11, the assessee filed the return on 15/10/2010 declaring 'NIL' income. They have not claimed any exemption of income u/s 11 of the IT Act, though registered u/s 12A of the Act. The assessee, however, claimed some part of its income to the tune of Rs. 8,32,29,451/- as exempt on the principal of mutuality which was denied by the Assessing Officer, who by order dated 18/3/2013 u/s 143(3) of the Act assessed the income at Rs.12,14,81,569/- by denying the benefit of mutuality and other disallowances on account of donations made.

4. The Commissioner of CIT(E), on a perusal of the assessment record of the assessee, found that the assessee had not incurred the Global Trade Development (GTD) activity expenses in accordance with the aims and objects for which it was established and they not proper enquiry made by the Ld. Assessing Officer on that aspect. Ld.CIT(A), therefore, after hearing the assessee, recorded a finding that the assessment order was erroneous inasmuch as it is a prejudicial to the interest of the Revenue for

non-consideration of the allowability of the GTD expenses after due verification. Ld.CIT(A) further observed that though the Assessing Officer had denied the assessee's claim of exemption of income to the tune of Rs.8,32,29,451/- on account of principal of mutuality, he failed to give effect thereto in the computation of income and erroneously computed the sum at Rs.12,14,81,569/- as against Rs.14,67,57,376/-. On these two grounds Ld.CIT(A) set aside the matter to the file of the Ld. Assessing Officer to exempt the issue of admissibility of GTD expenses afresh and the compute the income correctly.

5. The assessee is, therefore, aggrieved of the impugned order and challenged the same before us in this appeal stating that the Assessing Officer had already examined the issue relating to the allowability of GTD expenses and computed the assessed income of the assessee correctly. It is stated that the assessee incurred such the expenditure in furtherance of the aims and object of the assessee society and therefore, it cannot be said that allowing such an expenditure was unsustainable in law. The Ld. AR submitted that if for any reason the Ld.CIT(A) felt that there was no or inadequate enquiry, the Ld.CIT(A) should have taken it to the logical conclusion by adopting an independent enquiry by herself and recorded a finding of fact that the assessment was unsustainable or the order of the assessment was erroneous

insofar as it is prejudicial to the interest of the revenue by demonstrating the same with cogent reasons.

6. Per contra, it is the argument of the Ld. DR that it has been observed that Ld. CIT(E) to rely on the material as it stands not only at the time when the order in question was passed by the Id. Assessing Officer, but also the record as it stands at the time of examination of Ld. CIT(E) in this matter. It is clear from the assessment order itself that when the Ld. Assessing Officer raised a query seeking details for the expenses incurred out of India, but the assessee did not furnish such a details and on the other hand stated that since they are not availing any benefit of exemption u/s 11 of the Act, and their income has been treated as business income as per Section 28(iii) of the Act, such details were irrelevant.

7. We have gone through the record in the light of the submissions made on either side. There is no dispute that the aims and object of the assessee society as are to be found from the Memorandum of Association incorporated at Page No. 56 to 74 of the paper book, vide Clause 3(7 and 24) include the promotion of expert of Indian Software & Associated Services and also sponsoring on its own and or arrange through the agencies of the Government visits of delegations of members to countries to promote the interests of the Indian Industry in general and

software industry in particular in the areas such as market surveys, exports, joint ventures and collaborations, engineering consultancy studies and all other allied matters. Further, it was submitted before the Ld. CIT(E) that the nature of the GTD expenses as that it is primarily in the nature of the fees etc. being paid to various consulting (Public affair) firms of international repute, retained by the assessee to highlight the value proposition with key policy makers to maintain & enhance the business image of India and establishment of the "India" brand to facilitate opening up of international markets and to provide a level playing ground to India companies competing for international business, with large multinationals in the Indian market place.

8. Further, purpose of such expenditure and the benefits derivable there from is aimed at benefitting L.C.T & Business Process Management (BPM) industry as a whole, which not denotes the member fraternity of the assessee, but also the industry at large in India. The monetary & in principal support to GTD activity by Government of India clearly establish the utility of such expenses for the India I.T Industry as a whole.

9. It is further noteworthy that for the years early to the Assessment Year 2010-11 and subsequent to 2012-13 such an expense was allowed without raising any query. The assessment order for the Assessment Year 2012-13 was passed on 9/2/2015

and it was available before the Ld. CIT(E) when she passed the order u/s 263 for the Assessment Year 2010-11. So also, when the Assessment Orders for the Assessment Years 2013-14, 2014-15 and 2015-16 were passed on 8/2/2016, 23/3/2016 & 15/3/2017, this order dated 30/03/2015 u/s 263 was very much available before the Ld. Assessing Officer. In spite of this fact, record does not show that any consistency is followed in respect of the Assessment Years prior to the Assessment Year 2010-11 and subsequent to 2012-13.

10. On a perusal of the objects of the society in the light of the nature of GTD Expenses and the nature and purpose of such expenses, it is difficult to say how allowance of such expenses was unsustainable.

11. Further, according to the Ld. CIT(E), Ld. A.O failed to make any enquiries with respect to the admissibility of the GTP activity expenses. However, the impugned order does not show any independent enquiry undertaken by the Ld. CIT(E). The assessee placed reliance on the decisions of the Hon'ble Jurisdictional High Court in the case of ITO Vs. D.G. Housing Projects Ltd and also 2012 343 ITR 329 Delhi and PCIT Vs. Delhi Airport Metro Express Pvt. Ltd. ITA No. 705/Del/2017 dated 5/9/2017 for the principle that in case the CIT(A) is of the opinion that this is a case of no enquiry or inadequate enquiry, in order to say that the order of assessment was erroneous, it is sine qua non for the Ld. CIT(E) to conduct

necessary enquiry to reach the conclusion that the order was erroneous.

12. It is further submitted on behalf of the assessee that the assessee receives Government grant and subsidies and the unfunded amount have been carried forward to the subsequent years as could be seen from the notes to accounts at Page No 14 of the paper book. It could be seen from the income and expenditure amount for the year ended March 31<sup>st</sup>, 2010, the GTD expenses were shown at Rs. 274,56,234/- was declared and it is so inconsonance with the practice for earlier years.

13. In D.G Housing Projects Ltd. (Supra), the Hon'ble Jurisdictional High Court held as under:-

*“16. Thus, in cases of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under [Section 263](#) is passed. In such cases, the order of the Assessing Officer will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the Assessing Officer to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the Assessing Officer, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the Assessing Officer had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the Assessing Officer to conduct further*

*enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition or requirement which must be satisfied for exercise of jurisdiction under [Section 263](#) of the Act. In such matters, to remand the matter/issue to the Assessing Officer would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the Assessing Officer to decide the aspect/question.*

*17. This distinction must be kept in mind by the CIT while exercising jurisdiction under [Section 263](#) of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of Revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the Assessing Officer, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/inquiry. The order of the Assessing Officer may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the Assessing Officer to decide whether the order was erroneous. This is not permissible. An order is not erroneous, unless the CIT hold and records reasons why it is erroneous. An order will not become erroneous because on remit, the Assessing Officer may decide that the order is erroneous. Therefore CIT must after recording reasons hold that the order is erroneous. The jurisdictional precondition stipulated is that the CIT must come to the conclusion that the order is erroneous and is unsustainable in law. We may notice that the material which the CIT can rely includes not only the record as it stands at the time when the order in question was passed by the Assessing Officer but also the record as it stands at the time of examination by the CIT(A)."*

14. So also in Delhi Airport Metro Express Pvt. Ltd. (supra), the Hon'ble Jurisdictional High Court held that for the purpose of exercising jurisdiction u/s 263 of the Act, the conclusion that the order of A.O is erroneous and the prejudicial to the interest of the Revenue has to be preceded by minimal enquiry and it is incumbent upon the PCIT to conduct such enquiry where the PCIT

was of the view that the A.O did not undertaken any enquiry. It is further held that such an enquiry has to be exercised only by the PCIT. In the case of PCIT Vs. Modi care Ltd. (ITA NO. 759/Del/2016) dated 14/9/2017, the Hon'ble Jurisdictional High Court, after noticing the decisions in the case of D.G Housing Projects Ltd. and also Delhi Airport Metro Express Pvt. Ltd held that the exercise u/s 263 of the Act could not have been outsourced by the CIT(A) to A.O and instead of directing the A.O to verify the correctness of the client of the assessee, the CIT himself should have undertaken an enquiry and give reasons for coming to the conclusion that the assessment order was erroneous and prejudicial to the interest of the revenue.

15. In these circumstances, we are of the considered opinion that the Ld. CIT(A)(E) in this matter did not undertake the exercise of enquiry required to reach the conclusion that the assessment order was erroneous insofar as it is prejudicial to the interest of the revenue because firstly, there is no finding that the GTD activity expenses were not for furtherance of the aims and objects of the assessee society or that the assessment order is erroneous for any reasons to be recorded by the Ld. CIT(E). For want of an enquiry to reach such a conclusion we find it difficult to sustain the impugned order in so far as GTD expenses are concerned.

16. Now, coming to the aspect of the computation error adverted to by the Ld. CIT(E) in respect of the denial of exemption

of Rs. 8,32,29,451/-, the contention of the assessee is that the assessee was not given an opportunity of being heard on this aspect and there was no such mention in the notice issued to the assessee u/s 263 of the Act. On a perusal of the copy, notice that Page No. 36 of the paper book, we find that there is no reference to this computational error and the record does not reveal that the CIT(E) had given any opportunity to the assessee to explain this aspect.

17. On this aspect of violation of principles of natural justice, Ld. AR placed reliance on the decision of the Hon'ble Apex Court in the case of CIT(A) Vs. Amitabh Bachchan 2016 384 200 SC wherein it is held that failure to give opportunity of being heard to the assessee would render the revisional order legally fragile not on the ground of matter of jurisdiction, but on the ground of violation of principles of natural justice. Further, reliance is placed on the decision of Mumbai Bench of the Tribunal in ITA NO. 3563/Mum/2016 for the Assessment Year 2010-11 in Ambuja Cement Ltd. Vs. CIT(A) LTU Mumbai, wherein while following the decision of the Hon'ble Apex Court in the case of Amitabh Bachchan (Supra) the Tribunal held that the obligation to give an opportunity to the assessee of being heard on the point on the basis of which the Ld. Commissioner found the assessment order erroneous insofar as it is prejudicial to the interest of Revenue is definitely cast on the Commissioner as laid down by the Hon'ble

Apex Court in the case of Amitabh Banchchan (Supra). It is, therefore, clear that for violation of principles of natural justice, the impugned order cannot be sustained in so far as the computation error is concerned.

18. We, therefore, for the reasons set forth in the preceding paragraphs or of the considered opinion that the impugned order cannot be sustained and is liable to be quashed. We accordingly quashed this.

19. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 17.05.2019

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Dated: 17.05.2019

R.N

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-  
**(K. NARSIMHA CHARY)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	15.05.2019
Date on which the typed draft is placed before the dictating Member	16.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	