

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.2347/Del/2017
Assessment Year: 2012-13

East Point Education Society,
F-26, Vasundhara Enclave,
Delhi.

Vs ADIT (E),
Trust Circle-II,
Delhi.

PAN: AAATE2296E

(Appellant)

(Respondent)

Assessee by	:	Shri Arvind Kumar Jain, Advocate
Revenue by	:	Ms Ashima Neb, Sr. DR
Date of Hearing	:	26.08.2019
Date of Pronouncement	:	06.09.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 20th March, 2017 of the CIT(E) passed u/s 263 of the IT Act relating to assessment year 2012-13.

2. Facts of the case, in brief, are that the assessee is a society registered u/s 12A of the IT Act, vide Registration dated 10.09.1985 and also registration u/s 80G(5)(vi) of the IT Act, vide order dated 23.11.2009, for assessment year 2010-11 to 2012-13. The assessee society is running a school named Starex International, formerly known as East Point School, at Vasundhara Enclave, Delhi. It filed its return of income on 27th September, 2012 declaring 'nil' income along with audit report u/s 12A(b) in Form No.10B and also balance sheet, Income & Expenditure Account with relevant

schedules. The Assessing Officer completed the assessment u/s 143(3) on 12.11.2014 accepting the returned income.

3. Subsequently, the Id.CIT(E) examined the assessment records and found that the Assessing Officer has not properly examined certain issues relating to assessment of the case. He, therefore, issued notice u/s 263 of the Act on 07.01.2005 asking the assessee to show cause as to why the assessment order should not be set aside u/s 263 of the Act to be made afresh. He asked the assessee to file reply on the following queries:-

- (i) The society has converted corpus donation into loan. In doing so it has committed the firm funds towards repayment of principal and interest on so called loan. The finality of recent reversal of the entry in the society books of account is a matter of continuing litigation with the affected member who had brought in the funds.
- (ii) There is dispute over the utilization of this donation/loan and member of the society are alleging embezzlement, misuse of funds, falsification of documents against each other which throws question mark over the utilization of funds solely for educational purpose.
- (iii) In respect of subsequent transactions involving purchase of building also, there is dispute over ownership, source of funds etc. The society is neither treating the building nor the bank loan as relating to it while Shri Mohinder Singh has claimed to have constructed the building for the school.

(iv) The litigation amongst the society members continues for control of society and adjudication on the allegations is still pending before Delhi High Court.

4. Rejecting the various explanations given by the assessee and observing that the decision of the Tribunal for assessment year 2006-07 was accepted only on account of low tax effect and not on merits, the Id.CIT(E) held that the order passed by the Assessing Officer u/s 143(3) dated 12th December, 2014 was framed in a hurried and casual manner without any application of mind and without considering the consistent stand of the Department and, therefore, the same is erroneous and prejudicial to the interests of the Revenue. Accordingly, the Id.CIT(E) set aside the order u/s 263 of the Act with a direction to the Assessing Officer to examine the issue discussed in his order and pass a fresh assessment order in accordance with law and after affording due opportunity of being heard to the assessee.

5. Aggrieved with such order of the CIT(E), the assessee is in appeal before the Tribunal raising the following grounds:-

“1. On the facts and in the circumstances of the case, the learned CIT(E) erred in assuming his jurisdiction u/s.263 of the I.T. Act, whereas the mandatory conditions for assuming such jurisdiction are totally absent, with the result that the impugned order passed u/s.263 is bad in law.

2. On the facts and in the circumstances of the case, the learned CIT(E) erred in arriving at a conclusion without any basis whatsoever to the effect that the assessment order passed by the Assessing Officer was erroneous as well as prejudicial to the interest of the revenue.

3. on the facts and in the circumstances of the case, the learned CIT(E) erred in setting aside the assessment order passed by the Assessing Officer on 12th November, 2014 u/s.143(3) of the I.T. Act and directing. The Assessing Officer to make a fresh assessment.

4. The appellant craves leave to add, alter, amend and/or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”

6. The ld. counsel for the assessee strongly challenged the order of the CIT(E) assuming jurisdiction u/s 263 of the Act. Referring to the assessment order, the ld. counsel drew the attention of the Bench to the following observations of the Assessing Officer in the body of the assessment order:-

“..... On examination of the balance sheet for the F.Y. 2011-12, it was noted that the assessee has shown unsecured loan amounting to Rs.1,72,10,000/-which is attributed to Sh. Mohinder Singh who was one of the governing body member of the Starex International School. In the Notes on accounts, the auditors have made following observations:

“The Society is in legal dispute with Mr. Mohinder Singh regarding an amount of Rs.1,75,00,000/- given by him to the Society and Mr. Mohinder Singh have filed cases against each other in the matter. The exact amount of the liability of the Society, if any, in this matter is not quantifiable at this stage.”

The above information has been stated by the assessee in the notes to Account of the audited accounts filed along with the return on income for the A.Y. 2012-13. Thus, the assessee has taken certain amount as loan from one of the governing body members, and then converted the same as donation in the subsequent year. Again the large sum of Rs.1,75,00,000/- was treated as unsecured loan in the F.Y 2005-06. This amounts to tying up of Society fund for the benefit of a person who is a specified person within the meaning of sec. 13(3) of the I.T. Act, in respect of the society. Sh. Mohinder Singh is a specified person within the meaning of sec.13(3) of the IT Act, in respect of the East point education Society, by virtue of his being a substantial contributor to the assessee trust's corpus fund, and also on account of being a Governing Body Member, running the affairs of the Trust. In the preceding assessment years the assessee has been denied exemption us 11 & 12 on this very violation u/s 13(1)(c).”

7. He submitted that the Assessing Officer in the questionnaire has asked the assessee as to why the benefit u/s 11 should not be disallowed following the order for earlier assessment years. Referring to page 3-5 of the assessment order, he drew the attention of the Bench to the reply submitted by the assessee and, thereafter, the order

passed by the Assessing Officer. Referring to copy of the order of the Tribunal for assessment year 2006-07, copy of which is placed at pages 1-16 of the paper book, he submitted that the Tribunal has decided the issue by passing a speaking order and the Tribunal has not decided the appeal on account of low tax effect. It is for the Department whether to accept the orders of the Tribunal or not. Merely because the Revenue has not challenged the appeal on account of low tax effect, the assessee cannot be held responsible. He submitted that the issue on which the Id.CIT(E) has assumed jurisdiction has been thoroughly discussed by the Assessing Officer. Relying on the decision of the Hon'ble Gujarat High Court in the case of *CIT vs. Arvind Jewellers reported in 259 ITR 502*; and the decisions of the Hon'ble Supreme Court in the case of *Malabar Industrial Company Ltd. vs. CIT, 243 ITR 83* and in the case of *CIT vs. G.M. Mittal Stainless Steel Pvt. Ltd., 263 ITR 255*, he submitted that when an issue has already been discussed by the Assessing Officer and has taken a possible view, the CIT cannot invoke jurisdiction u/s 263 of the IT Act merely because he does not agree with the view taken by the Assessing Officer. He accordingly submitted that the action of the CIT(E) assuming jurisdiction u/s 263 of the IT Act is not in accordance with law and, therefore, has to be set aside.

8. The Id. DR, on the other hand, strongly supported the order of the CIT(E). She submitted that the Assessing Officer in utter disregard of the consistent view of the Department and in a hurried manner has passed the order accepting the statements made by the assessee and has not applied his mind properly. Therefore, the Id.CIT (E) was fully justified in assuming jurisdiction u/s 263 of the IT Act. She accordingly

submitted that the order of the CIT (E) be upheld and the grounds raised by the assessee be dismissed.

9. We have considered the arguments made by both the sides and perused the material available on record. We find the Ld. CIT (E) assumed jurisdiction u/s 263 of the IT Act on the ground that the Assessing Officer framed the assessment in a hurried and casual manner without any application of mind and in utter disregard to the consistent stand of the Department. It is the submission of the ld. counsel for the assessee that the Assessing Officer, after due application of mind and on the basis of the reply of the assessee to the various issues raised by him, has passed the order. It is also the submission of the ld. counsel for the assessee that the Tribunal in assessee's own case for assessment year 2006-07 has allowed the exemption u/s 11 of the Act which was denied by the Assessing Officer and the CIT(A). Further, it is also the submission of the ld. counsel for the assessee that following the order of the Tribunal for assessment year 2006-07, the Tribunal in assessee's own case for assessment year 2007-08, 2009-10, 2010-11 and 2011-12, has allowed the appeal filed by the assessee on the issue of denial of exemption u/s 11 due to violation of the provisions of section 13(1)(c) read with section 13(3) of the IT Act. It is also the submission of the ld. counsel for the assessee that when the Assessing Officer has taken a possible view, merely because the ld.CIT(E) does not agree with the view taken by the Assessing Officer, the same cannot be a ground for invoking the jurisdiction u/s 263.

10. We find merit in the above argument of the Id. counsel. A perusal of the order of the Tribunal for assessment year 2006-07, copy of which is placed at pages 1 to 16 of the paper book, shows that the Tribunal has threadbare discussed the issue of violation of provisions of section 13(1)(c) r.w. section 13(3) of the Act and, thereafter, has allowed the exemption u/s 11 of the IT Act. We find, following the order of the Tribunal in assessee's own case for assessment year 2006-07, the Tribunal in assessee's own case for assessment years 2007-08, 2009-10, 2010-11 and 2011-12, copies of which are placed at pages 17 to 35 of the paper book, has allowed the exemption u/s 11 of the Act which was denied by the Assessing Officer and upheld by the CIT(A) for violation of the provisions of section 13(1)(c) read with section 13(3) of the IT Act. Merely because the Revenue has not filed any appeal against the order of the Tribunal on account of low tax effect the same in our opinion cannot be held as an adverse view against the assessee. We find the Hon'ble Gujarat High Court in the case of *CIT vs. Arvind Jewellers (supra)* has held that where the Assessing Officer has considered material on record and framed assessment, revision of order is not justified. It was held where the assessee had produced relevant material and offered explanation in pursuance of notices issued u/s 142(1) as well as u/s 143(2) of the Act and after considering the material and explanations, the ITO had given a definite conclusion, merely because a different view can be taken should not be the basis for action u/s 263 of the IT Act. Accordingly, the revision order passed by the CIT was held to be not justified.

11. The Hon'ble Supreme Court in the case of *Malabar Industrial Company Ltd. vs. CIT (supra)*, has held that for invoking the jurisdiction u/s 263 the twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue must be satisfied. If one of them is absent, then, recourse cannot be taken to section 263(1) of the IT Act. The provision cannot be invoked to correct each type of mistake or error committed by the Assessing Officer. Similar view has been taken by the Hon'ble Supreme Court in the case of *CIT vs. G.M. Mittal Stainless Steel Pvt. Ltd. (supra)*.

12. Since, in the instant case, the Assessing Officer, after considering the reply given by the assessee has passed a speaking order on the issue of exemption u/s 11 and 12 on account of violation of section 13(1)(c) of the Act, therefore, merely because the Id.CIT(E) is not in agreement with the views taken by the Assessing Officer, the same, in our opinion, cannot be a ground to invoke the jurisdiction u/s 263 of the Act. In this view of the matter, we hold that the Id.CIT(E) was not correct in assuming jurisdiction u/s 263 of the IT Act. We, therefore, set aside the order of the CIT (E) and allow the grounds raised by the assessee.

13. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 06.09.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated:06th September, 2019

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Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi