

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH  
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
&**

**SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.543/Mum/2021  
(Assessment Year :2015-16)**

**&**

**ITA No.544/Mum/2021  
(Assessment Year :2016-17)**

M/s. National Institute of Construction Management and Research Walchand Terraces, Ground Floor, Opp. Air Conditioned Market, Tardeo Road Tardeo, Mumbai – 400 034	Vs.	Commissioner of Income-Tax (Exemptions) Piramal Chambers, Lal Baug, Parel, Mumbai – 400 012
<b>PAN/GIR No.AAATN1348J</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri V. Sridharan, Senior Advocate Ms Neha Sharma, Advocate
Revenue by	Shri Mahesh Akhade
<b>Date of Hearing</b>	<b>15/11/2021</b>
<b>Date of Pronouncement</b>	<b>16/11/2021</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

These appeals in ITA Nos.543/Mum/2021 & 544/Mum/2021 for A.Yrs.2015-16 & 2016-17 preferred by the order against the revision order of the Id. Commissioner of Income Tax (Exemptions), Mumbai u/s.263 of the Act dated 04/03/2021 for the A.Y.2015-16 & 2016-17.

As common issues are involved in both these appeals, they are taken up together and disposed of by this common order for the sake of convenience.

2. We find that assessee has challenged the validity of assumption of jurisdiction by the Id. PCIT u/s.263 of the Act both on law as well as on merits of the case. This is identical in both the years before us.

3. We have heard rival submissions and perused the materials available on record. We find that assessee was founded in 1983 with the objective of imparting knowledge and education to students in the field of construction management and research. The assessee is registered under the Bombay Public Trust Act, 1950. The assessee was granted registration u/s.12A of the Act on 06/02/1984 and the same was in force till the date of passing the order of the Id. PCIT u/s.263 of the Act. The return of income for the A.Y.2015-16 was filed by the assessee claiming exemption u/s.11(1) & 11(2) of the Act on the ground that assessee was carrying on educational activities which are charitable in nature. The scrutiny assessment was completed for the A.Y.2015-16 u/s.143(3) of the Act on 31/10/2017 accepting the returned income of the assessee and allowing the claim of exemption u/s.11(1) & 11(2) of the Act. Thereafter, this assessment was sought to be revised by the Id. PCIT by invoking revision jurisdiction u/s.263 of the Act vide show-cause notice dated 04/03/2021 on the following grounds:-

*a. That the activities carried on by the Appellant cannot be categorized solely as educational, rather the Appellant is a service provider existing for profit motive.*

*b. That the surplus is being generated over the years by the Appellant, which indicates the intention to be in the nature of business for profit. Therefore, the activities of the Appellant cannot be held charitable in light of the proviso to Section 2(15) of the IT Act.*

*c. That without prejudice to the above, if the exemption u/s 11 is allowable, the income from activities of the Appellant such as on-campus POP MFOCB, PFP training for executives, in-service training fee and consultancy charges, being not in educational activity, shall be brought to tax as business income u/s 11(4A) of the IT Act.*

*d. That the amount paid to ASBM Trust and to Mushtifund Saunstha out of accumulated income of earlier years cannot be allowed as application of income for the charitable purposes.*

3.1. This show-cause notice dated 04/03/2021 was served on the assessee on 08/03/2021 and hearing was scheduled on 11/03/2021. The assessee filed a letter dated 08/03/2021 seeking two week's time for filing its reply before the Id. PCIT. This letter was sent electronically on the portal of the Income Tax department by e-mail and was also filed physically. When the request was filed physically, the office of the Id. PCIT informed the representative of the assessee that the next date of hearing would be communicated through the portal of the Income Tax department and through e-mail. But no such extended date of hearing was communicated to the assessee in any manner. The assessee however, filed its written submission along with all the supporting evidences on 25/03/2021 in response to the show-cause notice dated 04/03/2021 and uploaded the said reply in the portal of the Income Tax department. These evidences are available in pages 114 to 116 of the paper book-1 filed before us read with pages 80 to 113 of the paper book. However, the Id. PCIT in his order stated that the extended date of hearing was scheduled on 22/03/2021 and since no replies were filed by the assessee in response to the show-cause notice dated 04/03/2021, he simply reproduced the contents of the

show-cause notice u/s.263 and passed a revision order u/s.263 of the Act treating the order passed by the Id. AO u/s.143(3) of the Act dated 31/10/2017 as erroneous in as much as it is prejudicial to the interest of the Revenue. In the said order passed by the Id. PCIT, the assessment framed by the Id. AO was set aside with a direction to the Id. AO to do denovo assessment. The reply filed by the assessee on 25/03/2021 which was electronically uploaded in the portal of the Income Tax department, was also sought to be filed physically before the Id. PCIT on 26/03/2021. The said reply was refused to be received by the Id. PCIT's office on the ground that since assessee had already electronically furnished on 25/03/2021 itself, there was no need to file any papers in physical mode. Despite this, the Id. PCIT proceeded to pass the revision order u/s.263 of the order on 26/03/2021 stating that no reply was filed by the assessee in response to show-cause notice issued u/s.263 of the Act. We find that the Court Clerk of Advocate of the assessee Mr. Dhananjay Bordvekar had filed an affidavit dated 06/10/2021 duly notarized in non-judiciary stamp paper narrating the entire facts as above. The contents of the aforesaid affidavit have not been controverted by the Revenue before us.

3.2. In view of the aforesaid facts, we find that assessee was not given proper opportunity to file its rebuttal to the show-cause notice issued u/s.263 of the Act in as much as the reply filed by the assessee electronically on 25/03/2021 has not been considered at all by the Id. PCIT while passing his revision order u/s.263 of the Act. Hence, in the interest of justice and fair play, we deem it fit and appropriate to restore the appeal for A.Y.2015-16 to the file of the Id. PCIT for denovo adjudication. All the contentions of both the sides are left open and no decision is hereby given by us on merits. The assessee is also

given liberty to raise fresh grounds or raise fresh contentions before the Id. PCIT in support of its case. The Id. PCIT is hereby directed to give effect to its order within three months from the date of receipt of this order from the Tribunal. Needless to mention that assessee be given reasonable opportunity of being heard. The assessee is also directed to co-operate with the Id. PCIT for expeditious disposal of the proceedings before him and not to take any adjournment except due to exceptional or unavoidable circumstances. Accordingly, the grounds raised by the assessee for A.Y.2015-16 are allowed for statistical purposes.

4. The facts of A.Y.2016-17 are exactly identical to A.Y.2015-16 and hence, the decision rendered in A.Y.2015-16 shall apply *mutatis mutandis* to A.Y.2016-17 also.

**5. In the result, both the appeals of assessee are allowed for statistical purposes.**

Order pronounced on 16/11/2021 by way of proper mentioning in the notice board.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 16/11/2021  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**