

**IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE**

(Convened through Virtual Court)

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI MANISH BORAD, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 200 to 204/Ind/2020
(निर्धारण वर्ष / Assessment Years : 2002-03 to 2006-07)

M/s. Virat Hare Krishna Education Society E-4/146, Arera Colony, Bhopal	बनाम/ Vs.	Pr.CIT-1 Aayakar Bhawan, 48 Arera Hill, Hoshangabad Road, Bhopal
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAJV0352J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Ashish Goyal & Shri N. D. Patwa, Advs.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. S. Mantri, CIT. D.R.

सुनवाई की तारीख / Date of Hearing	05/10/2021
घोषणा की तारीख /Date of Pronouncement	20 /12/2021

ORDER

PER MAHAVIR PRASAD, JM:

These five appeals have been filed by the assessee against the order of learned Pr. Commissioner of Income Tax-1, Bhopal ('CIT(A)' in short) passed order under S. 263 of the Income Tax Act, 1961 ('the Act' in short).

2. Since the facts in issues relate to the common grievance, all these appeals were heard together and are disposed of by this common order for the sake of convenience.

ITA No. 200/Ind/2020-A.Y. 2002-03

3. The grounds of appeal raised by assessee read as under:

- “1. *The Id CIT was not justified in passing order u/s. 263, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
2. *The Id CIT was not justified in initiating proceedings u/s. 263, as the order of the Id AO was neither erroneous not prejudicial to the interest of the revenue; and thus the revision order deserves to be quashed.*
3. *The Id Assessing Officer passed the set-aside order granting exemption u/s. 10(23C) based on the directions of the Hon'ble ITAT, and thus there was no error of fact or law and the order passed by the Id Assessing Officer cannot be treated as erroneous.*
4. *The society is eligible for exemption u/s. 10(23C) of the Act and same ought to be granted.”*

4. The assessee had filed its return of income, for A.Y. 2002-03 on 19.02.2007 against the notice u/s 153C of the Act, declaring total income at NIL. The assessment was completed u/s 153(C) of the Income Tax Act, 1961 on 31.12.2007 assessing total income at Rs.5,05,000/-.

4.1 The assessee is a Public Charitable Society formed as per the provisions of MP Societies Registration Act, 1872 and as per the bylaws the society have object to impart education, medical education, ayurvedic college etc. for the benefit of public at large. On perusal of the assessment order and case record, it is noticed that the assessee has not filed regular return of income u/s 139(4A) of the Act and had not claimed exemption of Rs.4,65,000/- u/s 10(23C)(iiia) in the return of income filed u/s 153C of

the Act. Therefore, the assessee's claim of exemption u/s 10(23C)(iiia) was required to be disallowed and added back to the assessee's total income. In view of the above facts, the assessment order was found to be erroneous and prejudicial to the interest of the society by the learned PCIT. Accordingly, a show cause notice was issued. It is a second round before the Tribunal and as per direction of ITAT, Indore Bench vide order no. 56 to 60/ IND /2013 dated 07/10/2016 pertaining to A.Ys. 2002-03 to 2006-07, "the Ld. AO has to verify the conditions of section 10(23C) (iiia) as applicable to the assessee and allow the claim in accordance with law".

4.2 In compliance to the abovesaid direction of the Tribunal, the lower authorities held that after careful examination of the facts placed on record and submission of the assessee, it is noticed that assessee was not filing its regular return of income. Further, the assessee has filed its return of income when notice under S.153C of the Act was issued to the assessee. On perusal of the return of income, it is found that assessee has filed return of income without claiming exemption under S. 10(23C) (iiia) of the Act. The reliance is placed on record Hon'ble Supreme Court of India decision [2006] 157 in the case of Goetze (India) Ltd. Vs Commissioner of Income tax [1], wherein the Hon'ble Supreme Court has held that additional claim cannot be made before the Assessing Officer, as there is no provision under the Income tax to make amendment in the return without filing a revised return. The Supreme Court further stated that this decision was limited to the power of Assessing Officer to entertain claim for deduction otherwise than by filing a revised return and it does not impinge on the power of Tribunal. Therefore, based on the above decision of the Hon'ble Supreme Court, AO does not have any power to entertain additional claim such. Such a claim made in revised return filed within the due date of revised return of income. In these facts and circumstances, assessee filed the return

of income when notice under s.153C of the Act was served upon the assessee. Since no enquiry/verification has been conducted by the AO about the status of the return and claim of exemption by the assessee under S. 10(23)(iii)ac of the Act, the assessment proceedings and the order passed by the AO is prejudicial to the interest of Revenue. The learned PCIT held that it is settled law that if the AO fails to make proper verification, the assessment order passed by him is erroneous and prejudicial to the interest of Revenue.

5. Now, the assessee has come before us. It is held that this is the second round before the ITAT and learned AO passed an order pursuant to the ITAT directions and that should not have been bestowed by the learned PCIT. The judgment which has been cited by the learned PCIT, it is categorically mentioned in the said judgment that Hon'ble Supreme Court does not wish to impinge on power of the Tribunal. As per Income Tax Act, powers of ITAT are dealt with second appeal on all matters of direct tax including appeals against revisional order of the Administrative Commissioner as well as order denying the registration under S.12AA or 80G of the Act etc. Tribunal has been entrusted with the responsibility of deciding intricate question of law and facts and in case of facts, Tribunal is a final finding authority. In these circumstances, the Tribunal has categorically directed learned AO to examine the claim of the assessee under S. 10(23)(iii)ac of the Act and therefore decide as per law. In our considered opinion, learned PCIT has exceeded his power wherein ITAT has categorically given instruction to the AO. In such circumstances, the order under S.263 of the Act cannot be sustained. Thus, appeal of the assessee is allowed.

6. In view of the above, all the appeals filed by the assessee (ITA Nos. 201 to 204/Ind/2020) are order under s.263 of the Act are cancelled and orders of the AO are upheld.

7. In the result, all five appeals filed by the assessee are allowed.

This Order pronounced in Open Court on 20/12/2021

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER
Ahmedabad: Dated 20/12/2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Assisstant Registrar,
I.T.A.T., Indore

- 1.Date of dictation on 17.12.2021
- 2.Date on which the typed draft is placed before the Dictating Member 20.12.2021
- 3.Date on which the approved draft comes to the Sr.P.S./P.S.
- 4.Date on which the fair order is placed before the Dictating Member for pronouncement
- 5.Date on which the fair order comes back to the Sr.P.S./P.S
- 6.Date on which the file goes to the Bench Clerk
- 7.Date on which the file goes to the Head Clerk
- 8.The date on which the file goes to the Asstt. Registrar for signature on the order
- 9.Date of Despatch of the Order