IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.134/CTK/2021
Assessment Year : 2016-17

Dhaneswar Rath Institute of Engineering and Medical Sciences, Cuttack	Vs.	CIT (Exemptions), Hyderabad
PAN/GIR No.AACAD 0006G		
(Appellant)	..	(**Respondent**)

Assessee by : Shri D.Parida/C.Parida , ARs
Revenue by : Shri M.K.Goutam, CIT (DR)

Date of Hearing : 30 /3/ 2022
Date of Pronouncement : 17 / 05 /2022

O R D E R

Per C.M.Garg, JM

This is an appeal filed by the assessee against the order u/s.263 of the Income tax Act, 1961 of the CIT(E), Hyderabad dated 31.3.2021 for the assessment year 2016-17.

2. The appeal filed by the assessee is barred by limitation by 198 days. The assessee has filed condonation petition dated 14.12.2021, contending therein that the order of CIT(E), Hyderabad dated 31.3.2021 was received by the assessee on the same day through e-proceedings income tax portal. The appeal had to file on or before 30.5.2021. It is stated that due to COVID-19, the State Government had declared the Institute to run 400

bedded Covid care w.e.f 30.4.2021 restricting the limit entrance into it. Therefore, step could not be taken to file the appeal within the time. It is stated that it was in this backdrop that the appeal was filed belatedly causing a delay of 198 days.

3. Ld A.R. reiterating the submissions in the condonation petition submitted that the Hon'ble Supreme Court has also passed limitation to file appeal during the COVID -19 pandemic. Therefore, the delay in filing the appeal may be condoned. Ld CIT DR did not object to condone the delay.

4. After hearing the rival submissions, we are satisfied that the assessee was prevented by sufficient cause in not filing within the stipulation period. Therefore, we condone the delay of 198 days and admit the appeal for adjudication.

5. The sole grievance raised in the grounds of appeal is that the CIT(Exemptions), Hyderabad has passed the revision order u/s.263 of the Act, in a hurriedly manner without providing reasonable opportunity of hearing to the assessee.

6. Facts of the case are that the assessee is a charitable trust filed its return of income on 20.9.2016 showing income at Nil after claiming exemption u/s.11 of the Income tax Act. The return of income was selected for complete scrutiny. The Assessing Officer completed the assessment u/s.143(3) of the Act on 23.10.2018 on a total income at Rs.Nil.

Thereafter, the Pr. CIT (Exemption), Hyderabad noticed that the assessment order passed by the AO is erroneous and prejudicial to the interest of the revenue because the AO while passing the assessment order has not made proper enquiry on the following issues:

> On perusal of income & expenditure account, the assessee had declared income of Rs.25,63,08,085/- and claimed administrative expenses of Rs.18,60,27,027/-, interest & other financial expenses of Rs.1,37,10,317/-, depreciation of Rs.4,77,03,665/-, excess of income over expenditure has been declared at Rs.88,67,076/-. In Form 10B, the amount of income of the previous year applied to charitable or religious purposes in India has been declared at Rs.88,67,076/-.
>
> In this regard, attention is invited to the judicial pronouncement in the case of ACIT vs Grama Vidiyal Trust, reported in 71 taxmann.com 88, the ITAT, Chennai 'D' Bench held that where the cost of asset was allowed u/s.11 as application of income in the earlier assessment years, the assessee would not be entitled to depreciation. It is seen that the assessee had gross block of fixed assets of Rs.96,78,84,619/- as on 1.4.2015. Since this cost of asset has already been allowed u/s.11, the assessee cannot claim depreciation of Rs.4,77,03,665/- as application of trust income for charitable purposes. The amount of income accumulated/set apart, therefore, works out to Rs.5,65,70,741/-, which exceeds 15% of the income derived from property held under the trust. The assessee is, therefore, not entitled to exemption u/s.11 and as such, this excess amount of Rs.5,65,70,741/- should have been brought to tax.

7. Accordingly, the Pr. CIT (Exemption), issued show cause notice u/s.263(1) of the Act on 26.3.2021, to which, the assessee requested for adjournment of case for 15 days for compliance. However, in view of time barring case, the Pr CIT(E) passed the order u/s.263 of the Act directing the Assessing Officer to examine the above issues and redo the assessment after verification and in accordance with law.

8. Ld A.R. submitted that during the assessment proceedings, the Assessing Officer issued notice u/s.142(1) of the Act with detailed questionnaire and the compliance was made. He submitted that the CIT(E) revised the assessment order only on the issue of claim of depreciation, its allowably and details of amount set apart within the meaning of section 11(2) of the Act, to which, the assessee has furnished all the details and after satisfying the reply, the Assessing Officer completed the assessment u/s.143(3) of the Act. Hence, the order passed by the AO cannot be termed as erroneous and prejudicial to the interest of the revenue.

9. Further, ld A.R. submitted that in reply to show cause notice, the assessee requested 15 days time for compliance but the Ld CIT (E) without giving any opportunity passed the order, which is in clear violation of principles of natural justice. Ld A.R. of the assessee also submitted that in the previous assessment years, the assessee has never taken cost of fixed assets as application u/s.11 and the assessment orders were passed accepting the returned income by the assessee.

10. Ld A.R. of the assessee submitted that if the CIT(E) was under the impression that the AO has not made enquiry, then, the CIT(E) could have verified himself to record the finding that the assessment order is erroneous and prejudicial to the interest of the revenue as prescribed in section 263 of the Act in terms of claim of cost of fixed assets as application of income as

all the returns of income were available in the income tax portal to disallow the depreciation. For this proposition, he relied on the following judgments:

i) DIT vs Jyoti Foundation, 357 ITR 388 (Del)

ii) ITO vs DG Housing Projects Ltd., 343 ITR 329 (Del)

iii) Pr. CIT vs Delhi Airport Metro Express Pvt Ltd., 38 ITR 8(Del)

iv) ITAT Cuttack in the case of Sangram Keshari Samantaray vs Pr. CIT in ITA No.12/CTK/2020 order dated 28.10.2021

11. Ld A.R. vehemently pointed out that in the notice u/s.263(1) of the Act and in the impugned order u/s.263 of the Act, the CIT (E) incorrectly noted that the AO did not make any proper enquiry to ascertain the true facts and not his mind while passing the assessment order as during the scrutiny assessment proceedings, the Assessing Officer issued notice u/s.142(1) of the Act vide dated 6.9.2018 alongwith questionnaire wherein, in Q. No.10, it was specifically asked to the assessee "*please furnish the details of depreciation claimed*" and said show cause notice was replied by the asssessee through e- proceedings response acknowledgement No.24091810416508. Ld A.R. further pointed out that when the AO during the scrutiny assessment proceedings has raised 15 questions to the assessee including Q.No.10, asking the assessee to furnish details of depreciation claimed and after taking on record receipt of the assessee and satisfied himself that the assessee has not claimed amount of purchase of assets as an application of income in the income and expenditure account,

then it was eligible for claim of depreciation thereon as application of income, therefore, in absence of any fault, defect and discrepancy, the AO accepted the claim of the assessee towards depreciation as application of income. Therefore, there is no fault with the assessment order and the same cannot be alleged as erroneous and prejudicial to the interest of the revenue. Ld A.R.pointed out that the assessee filed all details including the depreciation claimed as application of income before the AO during the scrutiny assessment proceedings and again before the ld CIT(E) in reply to show cause notice u/s.263 of the Act including copies of audited annual report and financial statement for financial years 2011-12 to 2015-16 relevant to assessment years 2012-13 to 2016-17 including present A.Y. 2016-17, which clearly reveals that the assessee had not claimed amount of assets at the time of purchase and, therefore, the assessee rightly claimed depreciation as application of income in the subsequent years.

12. Placing reliance on the decision of ITAT Chennai 'D' Bench in the case of ACIT vs Grama Vidiyal Trust (2016) 71 taxmann.com 88 (Chennai), especially paras 13.1 & 13.2, ld A.R. submitted that in a case where the cost of asset was allowed u/s.11 of the Act to the assessee charitable trust as application of income in the year of purchase, then the assessee would be entitled to depreciation on the said assets but in the present case, the assessee has successfully demonstrated before the AO as well as before the CIT(E) by filing e-reply to the show cause notice u/s.263 of the Act that at

the time of purchase of assets, the assessee has not claimed amount as application of income, therefore, it is entitled for claiming depreciation on those assets, which have not been included in the amount of application of receipts in the financial statement. Ld A.R. further drew our attention that despite the assessee filed e-reply on 28.3.2021 before the ld CIT(E) seeking 15 days time for filing compliance but same was not taken into consideration and the revisionary order u/s.263 has been passed in a hasty manner in violation of principles of natural justice, therefore, the findings and observations of ld CIT (E) that the order is erroneous and prejudicial to the interest of revenue are not sustainable and bad in law. He also contended that without any further verification and examination by the CIT (E) himself, the scrutiny assessment order cannot be alleged as erroneous and prejudicial to the interest of the revenue. Ld A.R. lastly submitted that the order has been passed by the AO after considering all relevant materials and taking into consideration consistency situation pertaining to claim of depreciation by the assessee since in several preceding assessment years, the AO was right in allowing the claim of depreciation as application of income to the assessee, therefore, the assessment order cannot be held as erroneous and prejudicial to the interest of the revenue, therefore, revisionary order may kindly be quashed.

13. Replying to above, ld CIT DR supported the order of the ld CIT(E) and further submitted that since the cost of asset has already been allowed u/s.11, the assessee cannot claim depreciation as application of trust income for charitable purposes. This aspect has not been examined by the AO while passing the assessment order u/s.143(3), therefore, the Ld CIT(E) was justified in directing the AO to redo the assessment order.

14. Ld CIT DR submitted that the assessee has not submitted the copy of reply before the Bench and it is not also clear what was submitted and furnished before the AO in response to the notice u/s.143(2)/142(1) of the Act, they could have filed the copy of the reply to be fair. Ld CIT DR submitted that this plea was not taken or agitated before the ld CIT(E) in response to the notice u/s.263 of the Act. Ld CIT DR submitted that this fact was not verified by the AO as to whether the assessee has not claimed amount of assets at the time of purchase as application of income u/s.11 of the Act, therefore, the AO allowed depreciation to the assessee as application of income without proper enquiry. Therefore, the ld CIT (E) is right in alleging the assessment order as erroneous and prejudicial to the interest of the revenue. Ld CIT DR also requested that the matter may be sent to the file of the ld CIT(E) for examination and verification of the issue of allowability of claim of depreciation of the assessee or the AO should be allowed to redo the assessment.

15. Placing rejoinder to above, ld A.R. submitted that the ld CIT(E) initiated revisionary proceedings by issuing notice u/s.263 of the Act on 26.3.2021 and the assessee by way of adjournment petition requested to grant 15 days time for compliance but instead of providing time, the ld CIT(E) dismissed the request of adjournment by observing that the time barring date and limit for passing the order is 31.3.2021. ld A.R. vehemently pointed out that if the department wants to initiate revisionary proceedings then, it should have been done early. It is not fair on the part of the department to initiate revisionary proceedings by issuing notice before 5-6 days time of time barring date and without providing due opportunity of hearing in violation of principles of natural justice. Ld A.R. also submitted that for invoking revisionary proceedings u/s.263 of the Act, the CIT (E) is required to call upon the assessment record and thereafter if he is satisfied that the assessment order is erroneous and prejudicial to the interest of the revenue, he may issue notice to the assessee and after allowing due opportunity of hearing to the assessee, the revisionary order u/s.263 of the Act can be passed.

16. In the present case, ld CIT (E) has gone against the basic and minimum required procedure as per section 263 of the Act. Therefore, the impugned order is not sustainable. He further pointed out that the only issue picked up and agitated by ld CIT (E) that the AO allowed depreciation claimed by the assessee as application of money without any verification

and examination whereas the AO during the assessment proceedings, issued notice u/s.142(1) of the Act alongwith questionnaire, wherein in Q. No.10, assessee was asked to submit details of depreciation claim and this notice was replied by the assessee by e-proceedings and the assessee submitted that since the assessee is not claiming amount at the time of purchase of assets as application of income, therefore, the assessee has claimed depreciation as application of income. Ld A.R. submitted that from the audited annual accounts and financial statement for past five years including the present assessment year 2016-17 clearly reveals that the assessee has not claimed amount of utilization for purchase of assets in the year of purchase as application of income and only claimed depreciation thereon as application of income which is allowable.

17. We have heard the rival submissions and perused the record of the case. The sole point taken by the ld CIT(E) for exercising his power u/s.263 of the Act is that the Assessing Officer without examining the issue of disallowance of depreciation while framing the assessment u/s.143(3) of the Act.

18. The first grievance of ld A.R. is that the ld CIT(A) has not given proper opportunity before passing the order u/s.263 of the Act. Section 263(1) of the Act reads as under:

> : "(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed

> therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he, may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

19. On a plain reading of the above provision makes it very clear that the power of suo motu revision u/s 263(1) is in the nature of supervisory jurisdiction and the same can be exercised only if the circumstances specified therein exist. Two circumstances must exist to enable the Commissioner to exercise power of revision u/s 263, namely (i) the order is erroneous (ii) by virtue of being erroneous, and prejudice has been caused to the interests of the Revenue.

20. For the purpose of exercising jurisdiction u/s 263 of the Act, the conclusion that the order of the AO is erroneous and prejudicial to the interest of the revenue has to be preceded by some minimal enquiry by CIT(E). If the CIT(E) is of the view that the AO did not undertake any enquiry, it becomes incumbent on the CIT(E) to conduct such enquiry. If the CIT(E) does not conduct such basic exercise then the CIT (E) is not justified in setting aside the order u/s. 263 of the Act.

21. In this case, in reply to show cause notice u/s.263(1) of the Act, the assessee had requested in email to give 15 days' time for compliance, but on account of time barring, the CIT(E) has passed the order without giving

any opportunity to the assessee. Hence, on this ground the CIT(E) is not justified in directing the AO to redo the assessment.

22. Section 263(1) sets out the procedure to be followed by the Commissioner, while exercising the power conferred by that section. It says that the Commissioner may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass an order enhancing or modifying the assessment or canceling the assessment of the ITO and directing a fresh assessment. Thus, the statute itself has made a provision for an effective opportunity of being heard to the assessee before the Commissioner passes an order under s. 263. In this case, the CIT (E) having passed an order without giving the assessee an opportunity of being heard, can be taken to have infringed the statutory provision and, therefore, the order passed by him suffers from procedural irregularity. In the face of s. 263 in which the principles of natural justice have been embedded as a statutory procedure to be followed by the Commissioner before passing an order in his revisional jurisdiction, the order of the Commissioner in the present case suffers from procedural violation or irregularity and not from violation of abstract principles of natural justice. If the principles of natural justice are not embedded in the statute and those principles are found to have been violated, then the order can be said to be one passed in violation of the principles of natural justice.

23. In the present case, in response to notice issued by the AO with regard to allowability of depreciation, the assessee has furnished all the details and after satisfying the reply to notice of the AO u/s. 142(1) of the Act, the Assessing Officer completed the assessment u/s.143(3) of the Act.

24. On merits, the sole issue in this appeal is that as to whether the claim of depreciation by the assessee as an application of income was allowable or not. The legal position is very clear from various orders and judgments of Hon'ble High Courts and Co-ordinate Benches of the Tribunal including order of ITAT Chennai in the case of Grama Vidiyal Trust(supra), wherein, it was clearly held that where the cost of asset was claimed and allowed u/s.11 of the Act to the assessee charitable society/trust as application of income in the year of purchase of asset, the assessee would not be entitled for depreciation on said asset as application of income. This preposition has been rendered in view of the fact that the assessee cannot claim depreciation as application of income twice, once at the time of purchase of assets and secondly during the subsequent period for claiming depreciation of asset as application of income. Now, the position is very much clear that the assessee trust/society has two options either the cost of asset, in the year of purchase, has to be claimed the amount u/s.11 of the Act as application of income or in case the assessee has not availed the first option, then the assessee can claim depreciation as application of income by exercising the second option only claiming depreciation during

subsequent assessment years but both the options cannot be exercised or enjoyed by the assessee.

25. In the present case from audited financial statement for assessment years 2011-12 to 2015-16 pertaining to assessment years 2012-13 to 2016-17 including the assessment year under consideration i.e A.Y. 2016-17, it is clearly demonstrated that the assessee has not claimed cost of asset in the year of purchase or during any subsequent period but it has only claimed depreciation thereon as application of income, which is permissible in a case where the assessee has not claimed cost of asset as application of income u/s.11 of the Act in the year of purchase or acquisition of assets.

26. As we have noted above that during the scrutiny assessment proceedings, the AO issued notice u/s.142(1) of the Act, which was replied by the assessee by e-compliance, acknowledgement No. being XXXX1375 on 21.9.2018, wherein, details of depreciation claimed have been submitted by the assessee before the AO. This fact has not been controverted by ld CIT DR except by stating that the copy of details have not been submitted and there is no discussion in the assessment order. We are of the considered view that when the AO has issued notice alongwith details of questionnaire, which was replied by the assessee, as has been done in the present case by the assessee through e-compliance supported by relevant documentary evidence/financial statement, therefore, it cannot be alleged that the AO has not made any enquiry. In the present case, keeping in

mind the entirety of the facts and circumstances of the case, we are of the considered view that the AO has made sufficient and adequate enquiry on the issue of allowability of claim of depreciation as application of income by way of issuing notice and after considering the reply of the assessee, took a plausible view, therefore, we decline to agree with the contention of ld CIT (E) that the AO did not make any enquiry on true facts and not applied his mind for passing the assessment order. This is not a case of no enquiry but we are satisfied that there was sufficient enquiry by the AO during scrutiny assessment proceedings.

27. We also observe that as per sub-section (2) of Section 263 of the Act, no order shall be made under sub-section (1) of section 263 after expiry of two years from the end of financial year in which the order is sought to be revised or passed and thus, it is ample clear that the legislature has provided more than two years time for initiation of revisionary proceedings and passing the order u/s.263 of the Act. In the present case, the AO passed the scrutiny assessment order on 23.10.2018 and thus as per sub-section (2) of Section 263 of the Act, the order should have been passed on or before 31.3.2021. In the present case after lapse of substantial time of more than two years and 3 months, the ld CIT (E) picked up the case for initiation of revisionary proceedings only before 6-7 days time from the last date of limitation i.e. on 26.3.2021 by issuing notice u/s.263 giving date of hearing on 30.3.2021. Before the date of hearing,

the assessee requested by way of e-mail on 28.3.2021 for granting 15 days time for compliance but this prayer of the assessee was not acceded to by ld CIT (E) and he passed order on 31.3.2021 and entire revisionary proceedings, including issue of notice, passing of order was completed within 6 days, which is not a reasonable and justifiable approach for exercising power u/s.263 of the Act. Hence, we decline to accept the submission of ld CIT DR that the matter may be restored to the file of the CIT(E) for fresh adjudication.

28. In the present case this is not a case of no enquiry and the AO has made enquiry of several issues including the claim of depreciation by the assessee. Even if, when the CIT (E) was not satisfied about the enquiry done by the AO during the scrutiny assessment proceedings, then instead of directing to the AO to conduct further enquiry and redo the assessment, the ld CIT (E) was required to conduct enquiry himself to arrive at a conclusion that the assessment order is erroneous and prejudicial to the interest of the revenue and without such exercise, the revisionary proceedings u/s.263 of the Act cannot be held as sustainable and valid in law in view of judgment of Hon'ble Delhi High Court in the case of CIT vs Jyoti Foundation, 357 ITR 388 (Del); (ii) ITO vs DG Housing Projects Ltd., 343 ITR 329 (Del) & (iii) Pr. CIT vs Delhi Airport Metro Express Pvt Ltd., 38 ITR 8(Del).

29. Ld CIT DR relied on the decision of ITAT Chennai in the case of M/s. Medall health Care pvt Ltd. Vs Pr.CIT 85 taxmann.com 211 (Chennai). On perusal of the said decision, we find in that case, the AO has not discussed anything in the assessment order regarding the issue pointed out by ld Pr. CIT but in the present case, the AO on the particular point i.e. claim of depreciation, asked the question and after being satisfied with the reply of the assessee, has allowed the same. In this context, the ld A.R. has placed reliance on the order of ITAT Mumbai Bench in the case of Reliance Payment Solutions ltd vs Pr. CIT (2022) 136 taxmann.com 277 (Mumbai), wherein, it was held thus:

> "Where the specific issue raised in the revision order was specifically looked into, detailed submissions were made and these submissions were duly accepted by the Assessing Officer, PCIT cannot invoke powers of revision u/s 263 merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263.Mere non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue". As long as the action of the Assessing Officer cannot be said to be lacking bonafides, his action in accepting an explanation of the assessee cannot be faulted merely because it could have been lawful to make mere detailed inquiries or because he did not write specific reasons of accepting the explanation."

Therefore, in view of above, no discussion in the assessment order cannot be a basis for alleging no enquiry and the exercise undertaken by the AO cannot be ignored and brushed aside. The ld CIT DR replying to submission of ld AR also submitted that the resjudicata does not apply to the proceedings but at the same time, we are also agree with the ld AR that

it is also a well accepted proposition that the rule of consistency has to be respected in tax proceedings by the tax officers as per the judgment of Hon'ble Supreme Court in the case of **Radhasoami Satsang vs. CIT** (1992) 193 ITR 321 (SC). In the present case, the assessee was claiming depreciation since several previous assessment years and he submitted audited financial statement for FYs. 2012-13 to 2015-16 including present assessment year 2016-17 has successfully demonstrated that it has not claimed the cost of asset as application of income at the time of purchase or acquisition of the asset but only claimed depreciation as application of income availing second option to claim depreciation and this was consistently claimed by the assesseea and allowed by the department, thus the AO was not required to go into micro details of claiming of depreciation by the assessee.

30. Hon'ble Delhi High Court Gee Vee Enterprises v. ACIT [(1995) 99 ITR 375 (Del)] defining the duty of the AO observed that, "it is his duty to ascertain the truth of the facts stated in the return when the circumstances of the case are such as to provoke an inquiry. It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real- life situations. What Justice Lopes said, in the case of Re Kingston Cotton Mills [(1896) 2

Ch 279, 288)], in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. Their Lordships held that an auditor (read Assessing Officer in the present context) is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound.". In our considered view, the AO cannot remain passive on the facts which, in his judicial opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the last point everything coming to his notice in the course of the assessment proceedings. In our humble opinion, when the facts as emerging or revealed out of the scrutiny alongwith explanation and reply of the assessee are apparently in order, and no further inquiry is warranted in his bonafide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. In the present case, the AO has issued notice u/s.142(1) of the Act alongwith questionnaire asking the assessee details and basis of claim of depreciation as application income of the assessee, which was replied by the assessee and the assessment records/folders for immediately preceding several years must be with the AO as it clearly revealed that the assessee is consistently claiming the depreciation as application of income without making the claim u/s.11 of the Act at the time of acquisition or purchase of assets as application of

income, then the AO was not required to go further to analyse and examine the issue and he is duty bound to follow the rule of consistency which the AO has done in the present case. Therefore, it is not a case of no enquiry but the AO has made proper, sufficient and adequate enquiry on the issue of allowability of claim of depreciation. Therefore, the ld CIT (E) was not right in passing the impugned revisionary order u/s.263 of the Act in violation of principles of natural justice alleging the assessment order as erroneous and prejudicial to the interest of the revenue and directing the AO to redo the assessment without making an enquiry himself.

31. In view of judgment of Hon'ble Delhi High Court in the case of CIT vs Jyoti Foundation, 357 ITR 388 (Del); (ii) ITO vs DG Housing Projects Ltd., 343 ITR 329 (Del) & (iii) Pr. CIT vs Delhi Airport Metro Express Pvt Ltd., 38 ITR 8(Del), we are inclined to hold that the impugned revisionary order of ld CIT (e) DATED 31.3.2021 is not sustainable being bad in law and passed in violation of principles of natural justice. Therefore, the impugned notice u/s.263, revisionary order dated 31.3.2021 and all consequential proceedings and orders thereto are hereby quashed.

32. In the result, appeal of the assesse is allowed.

Order pronounced on 17 / 05 /2022.

Sd/-	sd/-
(Arun Khodpia)	**(Chandra Mohan Garg)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Cuttack; Dated 17 / 5 /2022

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Dhaneswar Rath Institute of Engineering and Medical Sciences, Cuttack
2. The Respondent. CIT (Exemptions), Hyderabad
3. The CIT(A)-, Cuttack
4. DR, ITAT, Cuttack
5. Guard file.

//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack