

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 892/MUM/2021
(ASSESSMENT YEAR: 2015-16)

Axis Bank Foundation,
2nd Floor, Axis House,
Pandurang Budhkar Marg,
Worli, Mumbai - 400025
[PAN: AAATU2526R]

..... Appellant

Commissioner of Income Tax
(Exemption), Mumbai,
Room No. 617, 6th Floor,
Piramal Chamber,
Lal Baug, Parel,
Mumbai - 400012

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Soumen Adak
For the Respondent/Department : Shri Nikhil Chaudhary

Date of conclusion of hearing : 23.02.2022
Date of pronouncement of order : 20.05.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 26.03.2021, passed by the Ld. Commissioner of Income Tax (Exemptions)-, Mumbai [hereinafter referred to as 'the CIT(E)'] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] whereby the Assessment Order, dated 08.12.2017, was set aside by the CIT(E) with the directions to the Assessing Officer to frame fresh assessment.
2. The Appellant has raised the following grounds:
"Ground 1- Order u/s 263 dated 26th March 2021 is bad in law

- 1.1 *That on the facts and circumstances of the case and in law, the order dated 26 March 2021 passed by the Commissioner of Income-tax (CIT) u/s 263 of Act setting aside the assessment order u/s 143(3) of the Act dated 08 December 2017 is erroneous and bad in law.*
- 1.2 *An order of assessment cannot be set aside to assessing officer (AO) u/s 263 of the Act for the purpose of making further enquiries and thereafter pass fresh order of assessment. Therefore, such impugned order and directions issued u/s 263 are untenable, contrary to law and unsustainable.*
- 1.3 *No justification is available to allow the AO to make independent re-verification with regards to movement of funds and verify the application of income as these were duly and sufficiently verified by the AO at the time of original assessment proceeding vide order dated 08 December 2017.*

Ground 2 – Without prejudice to the above, CIT ignored the retrospective amendment under FCRA Act, 2010 with respect to foreign contribution.

- 2.1 *Without prejudice to the above ground, retrospective amendment to proviso under the FCRA Act, 2010 vide Finance Act, 2016 and also by Finance Act, 2018 states that the donations amounting to INR 63,18,46,554/- shall not be classified as foreign contribution received by the Trust.*

Ground 3 – That the appellant craves leave to add, amend, modify, rescind, supplement or alter any of the Grounds stated here-in-above, either before or at the time of hearing of this appeal.”

3. The brief facts of the case are that the Appellant is a public charitable trust registered under Section 12A of the Act. The Appellant e-filed its return of income for the Assessment Year 2015-16 on 29.09.2015 declaring 'Nil' income. The case of the Appellant

was selected for scrutiny and notice under Section 143(2) and 142(1) along with the questionnaire were served upon the Appellant vide order dated 08.12.2017, the Assessing Officer completed assessment under Section 143(3) of the Act accepting the returned income.

4. Thereafter, on verification of assessment record, the CIT(E) noted that the Appellant had applied for registration under Foreign Contribution Regulation Act, 2010 (FCRA) during the previous year relevant to the Assessment Year 2015-16 (hereinafter referred to as 'PY14-15') and obtained approval during the previous year relevant to the Assessment Year 2016-17 (hereinafter referred to as 'PY15-16'). The CIT(E) noted that the Appellant had received foreign contribution amounting to INR 63,21,92,771/- during PY14-15 which was held in an escrow account since the Appellant had not received approval under FCRA. In PY15-16, out of the aforesaid amount INR 4,47,75,89,115/- was shifted to FCRA account and the balance was invested in Fixed Deposits. According to CIT(E), since the foreign contribution of INR 63,21,92,771/- received by the Appellant was not applied for charitable purposes as per Section 11 of the Act during PY14-15, the same should have been held to be income of the Appellant for the Assessment Year 2015-16. Further, according to CIT(E) the Assessing Officer had failed to carry out basic verification of the aforesaid transaction during the course of assessment proceedings. Therefore, the CIT(E) was of the view that the assessment order dated 08.12.2017 passed under Section 143(3) of the Act was prejudicial to the interest of Revenue. Accordingly, show cause notice, dated 08.03.2021, under Section 263 of the Act was issued by the CIT(E) whereby the Appellant was asked the Assessee to show cause why the Assessment Order should not be held to be erroneous and prejudicial to the interest of Revenue under Section 263 of the Act.

5. In response to the show-cause notice, the Appellant filed written submissions vide letter dated 19.03.2021 and requested that the proceedings under Section 263 of the Act be dropped. However, the CIT(E), vide order dated 28.03.2018, concluded that the Assessment Order, dated 08.12.2017, was erroneous and prejudicial to the interest of the Revenue. Exercising powers of revision under Section 263 of the Act read with Clause (a) of Explanation 2 to Section 263 of the Act, the CIT(E) set aside the Assessment Order, dated 08.12.2017, with the directions to the Assessing Officer to pass assessment order *de-novo* as according to CIT(E) the Assessing Officer had failed to make necessary enquiries which he was expected to make in the facts and circumstances of the case.
6. Being aggrieved, the Appellant has filed the present appeal.
7. The Learned Authorised Representative of the Appellant appearing before us submitted that during the course of the assessment proceedings, Assessing Officer had called for all the relevant details. In this regard, he referred to letter dated 29.06.2017 and 03.11.2017 filed during the course of assessment proceedings forming part of the paper book. He submitted that all the relevant documents such as audited financial statements, statement of computation of income, details of non-corporate donations received during the year, income & expenditure account, receipt & payment account etc. were furnished during the assessment proceedings. He stated that the amount of INR 63,21,92,771/- credited in escrow account was reflected under the head 'Cash And Bank Balances' in the balance sheet. The receipts and payments account showed that general donation of INR 65,68,99,773/- were received during the year. It further showed that the Appellant had applied INR 7,33,37,103/- for educational purposes, INR 87,27,010/- for medical relief and INR 57,54,93,392/- for advancing the charitable objects of the trust. In the Schedule of Significant Accounting Policies it was clearly disclosed that contribution of INR

63,21,92,771/- has been kept in escrow account on account of pending registration /approval under FCRA. He further submitted that the Appellant had actually incurred aggregate expenditure of INR 65.75 Crores towards the objects of the trust from the general corpus funds available with the Appellant since the contribution of INR 63,21,92,771/- had to be kept in escrow account on account of pending FCRA approval/registration. The Ld. Authorised Representative for the Appellant submitted that provisions of Explanation 2 to section 263 of the Act are not applicable as the Assessing Officer had carried out necessary enquiries and there was nothing on record to provoke further enquiry. Relying upon the decision of Tribunal in the case of Tewari Charitable Trust vs. DIT (Exemption) 30 ITR (T) 705 (Mumbai) and Chotanagpur Diocesan Trust vs. ITO (1986) 19 ITD 175 (Patna), the Ld. Authorised Representative for the Appellant submitted that the assessment order was no erroneous as general corpus donations can be used for the objects of the trust. He referred to Memorandum Explaining the Provisions In the Finance Bill, 2022 to contend that the amendments to Section 10(23C) and 11 of the Act providing that applications out of corpus shall not be considered as application for charitable purposes have been brought into force w.e.f. 01.04.2022 and shall apply to Assessment Year 2022-23 and subsequent assessment years.

8. He further submitted that the revision order have been passed on a ground other than the ground for which revision proceedings were initiated. The notice issued under Section 263(1) of the Act does not make reference to Explanation 2 to Section 263(1) of the Act which has been invoked to set aside Assessment Order dated 08.12.2017 which in any case is not applicable in the facts of the present case. He further submitted that the CIT(E) has failed to carry out any enquiry without remitting the matter to file of Assessing Officer for verification and the

same is contrary to the judgment of Hon'ble Bombay High Court in the case of CIT vs. Gabriel India Ltd. (1993) 203 ITR 108.

9. Per contra, Ld. Departmental Representative submitted that the Assessing Officer had failed to make the necessary enquiries about the contributions received by the Appellant during the relevant previous year and the application of the same towards the objects of the trust. The Assessing Officer has merely accepted the submissions made by the Appellant without making necessary enquiries. Since the Appellant did not have any accumulations from earlier years, the Assessing Officer should have enquired into the source of funds applied by the Appellant. He further submitted that the order passed by CIT(E) does not suffer from any infirmity and in this regard he referred to the notice issued under Section 263(1) of the Act and order passed by the CIT(E) under Section 263 of the Act . He contended that in the present case, the assessment order has been set aside because the Assessing Officer had failed to make the necessary enquiries and therefore, the judgment of Hon'ble Bombay High Court in the case of Gabriel India Ltd. (supra) was not applicable.
10. We have given a thoughtful consideration to the rival contentions and have perused the material on record. It is the admitted position that foreign contribution of INR 63,18,46,554/- and other donations of INR 2,50,53,213/- were received by the Appellant during the PY14-15. Pending registration/approval under FCRA the aforesaid amount of INR 63,18,46,554/- was kept in escrow account. As on 31.03.2015, the balance in the escrow account was 63,21,92,771/- (including interest of INR 3,46,217/-). Since FCRA registration/approval was pending the Appellant was not permitted to utilize this amount and was under obligation to return the same as noted in the Schedule of Significant Accounting Policies (*at page 10 of the paper-book*). On perusal of material on records It is clear the Appellant had applied an amount of INR 65,75,57,505/- towards the objects of the trust out of general

corpus donations received by the Appellant during the earlier years and therefore, the Appellant claimed benefit of Section 11 of the Act in respect of the aforesaid amount of INR 65,75,57,505/-.

11. The contention of the Revenue is the aforesaid claim was accepted by the Assessing Officer without required verification and enquiry during the assessment proceedings whereas the Appellant contends that the claim of the Appellant was verified by the Assessing Officer during the assessment proceedings. We note that audited financial statements, statement of computation of income, details of non-corpus donations received during the year, income & expenditure account, receipt & payment account etc. were available with Assessing Officer during the assessment proceedings. A perusal of the same shows that all the necessary facts required for adjudication of the claim of the Appellant were already on record. In response to notice dated 24.01.2017 issued by the Assessing Officer, the Appellant had filed reply dated 29.06.2017 giving details of the trust its objects and providing other information/details sought for by the Assessing Officer. The relevant extract of the aforesaid letter dated 29.06.2016 read as under:

"6. Copy of audited financial statements of the Trust is enclosed herewith marked as Annexure-D.

7. Copy of statement of computation of income is enclosed herewith marked as Annexure-E

xx xx

9. Details of on-corpus donations received during the captioned assessment year are enclosed herewith marked as Annexure-G. Further, the assessee submits that during the captioned AY 2015-16, the Trust has not received any corpus donation.

xx xx

11. *Detail of expenses incurred for the objects of the Trust is enclosed herewith marked as Annexure-I.*

xx xx

13. *It is submitted that since the formation of the Trust i.e. from Assessment Year 2007-08, the Trust has not made any accumulation u/s 11(2) of the Act. It has applied its income for charitable purpose in the year of receipt of income as per the provisions of section 11(1)(a) of the Act i.e. 85% or more of its income for charitable purpose. Hence the question of utilization made u/s 11(2) of the Act does not arise.*

14. *As mentioned above, the Trust has applied its income for charitable purpose in the year of receipt of Income as per the provisions of section 11(1)(a) of the act i.e. 85% or more of its income for charitable purpose. As such, the question of exercising the option mentioned in Explanation to section 11(1)(a) of the Act does not arise."*

12. Thereafter, the Appellant had also filed letter dated 03.11.2017 explaining the receipts and payments account:

"1.0 Receipts and Payments account:

1.1 The Trust is registered with the Charity Commissioner, Mumbai under the Bombay Public Trust Act, 1950 ('Trust Act') and has prepared the financials in accordance with the applicable accounting standards issued by the Institute of Chartered Accountants of India and the provisions of the Trust Act.

1.2 Further, the Trust also prepares 'Receipts and Payments Account' which is summary of cash and bank transactions for every Financial Year ('FY') with bank balances at the beginning and closing of the said FY. All the receipts and payments are included in this account, whether revenue or capital in nature or whether they are related to current, account, whether revenue or capital in nature or whether

they are related to current, account, whether revenue or capital in nature or whether they are related to current, past or future years. It is submitted that the said 'Receipts and Payments Account' represents only the cash/bank position of the Trust and surplus/profit for a FY cannot be ascertained from this account.

1.3 For the captioned FY 2014-15, the opening balance is Rs. 70.55 crores and closing balance is Rs. 70.65 crores which pertains to balances in Bank accounts and Fixed Deposits with bank.

1.4 With regard to your goodself's query regarding opening balance in Receipts and Payments Account of Rs. 70.55 crores, it is submitted that the said amount represents corpus donation of Rs. 65.00 crores received by the Trust in earlier years and balance amount represent surplus of earlier years falling under the exemption given for accumulation of income for charitable purposes u/s 11(1)(a) of the Act to the extent of 15%.

1.5 It is also submitted that the Trust has not made any accumulation of income u/s 11(2) of the Act or Explanation 2 to section 11(1)(a) of the Act, in earlier years since its incorporation." (Emphasis Supplied)

13. From above it is clear that it was brought to the notice of Assessing Officer that opening balance of INR 70.55 Crores of the receipt and payments account consisted of corpus donations of INR 65 Crores received by the trust in the earlier years which has been applied for the objects of the trust as is clear from bare reading of the receipts and payments account. Since the claim made by the Appellant as well as all the facts were apparent and clearly on record, we do not agree with the CIT(E) that any further inquiry/verification was warranted in the facts of the present case. There was nothing on record to invite

further enquiry into the matter in view of the disclosures already made. According to CIT(E), the Assessing Officer fell in error by not enquiring about the source of money applied by the Appellant towards the objects of the trust since the foreign contribution was deposited in escrow account. We note that in the case of *Chotanagpur Diocesan Trust vs. ITO (supra)* it has been held as under:

“5. We have considered the contentions of both the parties as well as the facts on record, Section 11(1)(a) states that income derived from property held under trust wholly for charitable or religious purposes is exempt from tax only to the extent to which such income is applied to such purposes in India. The case of the department, as we see it, rests on the meaning of the phrase ‘such income’. According to the department, ‘such income’ refers to the income earned during the previous year and not to any other fund. On the other hand, according to the assessee, ‘such income’ is only a measure for determining the amount to be spent during the previous year and it is not essential that the said amount should come only from the income of the previous year. Considering the context and the scheme of the section, we agree with the contention of the assessee. The intention of the section is quite clear. The income derived by a charitable trust cannot be accumulated beyond a limit. The section requires that the income of the trust should be substantially spent during the previous year in which it was earned. In our opinion, the emphasis is on the spending of the income and not on confining the source of the amount spent to the income earned during the previous year. In this view of the matter, we hold that the assessee is entitled to succeed in this appeal.” (Emphasis Supplied)

14. Further, Ld. Authorised Representative for the Appellant had submitted that the assessment order is not erroneous and in support thereto had highlighted that the amendments to Section 10(23C) and 11 of the Act which provide that applications out of corpus shall not be considered as application for charitable purposes have been introduced w.e.f. 01.04.2022, and are not applicable to Assessment Year 2015-16. Ld.

Authorised Representative for the Appellant has contended that the view taken by the Assessing Officer is correct. According to us it is certainly a plausible view, if not the correct view, which cannot be disturbed by CIT(E) in exercise of powers of revision under Section 263 of the Act.

15. Accordingly, in view of the above, we set aside the order, dated 26.03.2021, passed by the CIT(E) under Section 263 of the Act and restore the Assessment Order, dated 08.12.2017.

In the result, the present appeal is allowed.

Order pronounced on 20.05.2022.

Sd/-
(Pramod Kumar)
Vice President

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 20.05.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/

BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai