

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

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

SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

**ITA No.1883/Mum/2021
(Assessment Year :2015-16)**

M/s. Sparc Samudaya Nirman Sahayak 503, Jolly Bhavan No.1 New Marine Lines Churchgate, Mumbai-400020	Vs.	CIT(Exemptions) Mumbai R.No.617, Piramal Chambers Lal Baug, Parel Mumbai- 400 012
PAN/GIR No.AABTS8659N		
(Appellant)	..	(Respondent)

Assessee by	Shri Dharmesh Shah
Revenue by	Shri Amol Kirtane
Date of Hearing	07/06/2022
Date of Pronouncement	10/06/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.1883/Mum/2021 for A.Y.2015-16 preferred by the order against the revision order of the Id. Commissioner of Income Tax(Exemptions), Mumbai u/s.263 of the Act dated 17/03/2020 for the A.Y.2015-16.

2. At the outset, there is a delay of 514 days in filing of this appeal by the assessee before us. But this falls during the Covid period and in view of

the relaxation of the Hon'ble Supreme Court, we hold that there is no delay and hence, the appeal of the assessee is hereby admitted for adjudication.

3. The assessee has raised the following grounds of appeal:-

1. *The Ld. CIT(Exemption) has erred in law and in facts in issuing notice u/s. 263 of the Act and passing revision order without satisfying the conditions laid down u/s. 263 of the Act and without appreciating that the assessment order was neither erroneous nor prejudicial to the interest of revenue.*
2. *The Ld. CIT(Exemption) has erred in law and in facts in setting aside the assessment with direction to the Assessing Officer to conduct fresh assessment.*
3. *The Ld. CIT(Exemption) has erred in law and in facts in directing the Assessing Officer to conduct verification of expenses incurred on the objects of the appellant trust.*
4. *The Ld. CIT(Exemption) has erred in law and in facts in directing the Assessing Officer to examine the receipts in the form of foreign donations and expenditure incurred against these receipts.*
5. *The Ld. CIT(Exemption) has erred in law and in facts in directing the Assessing Officer to conduct verification wrt accumulation of funds of the appellant trust.*
6. *The appellant craves leave of Your Honour to add to, alter, amend and/ or delete all or any of the foregoing grounds of appeal.*

4. The assessee is a registered as a public charitable Institution duly registered u/s.12A of the Act. Sparc Samudaya Nirman Sahayak is a non profit Institution under the provisions of Section 25 of the Companies Act, 1956 (Section 8 of Companies Act, 2013) to promote the social, economic and cultural development of the poor and in the process undertake various projects in collaboration with slum developers Manila Milan and their affiliates, such projects includes slum developments construction of houses for the poor, provision of basic amenities in the slums and provisions of financial aid for such projects and schemes through loans, grants, donations and bridge finance. The return of income for the A.Y.2015-16 was filed by the assessee Institution on 26/09/2015

along with Balance Sheet, Income and Expenditure account and Audit Report in Form No.10B declaring total income at Rs. Nil. The activities carried out by the assessee Institution are considered to be charitable in nature within the meaning of Section 2(15) of the Act. The assessee claimed exemption u/s.11 of the Act in the return of income and the same was duly granted by the Id. AO in the assessment proceedings. The Id. AO completed the assessment u/s.143(3) of the Act on 05/06/2017 accepting the nil income of the assessee. During the course of assessment proceedings, the Id. AO obtained various details from the assessee which were duly examined and finally the income of the assessee was determined in the following manner:-

Sparc Samudaya Nirman Sahayak		
Computation of Income		
Particulars	Rs.	Rs.
Income as per accounts		87765198
Less: Expenditure incurred as accounts Less: Application of Earlier Year	103395142	
(As per 10B Certificate)		
15% of Rs. 87765198/-	13164780	
Amount deemed to have been applied to charitable purpose in India during the previous year - Clause (2) of the Explanation to section 11(1)	116559922	
		87765198
Taxable Income		NIL

4.1. This assessment was sought to be revised by the Id. PCIT u/s.263 of the Act on the ground that the order passed by the Id. AO is erroneous in

as much as it is prejudicial to the interest of the revenue. The relevant operative portion of the order of the Id. PCIT is reproduced hereunder:-

“4. I have considered the submission of the assessee. The main contention of the assessee is that the details that have been mentioned as not verified, have been submitted at the time of assessment. Regarding the verification of the expenses incurred for the objects of the trust, the assessee has stated that the same have been submitted vide letter dated 03.02.2017, as per point no 9, Annexure 8. On perusal of the assessment records, it is seen that the assessee has submitted only the breakup of expenses, project wise and head wise, alongwith a note on the accounting policy adopted by the assessee, but has not submitted any supporting vouchers or bills to support their claim of the expenses incurred on the objects of the trust. The Assessing officer ought to have conducted verification, at least on test check basis before concluding the assessment in this case, specifically when there was ample time available since the proceedings were concluded in 05.06.2017, while the date of limitation of completion of assessment in this case was 31.12.2017.

The next issue is verification of the identities of the foreign donors and foreign receipts received by the trust. Here also, it is seen that neither the FCRA registration nor Form FC3 was submitted during assessment. Only the names of the donors, the country from which donations were received and the amounts have been mentioned. The assessing officer ought to have examined the above receipts along with statutory compliances having been completed in this regard. The expenditure incurred against these receipts has also not been checked, which also should be verified.

The third issue here is accumulation of funds u/s 11(2) where the assessee, in response to the notice u/s 263, has submitted that the trust has not accumulated any funds in AY 2015-16 and that the previous accumulated funds had been utilized in AY 2014-15. The assessing officer shall verify the above claim of the assessee while passing the order giving effect to this order.

The above details were not examined at the time of original assessment and therefore, the order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue because the order is passed without making inquiries or verification which should have been made.

5. Hence, by virtue of powers vested in the undersigned vide the provisions of Section 263 of the Income Tax Act, the assessment order, u/s.143(3) of I.T. Act dated 05/06/2017 is set aside. Assessing officer is hereby directed to conduct the assessment proceedings, de novo, focusing on the issues enumerated above. Needless to mention, AO is directed to give the Assessee trust sufficient opportunity to present its case, present its case, and pass a speaking order carefully enumerating facts, circumstances, verifications and findings.

6. In the result, this assessment is set aside with the direction to AO to conduct fresh assessment.

4.2. From the grounds, we find that assessee has challenged the validity of assumption of jurisdiction by the Id. PCIT u/s.263 of the Act as well as the adjudication of the issue on merits. First we deem it fit to address the legal issue on assumption of jurisdiction. We find that assessee had initially filed a letter dated 02/02/2017 before the Id. AO furnishing the primary details of the activities carried out by the assessee together with details of Institution, bank statements, party wise details of foreign contributions received along with copies of Foreign Inward Remittance Certificate (FIRCs) and audited accounts of foreign contributions received together with its utilization, copy of all quarterly TDS returns and copy of scrutiny assessment orders of A.Y.2012-13 and 2013-14 framed in the hands of the assessee together with details of expenses incurred for the purpose of objects of the assessee Institution. Later the Id. AO also issued specific query vide letter dated 21/02/2017 seeking practically 22 details from the assessee. Out of the same, the details called for in question No.9 regarding the details of expenses incurred on objects of the Institution, details sought for in question No.11 regarding details of accumulations made u/s.11(2) of the Act, if any, in last 10 years and details of utilization in the prescribed format and question No.15 seeking party wise details of foreign donations received, if any, together with copy of FCRA registration, form FC3 and audit report for contributions received thereon, would be relevant for the issues in dispute before us in the impugned appeal. The assessee filed reply for the same during the course of assessment proceedings which are enclosed in pages 28 & 29 of the paper book and further reply dated 14/03/2017 which are enclosed in pages 34-37 of the paper book. In the said reply dated 14/03/2017, the assessee had duly furnished the details of entire administrative expenses in the format given by the Id.

AO; details of expenses incurred on objects of the Institution; details of accumulation of income made u/s.11(2) of the Act for 10 years in the format given; details of option exercised in earlier years u/s.11(1)(a) of the Act for utilization of income during the year under consideration and party wise details of foreign donations received along with copy of FIRC's and audited foreign contribution amounts together with its utilization thereon. The details of foreign contributions received together with audit certificate and audited accounts are enclosed from pages 52-64 of the paper book filed before us. We also find that form FC3 being the annual return to be filed before the Ministry of Home Affairs under FCRA Act had been changed to form FC4 and the assessee had duly furnished form FC4 before the Id. AO which are also enclosed in pages 64-67 of the paper book filed before us. The copy of FIRC's are enclosed from pages 68-69 of the paper book. Similarly, we find that the entire details of accumulation of income made u/s.11(2) of the Act together with utilization thereon for each of the years commencing from A.Yrs. 2006-07 to 2015-16 are enclosed in pages 70-79 of the paper book filed before us. While this is so, it could be safely concluded that all the requisite enquiries were duly carried out by the Id. AO in the assessment proceedings itself, before accepting the returned income of the assessee. We find that the Id. CIT is not even conscious of the fact that form FC3 annual return has been changed to form FC4. This categorically goes to prove the complete non-application of mind on the part of the Id. PCIT before invoking his revision jurisdiction u/s.263 of the Act. We hold that the Id. AO had made requisite enquiries before concluding the assessment and hence, there could not be any revision proceeding on the ground that proper enquiries were not carried out by the Id. AO in the course of assessment proceedings. The law is very well settled that

revision jurisdiction u/s.263 of the Act could be invoked only in the event of lack of enquiry and not for inadequate enquiry; even though, in the instant case, there is no inadequate enquiry.

4.3. From the computation of income during the year under consideration, we find the total income of the year of the assessee was Rs.8,77,65,198/- and total amount expended for the purpose of objects of the Institution is Rs.10,33,95,142/-. This clearly results only in excess of expenditure over income (i.e. deficit) to the assessee. Hence, in any case, there can never be any prejudice that could be caused to the interest of the Revenue warranting revision u/s.263 of the Act. The law is also very well settled that in order to invoke revision jurisdiction u/s.263 of the Act, the Id. PCIT has to satisfy two conditions (a) the order passed by the Id. AO must be erroneous (b) it should be prejudicial to the interest of the Revenue. These conditions are to be satisfied cumulatively. From the perusal of the order of the Id. PCIT, we find that the Id. PCIT nowhere points out as to how the order of the Id. AO is erroneous or prejudicial to the interest of the Revenue. On this ground also, the revision order passed by the Id. PCIT deserves to be quashed. Moreover the activities of the assessee Institution had not changed from earlier years and the Id. AO had the benefit of scrutiny assessment orders framed for A.Y. 2012-13 u/s.143(3) of the Act dated 03/02/2015 and for A.Y. 2013-14 framed u/s.143(3) of the Act dated 28/03/2016 before him, while framing the assessment for A.Y.2015-16 i.e. the year under consideration. In view of the above, we have no hesitation in quashing the revision order passed by the Id. PCIT u/s.263 of the Act as it is bad in law for more than one reason as detailed hereinabove. Accordingly, the grounds raised by the assessee are allowed.

4.4. Since relief is granted on legal issue, the other grounds raised on merits, need not be adjudicated upon as they would be academic in nature. Hence they are left open.

5. In the result, appeal of the assessee is allowed.

Order pronounced on 10/06/2022 by way of proper mentioning in the notice board.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 10/ 06/2022
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