

IN THE INCOME TAX APPELLATE TRIBUNAL  
“G” BENCH, MUMBAI  
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 599/Mum/2022  
(A.Y: 2017-18)

Gujarat Research Society Dr. Madhuri Shah Campus, Ram Krishna Mission Marg, Mumbai- 400052.	Vs.	CIT(Exemption) Room No. 601, 6 <sup>th</sup> Floor, Cumballa Hill, MTNL Bldg, Peddar Road, Mumbai -400026.
PAN/GIR No. : AAATG2519A		
Appellant	..	Respondent

Appellant by :	Shri.Jayesh Dadia.AR
Respondent by :	Shri.S.Ambuselvam.DR

Date of Hearing	13.07.2022
Date of Pronouncement	25.07.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of Commissioner of Income Tax (Exemption), Mumbai passed u/sec263 of the Act. The assessee has raised the following grounds of appeal:

- 1. The Ld CIT has erred in law and on the facts of the case in passing the order under section 263 of the Income Tax Act. The order is bad in law.*

2. *The Ld CIT has erred in law and on the facts of the case in invoking Provision of Section 263 of the Income Tax Act by treating the assessment order made by the Assessing Officer as erroneous and prejudicial to the interest of Revenue. The action is unjustified and unwarranted as the Assessing Officer's order is not erroneous.*

3. *Without prejudice, the Ld CIT has erred in law and on the facts of the case in directing the Assessing Officer to verify the claim of deduction of your Petitioners of Rs.27,01,800/- particularly in view of the fact that the said claim was neither made by the Assessee nor allowed by the Assessing Officer in the assessment order.*

4. *You Petitioner crave leave to add, amend, alter and /or withdraw any or all the aforesaid ground of appeal.*

2. The brief facts of the case are that the assessee trust is registered u/s 12A of the Act. The assessee has filed the return of income for the A.Y 2017-18 on 14.10.2017 disclosing a total income of Rs. 29,53,110/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with annexure were issued. In compliance to the notice, the assessee trust has furnished the details electronically through its e-filing account in the ITBA from time to time and the details were examined. The Assessing Officer (A.O) found that the assessee has incurred expenditure for the objects of the trust

claimed in the income and expenditure account and exemption u/s 11 of the Act. The A.O found that in the A.Y 2017-18 the assessee has claimed accumulation u/s 11(2) of the Act of Rs.2,40,00,000/- in form no.10 and the purpose is mentioned as Education Fund. The A.O. has issued a show cause notice and a specific queries were raised and the assessee has furnished the detailed reply referred at Para 4.1 of the order. The A.O has considered the submissions and dealt on the provisions of Sec.11(2) of the Act and the judicial decisions on the aspect of the accumulation. The A.O. was not satisfied on the explanations as the assessee has not mentioned any specific purpose for accumulation u/sec11(2) of the Act and finally assessed the total income of Rs.2,89,18,290 and passed the order u/s 143(3) of the Act dated 05.12.2019.

3. Subsequently, the CIT(E) on perusal of the facts and the assessment record observed that the A.O has not made any enquiry in respect of utilization in Form No.10 filed for the A.Y 2017-18 on the accumulation amount of the A.Y 2013-14 relevant to F.Y 2012-13 of Rs.27,01,800/-.The CIT(E) is of the opinion that the

assessment order passed u/s 143(3) of the Act is erroneous and prejudicial to the interest of revenue and issued notice u/s 263 of the Act dated 30.12.2021 is read as under:

*2. On verification and careful examination of the assessment records for the A. Y. 2017-18 in your case, wherein assessment was completed under section 143(3) of the I.T. Act, 1961 on 05.12.2019, I am of the prima face view that the order passed by DCIT(E) Cir. 1(1), Mumbai (hereinafter 'the Assessing Officer' or 'the AO') is erroneous in so far as it is prejudicial to the interest of revenue, in view of the following:*

*i) In this case, return declaring total income of Rs.29,53, 110/- for A.Y. 2017-18 was filed on 14.10.2017. The case was selected for scrutiny and the assessment was completed u/s. 143(3) vide order dated 05.12.2019 determining total income at Rs.Nil.*

*ii) On verification of the assessment records of AY 2017-18, it is observed that the assessee has shown Rs.27,01,800/- in its form 10, as application against the accumulation of FY 2012-13, i.e. AY 2013-14 u/s. 11(2) of the Act During the course of assessment proceedings, the assessee has neither submitted the relevant details nor documentary evidence of above mentioned utilization. Further, the AO has allowed the assessee's claim.*

*iii. In view of the above, the issue of the utilization of Rs. 27,01,800/- by the assessee during the F.Y 2016-17 relevant to AY 2017-18 has remained to be verified during the assessment. The utilization of Rs.27,01,800/- has been allowed to the assessee without any verification.*

*The AO has passed order without the basic verification of the above facts stated above and therefore the order is prejudicial to the interest of revenue.*

3. In view of the above, may I request you to show cause why the assessment order made u/s. 143(3) of the Act dated 05.12.2019 should not be set aside by invoking the provisions of Section 263 of the Act with appropriate directions to the AO to make a fresh assessment. You are accorded an opportunity to furnish a written response online electronically through your e-filing account in [incometax.gov.in](http://incometax.gov.in) on or before 12.01.2022. You may further note that if nothing is heard from you at the specified date, it will be presumed that you have no submissions to make and order will be passed accordingly on the information available on the record.

4. In compliance to the notice, the assessee has filed the reply referred at Page 2 Para 3 of the order as under:

3. The SCN was issued to assessee society on 30/12/2021. In response, the assessee filed a written submission dated 10/01/2022 on 25/01/2022 requesting that the proceedings u/s.263 may be dropped. The gist of the submissions made by the assessee society is encapsulated as under:

(a) The assessee has submitted that the facts mentioned in the SCN dated 30/12/2021 is factually incorrect. The amount of Rs.27.01,800/- pertains to AY.2013- 14 and was not claimed as deduction in the return of income for the present assessment year i.e. AY.2017-18.

(b) It was further contended that as per law, the accumulation for AY.2013-14 can be applied or utilised on or before the end of the AY.2018-19. Hence, there is no impact on the taxability of income for the present assessment year i.e. AY.2017-18.

(c) The actual accumulation claimed under Section 11(2) of the Act for AY.2017-18 is Rs.2,40,00,000/-. In his assessment order, the AO has disallowed the same against

*which the assessee society is presently in appeal. Proof of filing appeal was also appended along with written submission.*

5. Whereas the CIT(E) was not satisfied with explanations with respect to utilization of accumulation pertaining to the A.Y 2013-14 and the A.O. has not verified the utilization of funds. The CIT(E) observed that the order passed U/sec143(3) of the Act is erroneous and prejudicial to the interest of revenue and has set aside the assessment and issued directions to the A.O. The observations are dealt at page 3 Para 6 to 8 of the order read as under:

*6. It is therefore clear from Form 10 extracted above that in the FY. relevant to AY.2016-17, the assessee had not applied any amount out of total accumulation of Rs.1,53,00,000/- in the AY.2013-14. However, in the present assessment year i.e. AY.2017-18, the assessee has mentioned in the relevant column of Form 10 that the amount applied from the accumulation of AY.2013-14 in the present AY.2017-18 is Rs.27,01,800/-. Hence, it is clear from the above that there is variance between assessee filings in Form 10 and statement made in response to the SCN. It is clear on verification of assessee Form 10 that the impugned amount of Rs.27,01,800/- was actually applied during the present AY and the same was allowed by the A without any verification whatsoever.*

*7. This non verification by the AO during the course of during the course of assessment proceedings, in my considered view renders the assessment order dated 05/12/2019 erroneous in so far as is prejudicial to the interest of revenue within the meaning of Explanation 2 to*

*Section 263(1) of the Act. Hence, I deem it appropriate to set aside the assessment order dated 05/12/2019 under section 263 of the Act with a limited mandate to the Assessing Officer to verify whether the impugned amount of Rs.27,01,800/- was expended for specified purpose as per the declaration made in form no.10 for the AY.2013-14. The AO may examine the details evidences of such explanation and arrive at concrete findings in his order after giving the assessee reasonable opportunity of being heard.*

*8. Subject to these directions, the assessment order dated 05/12/2019 is set aside under section 263 of the I.T. Act, 1961.*

6. Aggrieved by the revision order, the assessee has filed an appeal before the Hon'ble Tribunal.

7. At the time of hearing, the Ld.AR submitted that the CIT(E) has erred in set aside the order u/s 143(3) of the Act, which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue and direct the A.O to do afresh assessment. The Ld.AR submitted that the explanation 2 to sec 263 of the Act ought to be considered only when the AO has not applied his mind, the facts are to be verified and no enquiry is conducted. The Ld. AR emphasized that the assessee has complied with the notices and the clarifications were filed. The A.O. has dealt on the facts in respect of the issues raised by the CIT(E) but there are no observations in the assessment order. The Ld.

AR substantiated the submissions with the paper book, judicial decisions and prayed for allowing the appeal.

8. Contra, the Ld.DR submitted that the A.O has issued notice u/s 142(1) of the Act and the assessee has filed the reply but the details does not satisfy the completeness of the notice. Further the Ld.DR supported the order of the Pr.CIT and made submissions on the application of the provisions and explanation 2 to section 263 of the Act.

9. We heard the rival submissions and perused the material available on record. The Ld.AR contentions are that the order passed by the A.O. does not satisfy the twin conditions that (i) erroneous and (ii) prejudicial to the interest of the revenue. The Ld. AR further submitted that the CIT(E) is of the opinion that the AO has not conducted enquiry on utilization of accumulation and there are no specific reasons and findings are recorded. The crux of the disputed issue the CIT(E) has observed that the assessee has made accumulation u/sec11(2) of the Act for A.Y 2013-14 of Rs. 27,01,800/- and the A.O. has not verified, whether the said amount was expended for specific purpose as per the declaration in Form. no 10 for the A.Y.2013-14.

10. We find that the assessee has complied with the notice u/se 142(1) of the Act and the specific query notice dated 18-11-2019. The Ld.AR in the course of hearing has demonstrated the financial statements at page 10&11 of the paper book and in particular in the Audited Balance Sheet as on 31-03-2017 under “Funds and Liabilities” Education Fund disclosed with the balance as per last year and addition of transfer during the year and Less utilized during the year Rs.27,01,800/- (Pertaining to AY.2013-14). The Ld.AR emphasized on the summary of Accumulated Education Fund as on 31-03-2017 including earlier years and the accumulation utilized pertaining to F.Y.2012-13 at page 12 of the paper book. The Ld.AR also submitted that the accumulated funds are utilized for specific purpose and demonstrated the Ledger account of Education Fund from financial years 2012-13, 2014-15, 2015-16, & 2016-2017 placed at page 13 to 16 of the paper book. The Ld.AR highlighted the education fund of F.Y.2012-13 utilization in the F.Y.2016-2017 were allocated to additions of Fixed Assets in various pre primary, primary, Secondary and ISC section of the schools/Institutions. The Ld.AR

submitted that the assessing officer after satisfaction of verification of facts has passed the Assessment order. We find the submissions of the Ld. AR are realistic duly supported with the material information.

11. We Considering the overall facts, circumstances and the details submitted in the course of hearing are of the view that the if any query is raised in the assessment proceedings and it was responded by the assessee, mere fact that it is not dealt by the A.O. in the order cannot implied that there is no application of mind. Hence, the CIT(E) action cannot be acceptable as the order passed by the A.O. does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the Revision order passed by the CIT(E) and allow the grounds of appeal of in favour of the assessee.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.07.2022

Sd/-

Sd/-

(PRASHANT MAHARISHI)

(PAVAN KUMAR GADALE)

**ACCOUNTANT MEMBER**

**JUDICIAL MEMBER**

Mumbai, Dated 25.07.2022.

KRK, PS

Copy of the Order forwarded to :

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

//True Copy//

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आदेशानुसार / BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai