

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, CHENNAI

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.187/CHNY/2021
Assessment Year: 2015-16**

Lakshmi Vidya Sangham, Madurai, 7B TVS Building, West Veli Street, Madurai- 625001, Tamil Nadu. (PAN: AAATLO409J)	Vs.	Commissioner of Income Tax, (Exemption), Chennai.
(Appellant)		(Respondent)

Present for:

Appellant by : Shri N. V. Balaji, Advocate

Respondent by : Shri AR V Sreenivasan, Addl. CIT

Date of Hearing : 24.05.2022

Date of Pronouncement : 19.08.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against the order of Id. CIT(E), Chennai vide order No. ITBA/COM/F/17/2020-21/1031953954(1) dated 30.03.2021 passed u/s. 263 of the Income-tax Act, 1961 (hereinafter referred to as ‘the Act’) for A.Y. 2015-16.

2. The assessee has taken as many as six grounds of appeal by which it has challenged the assumption of jurisdiction for invoking the revisionary proceedings u/s. 263 of the Act and passing of the impugned order thereon.

3. Brief facts as culled out from records are that assessee is a charitable trust and is registered u/s. 12AA of the Act vide order in circular no. 212(572)/75 dated 31.03.1975. Assessee filed its return of income on 29.09.2015 reporting total income at Rs. Nil. Case was selected for limited scrutiny for which statutory notices were issued and served on the assessee. Assessee complied with notices and the

assessment so completed by the Ld. AO after examining the submissions made held that assessee had applied more than 85% of the total income and granted the exemption u/s. 11 of the Act.

3.1. Subsequently, Ld. CIT(E), Chennai noted on examination of record of the case that in the assessment completed by the Ld. AO, provisions for gratuity of Rs.53,32,843/-, provisions for earned leave Rs.6,54,918/- and provisions for building expenses of Rs.87,00,000/- had been allowed as application of income. Ld. CIT(E) noted that total amount of Rs.1,46,87,761/- towards these three provisions have been allowed when no actual expenditure was incurred during the previous year. Thus, Ld. CIT(E) by invoking the revisionary provisions, issued a show cause notice u/s. 263(1) of the Act dated 03.03.2020, wherein he noted at para 2 as under:

“The Assessing Officer has arrived at the application of income as under:

Gross Receipt (in Rs.)	31,48,76,379	
85% thereon		26,76,44,922
Application (including the provisions mentioned above)		27,82,89,253
Shortfall		NIL”

4. Ld. CIT(E) was of the considered view that the shortfall of Rs.40,43,430/- ought to have been brought to tax as it fell short of 85% of application of gross receipts towards the objects of the trust. Assessee vide its reply dated 13.02.2020 explaining its case that even though these provisions have been claimed as application, the expenditure actually incurred against these provisions, if taken into consideration, would amount to application of the gross receipts at the percentage prescribed i.e. 85% or more and, therefore, there is no short fall in the application as alleged by the Ld. CIT(E). In the reply submitted before

the Ld. CIT(E), it was also stated that a revised statement of application of income was submitted to the Assistant Commissioner of Income-tax (Exemption), Circle- Coimbatore on 07.02.2019, according to which, the total income is Rs.31,48,76,379/- against which total expenditure/application (excluding the three provisions) is Rs.26,84,97,515/-. Thus, the percentage of application of income comes to 85.27%. Ledger copies evidencing the provisions made and the actual payments made against these provisions for the AY 2015-16 were also placed before the Ld. CIT(E) vide letter dated 27.02.2020 along with revised working placed at page 5 of the paper book. The revised working demonstrate the percentage of application to income of 85.27% by excluding the three provisions mentioned in the show cause notice is reproduced hereunder:

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Lakshmi Vidya Sangham
Assessment Year 2015-16

Revised working given to IT Department during the course of Assessment

Particulars	Amount Rs.	Amount Rs.
INCOME		
Income as per Income and Expenditure Account	31,43,70,097	
Add: Special Coaching Fee (course continuous over a year)	5,06,282	31,48,76,379
TOTAL INCOME (A)		31,48,76,379
Expenditure incurred as per Income and expenditure account		
Salary & establishment cost	13,54,68,486	
Management contribution		
TVS Higher Secondary School	1,21,50,933	
TVS Primary School	20,31,901	
Academic expenses	2,14,37,868	
Cocurricular activities	4,76,199	
Functions & celebrations	24,32,271	
LVS - HSS Golden Jubilee Celebration expenses	25,83,686	
General administration expenses	1,91,19,428	
Hostel expenses	2,12,277	
Library expenses	1,37,695	
Bus maintenance charges	3,84,49,415	
Maintenance expenses	1,66,17,010	
Sports & games	3,47,957	
Interest on term loan & overdraft	34,60,900	
	25,49,26,026	
Add: Expenditure not charged to Income & Expenditure		
Gratuity paid during the year	8,97,507	
Add: Payment made for Building Maintenance towards the provision made during the AY 2014-15	39,98,516	25,98,22,049
Capital Expenditure		
Buildings & sheds	54,955	
Building under Construction	2,20,119	
Furniture & Fixtures	8,84,010	
Lab Equipments	1,18,223	
Electrical Fittings	3,25,709	
Computers	11,42,070	
Library Books	5,59,339	
Office / Other Equipments	52,56,041	
Vehicles	1,15,000	86,75,466
TOTAL EXPENDITURE (B)		26,84,97,515
EXCESS OF INCOME OVER EXPENDITURE (A-B)		4,63,78,864

Percentage of Application to Income

85.27

5. Before us, Shri N. V. Balaji, Advocate represented the assessee and Shri AR V Sreenivasan, Addl. CIT represented the department.

6. Ld. Counsel for the assessee reiterated the submissions made before the Ld. CIT(E) which have been referred in the facts stated above. The same are not repeated to avoid duplicacy. Per contra, Ld. CIT, DR relied on the order of the Ld. CIT(E).

7. We have heard rival submissions and gone through the facts and circumstances of the case. Admittedly, it is a fact that revised working in respect of application of income was placed on record after excluding the three provisions mentioned in the show cause notice issued by the Ld. CIT(E) for invoking revisionary proceedings u/s. 263 of the Act. The revised computation in respect of application of income has not been controverted by the Ld. CIT(E) nor any material brought on record to demonstrate anything against the said computation. Ld. Sr. DR also could not bring out anything contrary to the revised working reported by the Ld. Counsel when the said working was confronted to him. We thus find that in the course of proceeding u/s. 263 of the Act before the Ld. CIT(E), the assessee had furnished the relevant details factually demonstrating that the application of income excluding the three provisions is at 85.27% and explained the issue raised in the show cause notice by relevant documentary evidence and judicial precedents. We note that it is a well settled law that for invoking the provisions of section 263 of the Act, both the conditions that the order must be erroneous insofar as prejudicial to the interest of the revenue needs to be satisfied as held by Hon'ble Supreme Court in the case of Malabar Industrial Company Ltd. Vs. CIT (2000) 109 taxman 66 (SC). The ratio laid-down by the Hon'ble Supreme Court in this decision has been followed by various Hon'ble courts. Accordingly, consideration arrived at by the Ld. CIT(E) invoking the provisions of section 263 of the Act on the issue recorded by him is not justified and cannot be sustained in

the facts and circumstances of the present case. We, therefore, quash the impugned order u/s. 263 of the Act and allow the grounds of appeal raised by the assessee.

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

Order is pronounced in the open court on 19th August, 2022.

Sd/-
(MAHAVIR SINGH)
Vice President

Sd/-
(GIRISH AGRAWAL)
Accountant Member

Dated: 19th August, 2022

Jd.(Sr.PS)

Copy to:

1. The Appellant:
2. The Respondent:.
3. CIT(E), Chennai
4. The DR, ITAT, Kolkata Bench, Kolkata