

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री संजय गर्ग न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्यके समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 445/Kol/2020
Assessment Year : 2017-18

Giribala Memorial Trust (PAN:AAATG 2295 F)	Vs.	CIT(Exemption), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	08.06.2022
Date of Pronouncement / आदेश उद्घोषणा की तिथि	09.09.2022
For the Appellant / निर्धारिती की ओर से	Shri Subash Agarwal, Advocate
For the Respondent / राजस्व की ओर से	Md. Ghyas Uddin, CITDR

ORDER / आदेश

Per Shri Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Exemption), Kolkata [hereinafter referred to as 'Ld. CIT(E)'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 27.02.2020 for the assessment year 2017-18.

2. Though the Registry has pointed out that the appeal is time barred, however, in view of the decision of the Hon'ble Supreme Court in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the period of filing appeal during the COVID-

19 pandemic is to be excluded for the purpose of counting the limitation period. In view of this, the appeal is treated as filed within the limitation period.

3. The assessee has challenged the order passed by the Ld. CIT(E) u/s 263 of the Ac setting aside the assessment framed by the AO u/s 143(3) dated 20.12.2019.

4. Facts in brief are that the assessment was completed u/s 143(3) at Nil income vide order dated 20.12.2019 after allowing accumulation u/s 11(2) of the Act to the extent of Rs. 14,03,210/-. The Ld. CIT(E) upon perusal of the assessment records observed that the accumulation u/s 11(2) of the Act was allowed by the AO despite the fact that Form 10 was not filed on time as per the provisions of Section 13(9) of the Act which stipulates that Form 10 seeking accumulation of funds has to be filed before due date of filing return of income. In this case the assessee filed its return of income on 06.11.2017 which is within the extended period of time as allowed by the CBDT however no form 10 was filed. Accordingly, the Ld. CIT(E) issued a show cause notice u/s 263 of the Act dated 06.02.2020 as to why the assessment framed should not be set aside which was replied by the assessee on 17.02.2020 by submitting all the necessary details including form 10 were furnished before the AO during the assessment proceedings and the AO, only, after making proper enquiry and examination of the said documents, allowed the claim of the assessee. The Ld. CIT(E) rejected the contentions of the assessee and came to the conclusion that the AO has failed to conduct an enquiry or proper enquiry into the issue of filing the form 10 well within the due date for filing the return of income and accordingly held assessment order to be erroneous and prejudicial to the interest of the revenue as the claim u/s 11(2) was wrongly allowed and directed the AO to compute the income without allowing the accumulation u/s 11(2) of the Act. Pertinent to mention that condonation of delay filed by the assessee was also rejected by the Ld CIT(E) vide order dated 30.12.2019.

5. The Ld. A.R. submitted before the Bench that jurisdiction exercised by Ld. CIT(E) is invalid and against the provisions of Act as the order passed by the AO is

neither erroneous nor prejudicial to the interest of the revenue. The Ld. A.R. drew our attention of the Bench to the fact that during the course of assessment proceedings, the AO called for the details which were duly produced before the AO including form 10 in respect of accumulation of income. The ld AR argued that only after having due cognizance and examination of the issue/ details/evidences, claim of the assessee as regards the accumulation of income in Form 10 was allowed. The AO has mentioned in the assessment order that Form 10B was filed on 6.11.2017 and form 10 was filed on 6.11.2019. The ld. Counsel took us through the revisionary order passed u/s 263 of the Act wherein the Ld. CIT(E) wrongly observed that the AO has conducted no enquiry or proper enquiry as the Form 10 was filed after the due date and the application filed for condonation of delay in filing form 10 was also dismissed by Ld. CIT(E). On the legal issue the Ld. A.R submitted that it is not a case of no enquiry but where enquiry has been conducted by the AO and one of the possible views has taken by the AO on the allowability of claim u/s 11(2) of the Act. Therefore the exercise of jurisdiction u/s 263 of the Act is invalid and kindly be quashed.

6. Having heard rival submissions and perusing the material on record, we note that on the observation of ld CIT (E) no enquiry or proper enquiry was conducted by the AO. We note that AO has given all the facts in the assessment order which unequivocally proved that all the facts and evidences were called for from the assessee such as return of income, audit report in Form 10B, Form 10 etc and AO after examination of all the details/documents allowed the claim/deduction u/s 11 (2) of the Act. In our opinion, this is not the case of no enquiry and therefore exercise of jurisdiction by Ld. CIT(E) is wrong and cannot be sustained. Accordingly we set aside the order of ld CIT(E) and direct the AO to allow the claim u/s 11(2) of the Act.

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

Order is pronounced in the open court on 9th September, 2022

Sd/-

(Sanjay Garg /संजय गर्ग)
Judicial Member /न्यायिक सदस्य

Sd/-

(Rajesh Kumar /राजेश कुमार)
Accountant Member / लेखा सदस्य

Dated: 9th September, 2022

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Giribala Memorial Trust, C/o, Subash Agarwal & Associates, Advocates, Siddha Gibson, 1, Gibson Lane, Suite- 213, 2nd Floor, Kolkata- 700069
2. Respondent – CIT(E), Kolkata
3. Pr. CIT- Kolkata
4. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata