

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH  
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.66/Pat/2018  
Assessment Year: 2015-16**

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| Radha Govind Public Welfare Society<br>Jara Tola, Near Ramgarh College,<br>Ramgarh,<br>Jharkhand-829122.<br>(PAN: AAATR7936G) | Vs. | Commissioner of Income Tax<br>(Exemption), Patna. |
| <b>(Appellant)</b>  |     | <b>(Respondent)</b>                               |

**Present for:**

Appellant by : Shri Devesh Poddar, Advocate  
Respondent by : Smt. Rinku Singh, Addl. CIT, DR

Date of Hearing : 01.02.2023  
Date of Pronouncement : 23.02.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the revision order of Ld. CIT(Exemption), Patna vide Memo No. CIT(E)/Pat/u/s.263/2017-18/5311-13 dated 12.03.2018 u/s, 263 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") passed against the assessment order by the DCIT, Exemption Circle, Ranchi u/s.143(3) of the Act, dated 03.11.2016.

2. Assessee has raised three grounds, all of which relate to assumption of jurisdiction by the Ld. CIT(E), Patna for invoking the revisionary proceeding u/s. 263 of the Act and passing the impugned order thereon. Grounds are not reproduced for the sake of brevity.

3. Brief facts of the case are that assessee is a trust registered u/s. 12AA of the Act vide registration order dated 26.07.2005. Assessee filed its return of income reporting total income as nil. Assessment was completed u/s. 143(3) vide order dated 03.11.2016 wherein returned income was accepted. Subsequent to the said assessment, Ld. CIT issued a show cause notice dated 04.10.2017 on twelve different issues for invoking revisionary proceeding u/s. 263 of the Act. After considering the submission, Ld. CIT(E) concluded the revisionary proceedings on the four issues out of the twelve different issues vide his revisionary order dated 12.03.2018, directing the Ld. AO to pass an assessment order afresh *de novo*, in accordance with law and after allowing opportunity to the assessee. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee has placed on record a paper book containing 71 pages. Ld. Counsel referred to the assessment order passed u/s. 143(3) dated 03.11.2016 and stated that a notice u/s. 142(1) was issued in the course of assessment proceeding on all the twelve issues which have been raised by the Ld. CIT in the impugned revisionary proceeding. He also submitted that assessee had duly complied with the requirements of the said notice and also produced books of accounts, bills, vouchers in respect of the activities carried out by the assessee. Ld. Counsel referred to the elaborate discussion made by the ld. AO in respect of submissions made by the assessee and documents produced with written submission to explain its case. He also referred to the observations made by the Ld. AO, wherein it was noted that assessee runs four schools and maintains separate books of accounts for each of the schools which are subjected to audit. According to him, after examination of the records and books of account of the assessee along with explanation of each and every point raised by the Ld. AO, returned income of the assessee was accepted.

4.1. Ld. Counsel further referred to the notice issued u/s. 142 of the Act along with questionnaire dated 20.10.2016 placed in the paper book starting from page 10 and mapped all the twelve issues from the said questionnaire as well as the reply furnished by the assessee in response to the said questionnaire which is also placed in the paper book starting from page 29, to demonstrate that Ld. AO has applied his mind on all the twelve issues which have already been subjected to examination and accepted in the assessment proceeding. Ld. Counsel strongly submitted that the revisionary proceedings initiated by the Ld. CIT tantamount to change of opinion which is contrary to the provisions of section 263 of the Act.

4.2. Ld. Counsel also submitted that Ld. CIT has conducted the revisionary proceeding in a mechanical manner without any independent findings. He stated that out of twelve issues raised by the Ld. CIT, ten of them are the observations made by the auditor in the notes on account in Schedule I and audit report in Form 10B for which Ld. CIT has stated that AO has not examined the same. According to the Ld. Counsel, these ten issues out of twelve are ditto as they are mentioned by the auditor in the notes on account.

4.3. Further, Ld. Counsel submitted that on the first issue relating to payment of bus hire charges, civil construction expenses, labour contractor payment, professional legal fees, advertisement and smart classes for education without subjecting to tax at source (TDS) and the twelfth issue relating to claim of depreciation on the acquisition of fixed assets which has been allowed as application of income, Ld. CIT has not given any adverse comment or finding in the impugned order.

4.4. It is also submitted that though Ld. CIT has issued show cause notice u/s. 263 of the Act by raising twelve issues, however, in the final order passed u/s. 263, concluding observations have been made only in respect of four issues which according to the Ld. Counsel shows that the proceedings so initiated u/s. 263 are mechanical without application of mind. On the four issues which formed the basis of revisionary order under challenge before us, ld. Counsel made his submission as under:

i) Majority of the expenses have been incurred in cash and in case of vehicle hire charges , civil construction expenses, mess expenses in cash exceeds Rs.20,000/-.

On this issue Ld. Counsel submitted that Ld. AO had already dealt with this in the assessment proceedings through the questionnaire issued by him. Ld. Counsel submitted that this issue has been taken from the notes on account as annexed to Form 10B for which no specific finding has been given as to when and to whom such cash payments have been made. According to him, not even a single document has been brought on record either by the Ld. AO or by the Ld. CIT to show that expenses incurred in cash are above the monetary limit.

ii) It is found from the audited report that amount of Rs.25,17,019/- was paid to Priyanka Kumari, member of the assessee society.

In this respect Ld. Counsel at the outset submitted that such an observation by the Ld. CIT is factually incorrect and one fails to understand from where and how ld. CIT has ascertained this figure of Rs.25,17,019/- since nowhere in the audit report or audited accounts, such an entry exist. In this respect also, ld. Counsel referred to the questionnaire raised by the ld. AO in the course of assessment proceeding which was adequately replied by the assessee explaining that

issue with respect to purchase of vehicle in the name of Priyanka Kumari and the payment of hire charges has been duly considered in the assessment proceeding. Ld. Counsel stated that vehicle is purchased by taking loan from bank in the name of the Priyanka Kumari and is used for the charitable purposes of the assessee. For the purpose of repayment of loan, the amount is directly paid by the assessee in the loan account with the bank, accounted as hire charges in the books of account of the assessee.

iii) Electricity bill of Rs.42,874/- has been paid against electric connection taken in the name of Shri B. N. Saha, Secretary.

In this respect, ld. Counsel submitted that this issue has also been taken up by the Ld. CIT from the notes on account attached in the audit report in Form 10B. In this respect, it is submitted that there are total three electric meters fixed in the assessee's trust campus and the total electricity expenses for the year is Rs.2,29,591/-. Out of three meters, two meters are in the name of assessee trust which is not in dispute. However, the third meter is in the name of the Secretary, Shri B. N. Sah which was installed in the year 2001 when the trust was not registered. This meter was taken in the name of the Secretary for basic preparatory and construction work and continued in the name of the Secretary since then. Ld. Counsel further submitted that ever since the registration of the assessee trust, payment for electricity chargers for these three meters including that in the name of the Secretary, has been made from the accounts of the assessee and has never been disallowed either in the past or in the subsequent years.

iv) Loan from bank taken by Shri B. N. Sah has been repaid by assessee society amounting to Rs.8,95,120/-.

On this issue also Ld. Counsel submitted that Ld. CIT has taken note of this from the audit report in form 10B. In this respect, he submitted that Shri B. N. Sah, Secretary of the assessee trust had taken a personal loan of Rs.35 lacs from Axis Bank on 07.12.2011 which was on the very same day infused in the assessee's bank account and was utilised for the charitable purpose of the assessee. According to Ld. Counsel, it is not correct to say that personal benefit was enjoyed by Shri B. N. Sah, Secretary of the assessee since the amount has been utilised by the assessee for its charitable purpose. In reciprocation, loan taken by Shri B. N. Sah was repaid back by the assessee society along with interest thereon. He further stated that this issue has never been raised in the past or in the subsequent assessment years and the loan so received by the assessee from Shri B. N. Sah has never been doubted. When the receipt of loan has not been doubted, there is no question of raising any doubt on its repayment to the bank, directly by the assessee.

4.5. He thus submitted that the very basis of initiation of proceedings u/s. 263 are mechanical in nature without application of mind by the Ld. CIT. In the course of hearing, Ld. Counsel placed reliance on the decision of Hon'ble High Court of Delhi in the case of *ITO vs. D. G. Housing Projects Ltd.* 343 ITR 329 on the aspect of application of mind by the ld. PCIT on the records of the case.

5. Per contra, Ld. CIT, DR placed reliance on the order of Ld. CIT and submitted that no prejudice is caused to the assessee if the issues raised in the revisionary order are examined by the ld. AO to arrive at fresh conclusion.

6. We have heard the rival contentions and perused the material available on record. We take note of the fact that revisionary proceedings were initiated by raising twelve issues in the show cause notice and were concluded by referring to four issues for which direction was given to the Ld. AO to pass an order afresh *de novo*. On the four issues considered by the Ld. CIT in the impugned revisionary order, Ld. Counsel for the assessee has evidently demonstrated that these have been subject matter, duly considered by the Ld. AO in the assessment proceedings u/s. 143(3) of the Act by referring to the questionnaire issued along with notice u/s. 142(1) of the Act and corresponding replies made by the assessee, all of which are placed on record in the paper book.

6.1. From the perusal of the questionnaire and the replies made by the assessee in respect of the four final issues which formed the basis for passing the order u/s. 263 of the Act, we note that it is not a case of lack of enquiry. We observe that Ld. CIT has not applied his mind to arrive at a consideration which is erroneous in so far as prejudicial to the interest of revenue for passing the impugned order u/s. 263 of the Act. We observe that in the course of proceeding u/s. 263 of the Act, assessee had furnished the relevant details and explained the issues raised through the show cause notice, supporting its contentions by corroborative documentary evidence. It is well settled law that for invoking the provisions of section 263 of the Act, both the conditions that the order must be erroneous and prejudicial to the interest of revenue needs to be satisfied. This ratio stands laid down by various Hon'ble Courts.

6.2. For this, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in the case of Malabar Industries Ltd. vs. CIT

[2000] 243 ITR 83(SC) wherein their Lordships have held that *twin* conditions need to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer *must be erroneous and in so far as prejudicial to the interest of the Revenue*. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed *on incorrect assumption of fact*; or (ii) *incorrect application of law*; or (iii) Assessing Officer's order is in *violation of the principle of natural justice*; or (iv) if the order is passed by the Assessing Officer *without application of mind*; (v) if the AO *has not investigated the issue* before him; [*because AO has to discharge dual role of an investigator as well as that of an adjudicator*] then in aforesaid any of the events, the order passed by the AO can be termed as erroneous order. Looking at the second limb as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue, one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of Malabar Industries (*supra*) held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the AO. Their Lordships held that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law.

6.3. The aspect of application of mind by the CIT as contended by the Id. Counsel has been succinctly dealt by the Hon'ble Delhi High Court in the judgment of DG Housing Finance Co. Ltd. [2012] 20 taxmann.com 587 (Del) which is dealt hereunder.

6.3.1. While advertng on the issue, Hon'ble High Court held that the CIT has to come to the conclusion and himself decide that order is erroneous, by conducting necessary enquiry, if required and necessary before the order u/s 263 of the Act is passed. In such cases, the order of the AO will be erroneous because the order passed is not sustainable in law and the said finding must be recorded by CIT who cannot remand the matter to the assessing officer to decide whether the findings recorded are erroneous.

6.3.2. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/enquiry made is erroneous. This can happen if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the AO, making the order unsustainable in law.

6.3.3. In some cases, possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the AO had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the AO to conduct further enquiries without a finding that the order is erroneous, the condition or requirement which must be satisfied for exercise of jurisdiction u/s 263 of the Act. In such matters, to remand the matter/issue to the AO would imply and mean that the CIT has not examined and decided whether or

not the order is erroneous but has directed the AO to decide the aspect/question.

6.3.4. The Hon'ble Court further held that this distinction must be kept in mind by the CIT while exercising jurisdiction u/s 263 of the Act and in the absence of the finding that the order is erroneous and prejudicial to the interest of revenue, exercise of jurisdiction under the said section is not sustainable. In most cases of alleged "inadequate investigation", it will be difficult to hold that the order of the AO, who had conducted enquiries and had acted as an investigator, is erroneous, without CIT conducting verification/enquiry himself. The order of the AO may be or may not be wrong. CIT cannot direct reconsideration on this ground but only when the order is erroneous. An order of remit cannot be passed by the CIT to ask the AO to decide whether the order was erroneous. This is not permissible. An order is erroneous, unless the CIT holds and records reason why it is erroneous. Therefore, CIT must after recording reasons, hold that order is erroneous. The jurisdictional precondition stipulated is that CIT must come to the conclusion that the order is erroneous and is unsustainable in law.

6.3.5. It was further observed by the Hon'ble High Court that the material, which the CIT can rely up on includes not only the records as it stands at the time when the order in question was passed by the AO but also records as it stands at the time of the examination by the CIT. Nothing prohibits CIT from collecting and relying new/additional material which evidence to show and state that the order of the AO is erroneous.

6.4. In the present case before us, we note that Ld. Pr. CIT has raised twelve issues in the show cause notice and thereafter concluded on the four observations, all of which had already been examined in the

assessment proceedings. The extent of enquiry undertaken and replies filed in the assessment proceedings forms part of the records of the case on which ld. PCIT ought to have applied his mind before embarking upon the journey of initiating the revisionary proceedings.

7. We find that the four issues in the present case considered by the Ld. CIT for exercising revisionary proceedings u/s. 263 of the Act are purely on facts which are verifiable from the records of the assessee. Moreover, the same have been examined by the Ld. AO in the course of assessment proceedings for which all the relevant details and explanations were placed on record which also forms part of the paper book before us. Further, Ld. CIT, DR could not bring any material on record to controvert the factual position as submitted before us.

8. Accordingly, on the issues raised by the Ld. PCIT in the revisionary proceedings, no action u/s 263 of the Act is justifiable which in our considered view cannot be sustained under the facts and circumstances of the present case and judicial precedents dealt herein above. We, therefore, quash the impugned order u/s 263 of the Act and allow the grounds raised by the assessee.

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

Order pronounced in the open Court on 23<sup>rd</sup> February, 2023.

**Sd/-**  
**(Sanjay Garg)**  
**Judicial Member**

**Sd/-**  
**(Girish Agrawal)**  
**Accountant Member**

***Dated: 23<sup>rd</sup> February, 2023***

JD, Sr. P.S.  
Copy to:

1. The Appellant:
  2. The Respondent:.
  3. CIT(E), Patna.
  4. DCIT, Exemptions, Ranchi
  5. ITO (Hqrs.) (Exemptions), Patna
  6. DR, ITAT, Patna Bench, Patna
- //True Copy//

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata