

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री मनीष बोरड, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Dr. Manish Borad, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 287/Kol/2022
Assessment Year: 2017-18

M/s Tata Medical Centre Trust (PAN: AABTT 2222 Q)	Vs.	CIT(Exemption), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	08.12.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	03.03.2023
For the Appellant/ निर्धारिती की ओर से	Shri Akshay Ringasia, CA Shri Tarak Nath Jaiswal, Advocate
For the Respondent/ राजस्व की ओर से	Shri Biswanath Das, CITDR

ORDER / आदेश

Per Manish Borad, 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 the Ld. CIT(E)"] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) dated 29.03.2022 for the AY 2017-18.

2. The grounds raised by the assessee is reproduced as under:

Regular Grounds of Appeal

2.2. That the Ld. CIT(E) has erred in disallowing the depreciation and amortization expense of INR 3.67 lakhs as application of income.

2.3 That the Ld. CIT(E) erred in disallowing the application of income of INR 3933.05 lakhs towards addition to fixed assets and capital work-in progress solely on the assumption that there existed separate earmarked- funds and the assessee had used those instead of non-earmarked funds or general income.

2.4. The Ld. CIT(E) grossly erred in directing the AO to make an addition of INR 169.03 Lacs in the nature of waiver of treatment charges.

2.5. That the Ld. CIT(E) erred in invoking Section 263 as the order of the Ld. AO cannot be construed as erroneous or prejudicial to the interest of the revenue.

2.6. That the Ld. CIT(E) erred in invoking Section 263 on the basis of Audit Objections whereas independent application of mind for invoking 263 is sine-qua-non.

2.7. For that the appellant craves leave to add, alter or delete all or any ground of appeal.

Additional Grounds of Appeal

2.1 That the order passed by the Ld. PCIT is null and void as it fails to mention any DIN number on its body or adhere to Circular No. 19/2019 by the CBDT.

That your appellant craves the leave of this Hon'ble Tribunal to plead the above ground vide Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963 and ratio laid down by the Hon'ble Supreme Court in the case of NTPC 229 ITR 383

That since the above ground goes to the root of the matter and permeates from facts already on record before the lower authorities and this Hon'ble Tribunal, your appellant prays for the admission of the same in the interest of justice.

3. Brief facts of the case are that the assessee is a trust engaged in providing medical facilities and is registered u/s 12AA of the act vide order dated 20.02.2006. Assessment for AY 2017-18 completed u/s 143(3) of the vide order dated 28.12.2019 accepting the returned income. The assessment record called for by the Ld. CIT(E) invoking the provision of Section 263 of the Act referring to certain issues which the AO has not been examined in accordance with law and thus held the order of AO as erroneous and prejudicial to the interest of the revenue to be reframed as per the direction given in the impugned order.

4. Aggrieved the assessee is now in appeal before this Tribunal.

5. At the outset, the Ld. Counsel for the assessee referred to the additional grounds of appeal raised in the light of ratio laid down by the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. in 229 ITR 383 submitted that the impugned

order is null and void as it fails to mention the document identification no. (DIN) in the body of the order thus not adhering to the direction given by Central Board of Direct Tax in Circular No. 19 of 2019. He also submitted that under similar circumstances in assessee's own case this Tribunal in ITA No. 2382/Kol/2021 dated 18.07.2022 quashed the order u/s 263 of the Act for failing to mention DIN in the body of the order.

6. On the other hand, the Ld. D.R supported the impugned order but could not controvert the contention made by the ld. Counsel for the assessee by placing any other binding decision in support of the revenue.

7. We have heard the rival contentions and perusing the material on record. In the additional ground raised by the assessee it is stated that the impugned order is null and void as DIN no. is not mentioned in the body of the order and thus do not comply to the direction given by CBDT in Circular No. 19 of 2019. The reliance has also been placed on the decision of this Tribunal in assessee's own case for AY 2016-17 wherein the proceedings u/s 263 were in challenge. On perusal of the said order (supra) we notice that this Tribunal has taken note that the show cause notice u/s 263 of the Act bears DIN No. but in the order u/s 263 of the Act DIN No. has not been mentioned. In this order of Tribunal has referred to Circular No. 19 of 2019 issued by CBDT on 14.08.2019 and the same is reproduced as under:

Circular No. 19 /2019

*Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, dated the 14th August, 2019

Subject: Generation/Allotment/Quoting of Document Identification Number in Notice/Order/Summons/letter/correspondence issued by the Income-tax Department – reg.

With the launch of various e-governance initiatives, Income-tax Department is moving toward total computerization of its work. This has led to a significant improvement

in delivery of services and has also brought greater transparency in the functioning of the tax- administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication") were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer-generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as, -

- (i) when there are technical difficulties in generating/allotting/quoting the DIN and issuance or communication electronically; or*
- (ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties; or*
- (iii) when due to delay in PAN migration PAN is lying with non-jurisdictional Assessing Officer; or*
- (iv) when PAN or assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or*
- (v) When the functionality to issue communication is not available in the system,*

the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/ Director General of income- tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General or Income-Tax for issue of manual communication in the following format-

" .. This communication issued manually without a DIN on account of reason/reasons given in para 3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No ...dated.....(strike off those which are not applicable) and with the approval of the Chief Commissioner I Director General of Income Tax vide number dated"

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by -

- i. uploading the manual communication on the System.
- ii. compulsorily generating the DIN on the System;
- iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by 31st October, 2019.

8. Hindi version to follow.

(Sarita Kumari)
Director (ITA.II), CBDT

(F.No. 225/95/2019-ITA.II)

8. Considering the direction given in the Circular and the same being not applied to the order u/s 263 of the Act thus Tribunal vide order dated 18.07.2022 quashed the order u/s 263 of the Act observing as under:

“13. From the above submissions and arguments, we note that it is an undisputed fact that the impugned order u/s. 263 of the Act has been issued manually which does not bear the signature of the authority passing the order. Further, from the perusal of the entire order, in its body, there is no reference to the fact of this order issued manually without a DIN for which the written approval of Chief Commissioner/Director General of Income-tax was required to be obtained in the prescribed format in terms of the CBDT circular. We also note that in terms of para 4 of the CBDT circular, such a lapse renders this impugned order as invalid and deemed to have never been issued.

13.1 It is also important to note about the binding nature of CBDT circular on the Income-tax Authorities for which gainful guidance is taken from the decision of Hon’ble Supreme Court in the case of CIT v. Hero Cycles [1997] 228 ITR 463 (SC) wherein it was held that circulars bind the ITO but will not bind the appellate authority or the Tribunal or the Court or even the assessee.

13.2 In the case of UCO Bank [1999] 237 ITR 889 (SC), Hon’ble Supreme Court while dealing with the legal status of such circulars, observed thus (page 896):

"Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing

circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorized as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities."

13.3 *In the matter of Nayana P. Dedhia [2004] 270 ITR 572 (AP), the Hon'ble Andhra Pradesh High Court held that the guidelines issued by the Board in exercise of powers in terms of section 119 of the Act relaxing the rigours of law are binding on all the officers responsible for implementation of the Act and, therefore, bound to follow and observe any such orders, instructions and directions of the Board.*

13.4 *In the decision of DCIT v. Sunita Finlease Ltd. [2011] 330 ITR 491 (CG,) it was held by the Hon'ble High Court of Chhattisgarh in para 16 that the administrative Instruction No. 9/2004 issued by the Central Board of Direct Taxes is binding on administrative officer in view of the statutory provision contained in section 143(2), which provides for limitation of 12 months for issuance of notice under section 143(2).*

While giving its finding, the Hon'ble High Court of Chhattisgarh placed reliance on the decisions in the case of UCO Bank (supra) and Nayana P. Dedhia (supra).

13.5 *Hon'ble jurisdictional High Court of Calcutta in the case of Amal Kumar Ghosh [2014] 361 ITR 458 (Cal) dealt with the issue relating to CBDT circular which according to the Department cannot defeat the provisions of law. While giving its observations and finding on the issue, the Hon'ble Court referred to the decision of Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd (supra), which are as under:*

7. We have considered the rival submissions advanced by the learned Advocates. Even assuming that the intention of CBDT was to restrict the time for selection of the cases for scrutiny within a period of three months, it cannot be said that the selection in this case was made within the aforesaid period. Admittedly, the return was filed on 29th October, 2004 and the case was selected for scrutiny on 6th July, 2005. It may be pointed out that Mrs. Gutgutia was, in fact, reiterating the views taken by the learned Tribunal which we also quoted above. By any process of reasoning, it was not open for the learned Tribunal to come to a finding that the department acted within the four corners of Circulars No.9 and 10 issued by CBDT. The circulars were evidently violated. The circulars are binding upon the department under section 119 of the I.T. Act.

8. Mrs. Gutgutia, learned Advocate submitted that the circulars are not meant for the purpose of permitting the unscrupulous assesseees from evading tax. Even assuming, that to be so, it cannot be said that the department, which is State, can be permitted to selectively apply the standards set by themselves for their own conduct. If this type of

I.T.A. No. 287/Kol/2022
 Assessment Year: 2017-18
 M/s Tata Medical Centre Trust

deviation is permitted, the consequences will be that floodgate of corruption will be opened which it is not desirable to encourage. When the department has set down a standard for itself, the department is bound by that standard and cannot act with discrimination. In case, it does that, the act of the department is bound to be struck down under Article 14 of the Constitution. In the facts of the case, it is not necessary for us to decide whether the intention of CBDT was to restrict the period of issuance of notice from the date of filing the return laid down under section 143(2) of the I.T. Act. [emphasis supplied by us by underline]

14. Considering the facts on record, perusal of the impugned order, submissions made by the Ld. Counsel and the department, CBDT circular and the judicial precedents including that of Hon'ble Supreme Court and the jurisdictional High Court of Calcutta, we are inclined to adjudicate on the additional ground in favour of the assessee by holding that the order passed by the Ld. CIT(E) is invalid and deemed to have never been issued as it fails to mention DIN in its body by adhering to the CBDT circular no. 19 of 2019. Accordingly, additional ground taken by the assessee is allowed. Having so held on the legal issue raised by the assessee in the additional ground, the grounds relating to the merits of the case requires no adjudication. Accordingly, the appeal of the assessee is allowed in terms of above observations and findings.

9. Now in the light of the above decision we need to examine the facts in the instant appeal. We notice that first show cause notice was issued on 10.01.2022 and page 1 of the said show cause notice is reproduced for ready reference:



OFFICE OF THE COMMISSIONER OF INCOME TAX
 (EXEMPTIONS), KOLKATA
 6TH FLOOR, 10B, MIDDLETON ROW, KOLKATA- 700071
 Ph: (033)2229-2926, FAX(033)2229-1719
 e-mail: kolkata.cit.exmp@incometax.gov.in

No. CIT(E)/Kol/263/AABTT2222Q/2021-22/136

Dated: 10.01.2022

To

The Trustee / Authorised Signatory

Tata Medical Centre Trust

1, Bishop Lefiroy Road Kolkala-700020

Sir,

Sub: Initiation of proceedings u/s, 263 of Income Tax Act, 1961 in the case of Tata Medical Centre Trust [PAN:AABTT2222Q] for A. Y. 2017-18- reg.

Assessment u/s. 143(3) of the Income Tax Act, 1961 was completed on 28.12.2019 determining total income of Rs. Nil. On verification of assessment records, the following issues have been revealed:

- (i) Rs. 3.67,775/- has been claimed application under the head 'depreciation and amortization' and the same was allowed in assessment u/s. 143(3). However, as per Section 11(6), the depreciation is not an allowable expense.
- (ii) In 'other expenses' of the expenditure schedule, Rs. 108.64 lakhs has been claimed as expenses under the head provision for doubtful debts (net). The said expenditure has been allowed in assessment. Although the provision has been claimed to be an expense, but the nomenclature suggests the same as liability, which is uncertain. Any provision for expense is created on the basis of estimation, which may be matched in future or not depending upon several factors. In case of debt, it depends on extent of recovery made. As per accounting standard though the provision for doubtful debt is recognized as expense, but it is for showing true worth of an organisation. However, for the purpose of computation of income where, real expenses are recognized, such uncertain liabilities are not allowable expenses.
- (iii) The assessee Trust created several Trust and Corpus Fund as well as Earmarked Funds in which, contributions from donors with direction for utilization for specific purposes are.....”

10. Another show cause notice was issued on 16.03.2022 and the first page of this notice is also reproduced below:



कार्यालय आयकर आयुक्त (इ)ट, (6तलू ल, 10बी, मिडलटन रॉ, कोलकाता-700071)
OFFICE OF THE COMMISSIONER OF INCOME TAX (EXEMPTIONS), KOLKATA
10B, Middleton Row, 6th Floor, Kolkata-700 071
Email: kolkata.cit.exmp@incometax.gov.in

No. CIT(E)/Kol/263/AABTT2222Q/2021-22/ 1442

Dated: 15/03/2022

To
The Trustee/ Authorised Signatory
Tata Medical Centre Trust
1, Bishop Lefroy Road
Kolkata- 700020.

Sir/ Madam,

Sub: Proceedings u/s 263 of the Income Tax Act, 1961 in the case of Tata Medical Centre Trust [PAN: AABTT2222Q] for the A.Y 2017-18- matter regarding.

Ref: This office's Notice u/s 263 dated 10.01.2022.

Please refer to the above.

In addition to the earlier notice/ letters dated 10.01.2022 and 03.03.2022, some further issues mentioned hereunder are also discussed below for your necessary perusal and comments.

1. From audited Income and Expenditure A/c for the F.Y 2016-17 relevant to A.Y 2017-18, vide Note no. 23 in the relevant assessment record, the following discrepancy has been perused.

'Waiver of Treatment Charges' to the tune of Rs. 1008.68 lakh has been adjusted with 'Revenue from operation'. Therefore, the revenue receipts had been reduced to the extent of Rs. 1008.68 lakh and accordingly the reduced revenue income had been reported in the relevant return of income. However, in the audited Income and Expenditure Account for the F.Y 2016-17 vide Note No. 23 it was shown that an amount of Rs. 839.65 lakh pertaining to 'Patient Care Fund' under 'Other Earmarked Funds' had been adjusted with Waiver of treatment Charges which implies that capital receipts from Patient Care Fund for the amount of Rs. 839.65 lakh had been appropriated with Income and Expenditure A/c and had been utilized for the purpose of waiver of treatment charges to the poor patients. As mentioned above the Apportionment from Patient care Fund of Rs. 839.65 lakh which was added with the Income from Operations in the relevant Income & Expenditure A/c, however the same receipts had not been included as income of the assessee in the relevant return of income since Patient Care Fund was claimed to be exempted u/s 11(1)(d) of the Act.

In view of the above, it is evident that the assessee claimed application on 'Waiver of Treatment Charges' of Rs. 1008.68 lakh, however it was actually adjusted with Patient Care Fund. Moreover,

It is pertinent to note the receipts pertaining to 'Patient Care Fund' under the head 'Other Earmarked Fund' has been claimed as exempt u/s 11(1)(d). As such expenses of Rs. 1008.68 lakhs liable to be adjusted from the earmarked fund i.e. Patient care fund should not be claimed as expenditure in the I/E account as well as corresponding income should also not have been added to the income. Such adjustment made in the I/E account has resulted in excess application of income to the extent of Rs.169.03 Lakhs (Rs 1008.68 lakhs - Rs. 839.65 lakhs). This amount of Rs.169.03 Lakhs should have been reduced/ adjusted from the Patient Care Fund under Other Earmarked Fund.

You are requested to offer your comments regarding acceptability of the above observation and furnish a written explanation in support of your claim (if not agreed with the view) and supporting documents by 23.03.2022.

Yours faithfully



(Tajinder Pal Singh)

Commissioner of Income Tax (Exemptions), Kolkata

11. Further the first page of the impugned order which contains the details of the assessee and the date of order is also scanned below for ready reference:



कार्यालय आयकर आयुक्त सूट, (6तला, 10बी, मिडलटन रो, कोलकाता-700071)
OFFICE OF THE COMMISSION OF INCOME TAX (EXEMPTIONS), KOLKATA
10B, Middleton Row, 6th Floor, Kolkata-700 071
Email: kolkata.cit.exmp@incometax.gov.in

1. Name of assessee : Tata Medical Centre Trust	6. Whether Resident/Resident but not ordinarily resident/non-resident: Resident
2. Address : 1, Bishop Lefroy Road, Kolkata - 700020	7. Method of accounting : Mercantile
3. PAN/GIR No. : AABTT2222Q	8. Previous year : 2016-17
4. Status : Trust (a) If HUF, is higher rate of tax applicable? (b) If company, whether (i) Domestic/Others (ii) Public substantially interested/ Public not substantially interested (iii) Industrial/Non-Industrial (iv) Section 108/other than Sec. 108	9. Date(s) of hearing : As per records
5. Assessment Year : 2017-18	10. Date of order : 29.03.2022

ORDER U/S. 263 OF THE INCOME TAX ACT, 1961

Assessment u/s.143(3) of the Income Tax Act, 1961 for A.Y. 2017-18 was completed on 28.12.2019 by the DCIT Circle1(1),Exemption, Kolkata. The assessee is registered u/s. 12AA of the Income Tax Act, 1961 vide order No. DIT(E)/8E/341/2005-06/8617-19 dated 22.02.2006. For the A.Y. 2017-18, the assessee has filed Return of Income in ITR-7 on 26.09.2017 claiming exemption u/s. 11 in pursuance of its registration u/s. 12AA.

12. From the perusal of the above show cause notice as well as order u/s 263 of the Act, we notice that DIN No. has not been mentioned in any of the show cause notice as well as the order u/s 263 of the Act. Revenue failed to mention the reason for not mentioning the DIN and whether case in hand falls under any exception as provided in the CBDT Circular (supra). Since under similar facts due to the absence of DIN No. in the body of impugned order u/s 263 of the Act this Tribunal has quashed the revisionary proceedings as null and void, we therefore taking a consistent view allow the legal issued raised in additional ground of appeal by the assessee and hold that the impugned order u/s 263 of the Act is null and void and is thus quashed.

13. Though the assessee has also argued on the merits of the case but since we have already quashed the impugned order for the above stated reason, we find it merely academic to deal with the issue on merit and thus are held to be infructuous. Accordingly the appeal of the assessee is allowed in terms of the above judicial findings.

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

Order is pronounced in the open court on 3rd March, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Manish Borad/ मनीष बोर्ड)
Accountant Member/लेखा सदस्य

Dated: 3rd March, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Tata Medical Centre Trust, No. 1, Bishop Lefroy Road, Kolkata-700020.
2. Respondent – CIT(Exemption), Kolkata
3. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata