

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**ITA No. 123/Ind/2022
Assessment Year: 2017-18**

Shri Maheswari Jankalyan Trust Shri maheshwari Manglik Bhavan, 2, A.B. Road, Opp ZOO- Indore-452001, (MP) PAN No: AAOTS5619R (Appellant)	Vs	The CIT Exemption, Bhopal (Respondent)
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**Assessee Represented: Shri Pankaj Shah, C.A.
Revenue Represented: Shri P.K. Mishra, CIT-DR**

Date of hearing : 19-01-2023
Date of pronouncement : 17-04-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee against the Revision order dated 30.03.2022 passed by the Commissioner of Income Tax (Exemption), Bhopal under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The brief facts of the case is that the assessee is a Trust registered u/s. 12A of the Income Tax Act from 14.05.2015. The assessee also got approval u/s. 80G of the Act from 20.12.2015. The assessee trust carried out various charitable activities as per the provision of section 2(15) of the Act. The assessee trust shown total receipts of Rs. 2,89,205/- as per the Income & Expenditure account. As against the total receipt, the assessee has shown application of income of Rs. 2,79,750/- towards the objects of the trust and after set apart the income u/s. 11(1)(a) of the Act of Rs. 9,455/-, and claimed Nil income.

2.1. The return was taken up for scrutiny assessment and after verification of the details furnished by the assessee. The Returned Income filed by the assessee is accepted and assessment order dated 30.08.2019 was passed. This assessment order was gone through by Ld. CIT(E) and it was found in the balance sheet as on 31.03.2017, the assessee had shown land at Mirjapur at Survey No. 35 admeasuring 0.373 hectare at Rs. 1,60,11,305/- whereas on verification of sale deed it has been shown at Rs. 1,72,40,601/- (cost of land Rs. 1,61,87,407/- + stamp duty and registry charges at Rs. 10,53,184/-). Therefore the cost of land was undisclosed by Rs. 12,29,923/- and its source also remained unexplained. These details were not verified by the Assessing Officer while passing the assessment order. Therefore the said assessment order is an erroneous order and prejudicial to the interest of Revenue. Hence a show cause notice was served upon the assessee why the assessment order be revised u/s. 263 of the Act to bring to tax the differential income of Rs. 12,29,923/-.

2.2. In response to the show cause notice, the assessee filed its reply dated 25.02.2022 as follows:

"We wish to furnish all the information through this letter. We purchased land and got registered for the fulfilment of Charitable Objectives during the financial year 2016-17. The sellers were joint owners. We issued cheques for registry value of Rs. 1,61,87,417/- and we got registry of the same value on dated 10.08.2016. We issued post dated cheques as per agreed terms. Sellers were eligible to encash complete amount when the complete transfer and "Simankan" / measurement will be completed. The seller could not complete the measurement as agreed in the deed and did not presented the cheques till 31st march 2017. The cheques got expired and we did not issued new cheques till all the formalities completed, we were more responsible as we were using people's hard earned money which they gave for Charitable Objective fulfillment and we were required to draw books of accounts on true and fair view based on actually what expenditure we made during the year. The total payment of Rs. 1,60,11,308/- was made during the year and remaining cheques for Rs. 14,17,774/- became non usable after 90 days from the date of issuance. We booked all the payments made to seller and to lawyer regarding registration fees in the cost of the Land. The financial records for the assessment year 2017-2018 were audited on dated 22.08.2017 but the cheques were presented on dated 10.09.2017 and 22.09.2017 after the audit date. We booked the balance payment in the subsequent assessment year 2018- 2019. Copies of both the audit reports are enclosed for your kind perusal. We wish to make it clear that the sellers were farmers and due to their crop seasons all could not gathered at the same time and the complete payment done in month of September 2017 and we released fresh cheques worth of Rs. 14,17,774/- We booked complete assets in our books of accounts based on payment. There were no pending information.

Amount paid till the date 31.03.2017	Rs. 1,60,11,308/-
Cheques issued on 10.09.2017	Rs. 3,54,444/-
Cheques issued on 22.09.2017	Rs.10,63,330/-
Total Payment made	Rs. 1,74,29,082/-

Sr. No.	Particulars	Against Land purchases	Against Expenses	Total
1	Cheques Issued	16,187,417.00		16,187,417.00
2.	Registration Fees		190,000.00	190,000.00
3	Registration Fees		1,100.00	1,100.00
4	Registry Expenses		1,052,184.00	1,052,184.00
		16,187,417.00	1,243,284.00	17,430,701.00
	Less: Cheques not presented & Less expenditure	1,417,774.00	1,617.00	1419,33.00
		1,417,774.00	1,617.00	1419,33.00
	Amount Recorded as on 31.03.2017	14,76,643.00	1,241,665.00	16,011,308.00
	Add: Payment Made in 17-18	1,417,774.00		1,417,774.00

	Total Cost of Land As on 31.03.2018	16,187,417.00	1,241,665.00	17,429,082.00
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There is no question of hiding of information, we booked what actually paid and the remaining amount was booked in next financial year after confirmation of all the area. The Assets were booked proper. So kindly accept the same. Request Your Honour to drop the proceeding u/s 263 being no loss of revenue is effected after considering the above explanations and facts and available on record.”

3. The reply of the assessee was considered by Ld. CIT(E) and held that the reply is self-contradictory, inconsistent and incomplete as follows:

(a) In its reply the assessee stated that he paid the sellers amount of Rs. 1,61,87,417/- which was paid by post-dated cheques. But the seller's did not present the cheques till 31st march 2017 and the cheques got expired. The assessee also claims that the total payment of Rs. 1,60,11,308/- was made during the year and remaining cheques for Rs. 14,17,774 /- became non usable after 90 days from the date of issuance. However, from the sale deed it is evident that all payments were made and there was no balance amount due to the sellers.

(b) As per the sale deed the total amount paid is 1,61,87,417/through cheques of various dates starting from May 2015 to September 2016 but as per assessee's claim the amount paid till the date 31.03.2017 is Rs. 1,60,11,308 /-. Assessee's claim is not supported by any documentary evidence.

(c) If we go by assessee's claim, the total payment towards land is 1,74,29,082/- excluding registration charges. But in the table given in the subsequent part of its reply, assessee claims that total cost of land as on 31.03.2018 is 1,74,29,082/- which is inclusive of registration charges.

(d) In the reply the assessee has stated that the audit was made on 22.08.2017 and the cheques presented only on 10.09.2017 & 22.09.2017 after audit date. The reply submitted by the assessee needs verification as the transaction took place on 10.08.2016 and assessee had paid stamp duty at Rs. 10,53,184/- on 10.08.2016 itself. The presentation of so called cheques by assessee were inordinately delayed. This fact was also not been checked or conveyed to Audit.

(e) In the deed it has been mentioned that assessee had paid Rs. 1,61,87,417/- and paid stamp duty of Rs. 10,53,184/- there on. The assessee has also not given any specific reply on the points raised as per notice dated 25.02.2022 about understating of Rs 12,29,923/- of which Rs 10.53.184/- was stamp duties). It is evident that the assessee has understated an amount of Rs. 12,29,293/-paid towards the purchase of above immovable property.

(f) The balance Sheet show different figures in capital account as on 31.03.2017 vis-à-vis 31.03.2016 by way of introduction of corpus fund amounting to Rs 99,85,000/-, which coincides with demonetization period, and which was one of the issues for selection of the case for scrutiny. The absence of any enquiries of the large increase in total voluntary contribution and lack of any investigations into the co-relation between these contribution and the investments in immovable

properties by the trust during the relevant period also proves that the assessment was completed without proper enquiries.

3.1. Therefore the Ld. CIT(E) held that the assessment order passed by the A.O. as erroneous and prejudicial to the interest of Revenue and invoking Explanation 2 to section 263 of the Act and thereby set aside the assessment order dated 30.08.2019 with a direction to reframe the assessment de-novo after conducting proper enquiries or verification in the light of discussions made above and after affording opportunity of being heard to the assessee.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of appeal:

1. On the facts and circumstances of the case and in law the learned Commissioner of Income tax Exemption ("CIT-Exemption") erred in assuming jurisdiction under Section 263 of the Income Tax Act. The Appellant prays that the action of AO be held to be not erroneous and prejudicial to interest of revenue and the direction to re-examine the same be set aside and quashed.

2. On the facts and circumstances of the case and in law the learned CIT-Exemption erred in setting aside the original order of the learned Assessing Officer passed under Section 143(3) of the Act and directing the AO to reframe the assessment. The Appellant prays that the impugned order of the CIT-Exemption be quashed.

3. The Appellant prays that since the assessment order passed by the AO was after making specific and full enquiries therefore the assessment order cannot be regarded as erroneous therefore the action of the CIT-Exemption in invoking provisions of section 263 and revising assessment order be held ab-initio and / or otherwise void and bad-in-law.

4. On the facts and circumstances of the case and in law the learned CIT-Exemption erred in not giving fair consideration to the submissions made by the Appellant in the course of proceedings. The Appellant prays that the impugned order culminates from such non consideration of facts submitted by the Appellant and be directed to be quashed.

5. The Appellant prays that order passed u/s. 263 of the Act ought to be, in the facts and circumstances, struck down as null and void ab initio.

4.1. The Ld. Counsel Mr. Pankaj Shah appearing for the assessee submitted before us a small Paper Book containing ledger account

of land at Mirjapur, extract of the sale deed and extract of the bank statement for the Assessment Year 2018-19. The Ld. Counsel submitted that though four postdated cheques dated 10.09.2016 for Rs. 3,54,444/- each were given to the four sellers namely Gopal, Kamal, Gopichand and Chhotelal who were required to complete the measurement of the land matching with the document. However they could not complete the measurement before registration, therefore they have not encashed the above postdated cheques till 31st March, 2017 by the time, the cheques were also barred by 90 days limitation. Therefore in the ledger account a credit entry of Rs. 14,17,774/- were made on 10.12.2016. In the subsequent assessment year 2018-19, four new cheques paid to the above four land owners for Rs. 3,54,444/- each in all totaling Rs. 14,17,772/-, the same were encashed by the land owners on 13.10.2017, 16.10.2017 and 17.10.2017 respectively. This can be verified from copy of the bank statement with Yes Bank is enclosed in the compilation.

4.2. The Ld. Counsel further submitted in the ledger account, the above entries are made and copy of the same is also enclosed. Thus the Counsel pleaded that there is no under-valuation of the property by the assessee and there is no question of any erroneous order passed by the Assessing Officer and no prejudicial to the interest of Revenue in the above purchase transactions. Thus the Ld. CIT(E) failed to consider the ledger account relating to the Assessment Year 2018-19 and the bank statement furnished before him. In the absence of any prejudicial to the interest of Revenue,

therefore invocation of Revision proceedings under section 263 is invalid in law, therefore liable to be quashed.

5. Per contra, the ld. CIT-DR Shri P.K. Mishra appearing for the Revenue supported the order passed by the Ld. CIT(E) and requested to uphold the same and dismiss the assessee's appeal.

6. We have given our thoughtful consideration and perused the materials available on record including the Paper book filed by the assessee. The short point to be decided in this case whether there is an escaped income of Rs. 12,29,923/- in the purchase of the lands by the assessee trust. As it can be seen from records, the above lands at Mirjapur admeasuring 0.373 hectares out of 0.494 were purchased from four brothers, who is engaged in agricultural activities. During completion of the sale deed on 10.08.2016, there was a dispute on the exact measurement of the above agricultural lands, hence four postdated cheques dated 10.09.2016 was issued by the assessee trust to the sellers with undertaking on completion of the exact measurement of the land the cheques will be encashed. However the sellers could not complete the measurement and has not encashed the cheques till 31st March, 2017 by the time, the cheques were also barred by limitation of 90 days. After completing the full measurement of the land, the assessee trust again given four new cheques to the land owners for Rs. 3,54,443/- and the same were encashed by the seller of the lands on 13.10.2017, 16.10.2017 and 17.10.2017 respectively and is reflecting in the bank statement accounts of the assessee the assessee trust also accounted these payments in the subsequent assessment year

2018-19. Thus in our considered view that there is no income escaped from assessment as held by the Ld. CIT(E) in his revision order. We also find that there is any error in the assessment order and any prejudice to the interest of Revenue. Therefore the initiation of the Revision proceedings u/s. 263 itself invalid in law.

7. In the above circumstances, we hold that the Revision proceedings initiated by the Ld. CIT(E) is against the provisions of Section 263 of the Act and we hereby quash the same and thereby the grounds of appeal raised by the assessee are hereby allowed.

8. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in open court on 17 -04-2023

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore: Dated 17 /04/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	11/04/2023
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/04/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	04/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/04/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/04/2023
6) Date on which the file goes to the Bench Clerk	/04/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	