

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 25/Asr/2021**  
Assessment Year: 2016-17

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| NAVJEEVAN CHARITABLE SOCIETY,<br>BISHOP HOUSE, CIVIL LINES, Jalandhar<br>PAN: AAAAN7997G | The Commissioner of Income<br>Tax (Central), Ludhiana |
| <b>(Appellant)</b>   | <b>(Respondent)</b>                                   |

Appellant by            Shri. Gunjeet Singh Syal, Advocate

Respondent by        Shri Rohit Mehra, CIT (DR)

Date of Hearing        : 30/05/2023  
Date of Pronouncement : 13/06/2023

**ORDER**

**Per Dr. M. L. Meena, AM:**

The captioned appeal is filed by the assessee against the order u/s 263 of the act, passed by the Ld. Principal Commissioner of income tax (Central), Ludhiana [hereinafter referred to as "the PCIT"], dated 31.03.2021, challenging therein, invoking revisionary proceedings in view

of clause (a) of explanation 2 to section 263 of the Act, set asiding the order passed by the AO u/s 143(3) dated 29.10.2016 for the AY 2016-17.

2. The PCIT has issue d show cause notice u/s 263 of the act, questioning three issues as follows:

*“05. Upon perusal of the records, it is observed that as per ledger copies of the accounts submitted by assessee, the assessee had received Asset fund of Rs.1,34,05,700/-, Scholarship fund of Rs.1,60,70,677/- and Social work fund of Rs.8,76,043/- during the year, major account of which has been received in cash. However, there is **no evidence** submitted by assessee as to how does there amounts received does qualify to be included into corpus donations within the meaning of section 11(1)(d) of the I.T. Act, 1961.*

*06. Further, it is also observed from the records that huge amount of funds have been withdrawn in cash and stated to be utilized for charitable purpose by the assessee. However, no such details/evidences had been submitted by the assessee with regards to such utilization for charitable purposes.*

*07. In view of the above, it is evident that while passing the order u/s 143(3) dated 29.10.2018, the then Assessing officer has **not verified** the source of corpus donation majorly received in cash during the year. The order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue, as he was required to verify the creditworthiness and source of corpus donation majorly received in cash.*

*08. It was also pertinent to verify whether these amounts received does qualify to be included into corpus donations within the meaning of section 11(1)(d) of the Income Tax Act, 1961. The AO **failed to verify** the utilization of huge cash withdrawn by the assessee and stated to be utilized for charitable purpose by the assessee and no such details/evidences had been submitted by the assessee.*

*09. In light of the above, it is evident that the assessment order passed on 29.10.2018 u/s 143(3) of the I. T. Act, 1961 is apparently considered erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of section 263 of the I. T. Act, 1961.”*

2.1 Being not satisfied with the replies of the appellant assessee he held as under:

*“4.5 During course of proceedings u/s 263 of the Act, the Ld. AR failed to file even a single documentary evidence, when specifically asked by me even after taking adjournments twice first on 27.03.2021 and second on 30.3.2021. Thus, the claim remains unsubstantiated that the corpus donations are well documented in accordance with the law falling within the ambit of section 11(1)(d) of the Act and the AO had examined/investigated/verified the same that the donations received in cash did qualify to be included into corpus donations within the meaning of section 11(1)(d) of the Act. Further, the assessee had neither filed any copies of its bank accounts during the assessment proceedings nor before me, which may substantiate its claim that the expenses have been incurred mainly through the banking channels. Hence, the claim made in the above submission that the expenses have been incurred mainly through the banking channels by the assessee has been found untrue as per the material available on the records. Non-submission of copies of bank accounts either during the assessment proceedings or before me, which may substantiate its claim that the expenses have been incurred mainly through the banking channels raises doubt on the genuineness of expenses mentioned above and thus, the utilization of cash withdrawals remain uninvestigated by the AO. The application of income for charitable purpose by the assessee have not been established by the assessee during the assessment proceedings with corroboratory evidences. Further, the AO has not investigated the application of income and corpus donations.*

*5. In view of the above, **it is evident that the assessment was completed without making in-depth inquiries or verifications** which should have been made on the issues corpus donations and application of income in cash as detailed above and in the Show-Cause Notice, rendering the order erroneous and prejudicial to the interests of revenue within the meaning of section 263 of the Act read with clause (a) of Explanation 2 there under. After careful consideration of the material available on the record, the submission made by the assessee and in the light of the above facts, it is held that impugned order of AY 2016-17 passed u/s 143(3) of the Act by the AO on 29.10.2018 is erroneous and prejudicial to the interest of the revenue on the issues highlighted above and in SCN. **I, therefore, in exercise of powers conferred u/s 263 of the Act hereby set aside the order passed by the AO u/s 143(3) of the Act for the AY 2016-17 to be made afresh on the issues highlighted above and in SCN after examining the evidences and the materials***

*on the record, conducting inquiries and verifications after affording sufficient opportunity to the assessee.”*

3. The Ld. Counsel for the appellant submitted that the Ld. PCIT vide paragraph 4.5 of the impugned order has held that the order of the Ld. AO is erroneous and prejudicial to the interest of revenue in respect of two issues. First was whether Corpus donations qualify within the meaning of section 11(1)(d) and second was whether Cash withdrawn from bank has been utilized for charitable purpose. However, there was no observation/findings made by the Ld. PCIT in respect of the 3<sup>rd</sup> issue raised regarding the source of corpus donation received in cash, in order to hold the assessment order erroneous and prejudicial to the interest of revenue.

3.1 The Ld. AR further submitted that the Ld. CIT has conveniently overlooked the statutory provision of section 263 by not giving any statutory finding in respect of third issue (Source of corpus donation received in cash), ignoring the requisite details have been filed on record (APB, Pgs. 1 to 97) and jumped on to set aside the order passed by the AO u/s 143(3) for the AY 2016-17 in arbitrary manner is void *ab initio*. He contended that the present case is squarely covered by the decision Hon'ble Jurisdictional

High Court in the case '**CIT vs. R.K. Metal Works**', [1978] 112 ITR 445 (P&H). The relevant paragraph is extracted as follows: -

*“A perusal of the order of the Commissioner of Income-tax clearly shows that the criticism of the Tribunal is well-founded. There is no indication in the order of the Commissioner as to the basis on which he came to the prima facie conclusion that the capital borrowed by the firm was utilised for purposes other than that of the firm's business. When the assessee filed a detailed written statement before him, the Commissioner did not deal with any of the points raised in the statement. He thought that the best course in the circumstances was to remand the matter to the Income-tax Officer for consideration of the points raised in the assessee's written statement. That certainly was not the proper course to be adopted by him. It was necessary for the Commissioner to state in what manner he considered that the order of the Income-tax Officer was erroneous and prejudicial to the interests of the revenue and what the basis was for such a conclusion. After indicating his reasons for such a conclusion, it would certainly have been open to him to remand the matter to the Income-tax Officer for such other investigation or enquiry as might be necessary. But that was not the course which the Commissioner pursued. The Tribunal was, therefore, justified in setting aside the order of the Income-tax Commissioner. The learned counsel for the revenue urged that, while setting aside the order of the Commissioner, the Tribunal had purported to restore the order passed by the Income-tax Officer and this meant that the Commissioner was precluded from taking up the matter again. We do not want to express any opinion on this question, since our jurisdiction is confined only to answering the question referred to us. The question referred to us is answered in the affirmative. There will be no order as to costs.”*

3.2 The Id. Counsel raised objection to invoking the Explanation 2 of section 263 of the Act 1961 as the Ld. CIT has not mentioned said fact in the Show Cause notice dated 23.03.2021. Meaning thereby, such action of the PCIT regarding invoking of Explanation 2 in the order without

confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law. The AR argued that, this legal issue/matter is covered by the decision of the Hon'ble Gujrat High Court in the case 'PCIT v. Shreeji Prints (P) Ltd', (2021) 130 taxmann.com 293 (Guj.) where it has been held as under:

*“5. The Tribunal has found that in the order passed by the PCIT, Explanation 2 of section 263 of the Act, 1961 is made applicable. The Tribunal observed that the PCIT has not mentioned in the show cause notice to invoke the Explanation 2 of section 263 of the Act 1961. **Therefore, by invocation of Explanation in the order without confronting the assessee and giving an opportunity of being heard to the assessee is not appropriate and sustainable in law.**”*

3.3 SLP of revenue against the decision of the Hon'ble Gujrat High Court has been dismissed by the Apex Court as reported in PCIT v. Shreeji Prints (P.) Ltd. (2021) 437 ITR 10 (SC) (ST). In support, the AR filed a case law Paper book pages 1 to 58.

4. Per contra, the Ld. CIT(DR) stands by the impugned order. However, he failed to rebut the contentions of the appellant trust.

5. Heard rival contentions, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, there was no observation/findings made by the Ld. PCIT to hold the assessment

order erroneous and prejudicial to the interest of revenue, in respect of the 3<sup>rd</sup> issue raised regarding the source of corpus donation received in cash, although the requisite details have been filed on record by the appellant in compliance to the show cause notice (SCN). In our view, the Ld. PCIT has comfortably overlooked the statutory provision of section 263 by not giving any statutory finding in respect of third issue (Source of corpus donation received in cash), ignoring the requisite details available on record and jumped on to set aside the order passed by the AO u/s 143(3) for the Assessment Year under consideration.

6. In the present case, the assessee has filed a detailed written statement before the Ld. PCIT, who did not deal with the 3<sup>rd</sup>, the vital point raised in the show cause notice. He thought that the best course in the circumstances was to remand the matter to the Income-tax Officer for consideration of the points raised in the assessee's written statement. In our view, that certainly was not the proper course to be adopted by him. It was necessary for the Ld. PCIT to state in what manner he considered that the order of the Income-tax Officer was erroneous and prejudicial to the interests of the revenue and what the basis was for such a conclusion. After indicating his reasons for such a conclusion, it would certainly have

been open to him to remand the matter to the Income-tax Officer for such other investigation or enquiry as might be necessary. Thus, the appellants case is squarely covered by the decision Hon'ble Jurisdictional High Court in the case 'CIT vs. R.K. Metal Works', (Supra).

7. Respectfully, following the Hon'ble Jurisdictional High Court, we hold that the impugned order is infirm and perverse to the facts on record and accordingly, we set aside the impugned order passed by the Ld. PCITu/s 263 of the act. As such, the order is held as void *ab initio*.

*Order pronounced in the open court on 13/06/2023*

Sd/-

**(AnikeshBanerjee)**  
**Judicial Member**

*A.G/Doc\**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The DR, I.T.A.T.

True Copy  
By Order