

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.275/Chny/2021
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s Everwin Educational and Charitable Trust 12, Redhills Road, A.J. Avenue, Kolathur, Chennai-600 099.	बनम/ Vs.	DCIT (Exemption) Chennai.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAATE-4884-E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Vijayaraghavan (Advocate)-Ld.AR
प्रत्यर्थी की ओर से/Respondent by	:	Shri Senthil Kumaran (CIT)- Ld. DR

सुनवाई की तारीख/Date of Hearing	:	25-07-2023
घोषणा की तारीख /Date of Pronouncement	:	27-07-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee challenge revisionary jurisdiction u/s 263 as exercised by Ld. CIT(Exemption), Chennai [CIT(E)] vide impugned order dated 31.03.2021 in the matter of an assessment framed by Ld. AO u/s 143(3) on 26.12.2018. The grounds raised by the assessee read as under: -

1. The order of the Commissioner of Income-tax (Exemption) passed u/s.263 of the Act dated 31.03.2021 is contrary to law, facts and circumstances of the case.
2. The Commissioner of Income-tax (Exemption) erred in holding that Shri B. Purushothaman and Smt P Mageswari obtained the benefit by utilizing the funds of the Charitable Trust in acquiring the land in their own name without appreciating the true facts of the case.

3 The Commissioner of Income-tax (Exemption) ought to have appreciated that Shri B Purushothaman and Smt P Mageswari were Trustees of Ever Win Educational and Charitable Trust and were running the schools under the Trust from Assessment year 2016-17.

4. The Commissioner of Income-tax (Exemption) ought to have appreciated that the Schools were run in their individual capacity for the earlier years and the entire assets and liabilities of the Educational institution were declared and vested with Everwin Educational And Charitable Trust, which has been approved under Sec.12AA dated 30.07.2012. On the basis of this declaration all the assets and liabilities of the Educational institutions vested with the Trust and has been since operating under the said Trust.

5 The Commissioner of Income-tax (Exemption) ought to have appreciated that two Trustees had purchased lands for the purpose of construction of building for the Schools. Monies for purchase were taken from the school account and buildings were constructed on the said land and the buildings were used for running of the schools under the management of the trust.

6. The Commissioner of Income-tax (Exemption) ought to have appreciated that the purchase of land was made for and on behalf of the Trust and no benefit had accrued to the Trustees out of these purchases.

7 The Commissioner of Income-tax (Exemption) ought to have appreciated that once the building was constructed on the impugned land and the School started operating on the building, the Trust applied for and got approval under CBSE taking into account the new building constructed out of the said purchase of the land. This would show that the land and building thereon belonged to the Trust and utilised by it for running the school.

8. The Commissioner of Income-tax (Exemption) ought to have appreciated that the land so purchased was shown as the assets of the Trust in the balance sheet filed as 31.03.2017.

9. The Commissioner of Income-tax (Exemption) ought to have appreciated the Trustees did not enjoy any benefit from the purchase of land inasmuch as they have never utilized the land for their own purpose and utilization the land only that construction of building and the same being shown as assets of the Trust and this land was never taken as assets of the Trustees in their individual capacity.

10. The Commissioner of Income-tax (Exemption) ought to have directed the Assessing Officer to consider this contemporaneous evidence also before coming to any conclusion on the purchase of the land.

11. The Commissioner of Income-tax (Exemption) should not have given undue weightage to an erroneous submission made by the Trustees (based on a mistaken advice) that the transfer of the properties were made through a Will ignoring the fact that the assets were shown in the balance sheet of the Trust even as on 01.04.2015.

The Ld. AR pleaded for consideration of declaration deeds by lower authorities which has been opposed by Ld. CIT-DR on the ground that

this was merely an after-thought. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

2. The registry has noted delay of 64 days in the appeal. Considering the period of delay, the delay is condoned and the appeal is admitted for adjudication on merits.

Proceedings before lower authorities

3.1 An assessment was framed against the assessee u/s 143(3) on 26.12.2018 accepting returned income. Subsequently, this order was subjected to revision by Ld. CIT(E) and the assessee was put to show-cause notice. It was the observation of revisionary authority that the assessee purchased 4 properties in the name of Trustees Shri B. Purushothaman and Smt. P. Mageswari. Another property was also found to be registered in the name of two trustees. The same has been tabulated in para 2 and 2.1 of the impugned order. The consideration flowed from the bank accounts of two schools being run by the assessee trust. Therefore, it was alleged that the trusted funds were diverted and used for purchase of properties in the name of trustees who happen to be the persons covered u/s 13(3). In such a case, the provisions of Sec.13(1)(c) would get attracted by virtue of Section 13(2)(g) and exemption u/s 11 ought not to be allowed to the assessee. Further, a will was executed by the trustees on 12.12.2018 bequeathing the properties in favor of assessee trust. In the will, it was mentioned that assessee trust was entitled to acquire possession and enjoy the same after the lifetime of testators. Thus, during lifetime of testators, the properties were in possession and enjoyment of trustees which was clear violation of the provisions of Sec. 13(2)(g). The assessment was completed without

invoking the provisions of Sec. 13(1)(c). The Ld. CIT(E) also observed that land advance made for Rs.26.61 Crores was also not a prescribed mode of investment u/s 11(5). A further observation was made that there were huge cash deposits in assessee's bank accounts and payment was made to various persons including HUF. The nature of application of income was not properly examined while completing the assessment. Accordingly, the assessment order was held to be erroneous and prejudicial to the interest of the revenue.

3.2 Though the assessee assailed revision of the order, Ld. CIT(E) maintained the position taken in show-cause notice and invoking Explanation 2(b) of Sec.263, cancelled the order and directed Ld. AO to redo the assessment after affording opportunity of hearing to the assessee. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. Upon perusal of assessment order, it could be seen that the vital issues as raised by revisionary authorities has nowhere been examined by Ld. AO. Nothing has been shown to us that the issues as flagged by revisionary authority were ever verified or examined by Ld. AO during the course of assessment proceedings. The Ld. CIT(E) has flagged various issues with facts which indicate that there was violation of various provisions which would jeopardize assessee's claim u/s 11 / 12 as applicable to a registered trust. Non verification of these facts by Ld. AO would certainly make the order erroneous and prejudicial to the interest of the revenue and the same justifies invocation of the provisions of Sec.263. Therefore, no interference is called for in the impugned order. The impugned order clearly spells out as to how the assessment

order was erroneous and prejudicial to the interest of the revenue and we concur with the same. However, this adjudication would not be construed as any expression on the merits of the case. The assessee is free to agitate the issues on merits, before appropriate authority wherever consequential proceedings are pending. All the grounds as urged before us stand dismissed.

5. The appeal stands dismissed.

Order pronounced on 27th July, 2023.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 27-07-2023

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आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्था/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF