

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.174/PUN/2022
निर्धारण वर्ष / Assessment Year : 2010-11

Usha K. Jolly Charitable Trust, 23, Jolly Villa, Bund Garden Road, Pune- 411001. PAN : AAATU1384R	Vs.	CIT (Exemption), Pune.
Appellant		Respondent

Assessee by : Shri Kishor B. Phadke
Revenue by : Shri Ajay Kumar Kesari

Date of hearing : 10.08.2023
Date of pronouncement : 22.08.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Exemption), Pune [‘the CIT (Exemption)’] dated 30.03.2021 for the assessment year 2010-11.

2. The appellant raised the following grounds of appeal :-

“1. *The learned CIT (Exemptions) erred in law and on facts in invoking the jurisdiction u/s 263 of the IT Act, 1961, since issues*

objected to by him are neither erroneous nor prejudicial to the interest of the revenue.

2. *The learned CIT (Exemptions) erred in law and on facts in not granting adequate opportunity of being heard to the appellant and concluding the 263 order in a very short span of time.*
3. *The learned CIT (Exemptions) erred in law and on facts in setting aside the original assessment order u/s 263 of the ITA, 1961 by treating the same as erroneous on account of "failure to verify certain aspects" whereas the learned AO has already examined the issues critically.*
4. *The learned CIT (Exemptions) erred in law and on facts in contending that the learned AO has not duly verified and enquired regarding the huge cash deposits made by appellant. The learned CIT (Exemptions) failed to appreciate that, even if the re-assessment order was silent about the issue, it was duly verified by the learned AO on the basis of the bank statements and cash book filed by the appellant.*
5. *The learned CIT (Exemptions) erred in law and on facts in not appreciating the learned AO could not have entered into issues other than the following two issues, considering principle laid down in section 148 and CIT v. Jet Airways (I) Ltd. 331 ITR 236 (Bombay HC)-*
 - o Alleged non-filing of return of income (in fact filed in due time)*
 - o Alleged cash deposit in bank (in fact, no such cash deposit)*
6. *The learned CIT (Exemptions) erred in law and on facts in not appreciating that the following two issues, which are discussed in the 263 order, were not meeting the condition of "any other issue which comes to his notice"-*
 - o Corpus donation received- Rs. 20 crores*
 - o Advance to Sabari Foundation- Rs. 4 crores*
7. *The appellant craves leave to add, alter, amend and delete all or any of the grounds of the appeal."*

3. Briefly, the facts of the case are as under :-

The appellant is a charitable trust registered under the provisions of section 12A of the Income Tax Act, 1961 ('the Act'). The Return of Income for the assessment year 2010-11 was filed on 23.11.2011 declaring Rs.Nil income. Subsequently, on receipt of the information that the appellant trust made a cash deposit of Rs.1,31,99,95,101/-, the Assessing Officer reopened the assessment by issuing notice u/s 148 on 29.03.2017. Subsequently, the assessment came to be completed u/s 143(3) r.w.s. 147 accepting the returned income.

4. Subsequently, the Id. CIT (Exemption), on perusal of the assessment records, found three violations i.e. :

- (i) The appellant trust had received corpus fund of Rs.20,04,45,600/- during the year under consideration which was claimed to be exempt from tax without verifying whether the donor had donated the amount towards corpus fund or not.
- (ii) The appellant trust paid a sum of Rs.4 crores to Sabery Foundation towards the construction of Hospital. However, the said foundation was failed to construct the Hospital instead. In lieu of the donation, the said

foundation eventually constructed some flats, which were handed over to the appellant trust, which are contrary to the objects of the appellant trust.

(iii) The appellant trust given loan to some persons from whom no interest being charged. Thus, appellant trust violated the provisions of section 13(1)(c) of the Act.

5. In the light of above three violations, the ld. CIT (Exemption) formed an opinion that the appellant trust is not entitled for exemption u/s 11 of the Act. Therefore, the ld. CIT (Exemption) formed an opinion that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. Accordingly, the ld. CIT (Exemption) issued a show-cause notice u/s 263 on 24.03.2021. In response to the show-cause notice, the assessee had not responded. In the circumstances, the ld. CIT (Exemption) set-aside the assessment order to the file of the Assessing Officer by holding that the assessment order is erroneous and prejudicial to the interests of the Revenue with a direction to the Assessing Officer for *de novo* assessment after giving an opportunity of being heard to the appellant.

6. Being aggrieved, the appellant trust is in appeal before us in the present appeal.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of assumption of jurisdiction u/s 263 by the ld. CIT (Exemption). The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC) and in the case of CIT vs. Max India Ltd., 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous".

8. Now, we proceed to examine the facts of the present case whether the order of reassessment dated 28.09.2017 is erroneous or not?. As regards to the issue of addition in respect of unsecured

loans, admittedly, no addition in respect of cash deposit was made in the reassessment proceedings in respect of which the revision is sought to be made. Therefore, the assessment order passed by the Assessing Officer cannot be termed “erroneous and prejudicial to the interests of the Revenue”, in the light of the law laid down by the Hon’ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd., 331 ITR 236 (Bom.), the Hon’ble Delhi High Court in the case of Ranbaxy Laboratories Ltd. vs. CIT, 336 ITR 136 (Delhi) and the Hon’ble Rajasthan High Court in the case of CIT vs. Shri Ram Singh, 306 ITR 343 (Rajasthan), it is not permissible for the Assessing Officer to make any other addition. Therefore, what follows from this is that the ld. CIT (Exemption) could not have exercised the jurisdiction u/s 263 in respect of item, which could not have been disallowed in the reassessment proceedings in respect of which the 263 proceedings were initiated. In this connection, reliance can be placed on the decision of the Hon’ble Delhi High Court in the case of CIT vs. Software Consultants, 341 ITR 240 (Delhi). Therefore, we are of the considered opinion that the assessment order cannot be termed as “erroneous” amenable for jurisdiction u/s 263 of the Act. Thus, the ld. CIT (Exemption) ought

not to have exercised the jurisdiction u/s 263 of the Act. Accordingly, the grounds of appeal filed by the assessee stand allowed.

9. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 22nd day of August, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 22nd August, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT, Exemption, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.