

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA No.2940/Del/2022
Assessment Year: 2018-19

India International Centre,
40, Max Mueller Marg,
Lodhi Estate,
New Delhi – 110 003.

Vs CIT(E),
New Delhi.

PAN: AAATI0660C

(Appellant)

(Respondent)

Assessee by : Shri Krishna Mohan Prasad, Advocate
Revenue by : Shri Mohd. Gaysuddin Ansari, CIT,DR

Date of Hearing : 25.05.2023
Date of Pronouncement : 22.08.2023

ORDER

PER M. BALAGANESH, AM:

This appeal in ITA No.2940/Del/2022 for AY 2018-19, arises out of the order of the Commissioner of Income Tax (Exemptions), New Delhi [hereinafter referred to as 'Id. CIT(E)', in short] dated 19.10.2022 against the order of assessment passed u/s 143(3) r.w.ss 143(3A) & 143(3B) of the Income-tax Act,

1961 (hereinafter referred to as 'the Act') dated 31.03.2021 by the Income-tax Officer, National e-Assessment Centre, Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us :-

"1 The Revision Order dated 19.10.2022 u/s 263 of the Income-tax Act, 1961 by the Commissioner of Income tax (Exemptions), New Delhi is bad in law and is required to be quashed as:

the Assessment Order by the National eAssesment Centre (NeAC) has been framed after considering the decisions of Assessment orders, Appeal Orders, ITAT orders, High Court order of past several years and also by making required inquiries and verification by team of Assessing Officers of Regional eAssesment Centers (ReAC):Assessment Unit, Technical Unit, Review Unit, Verification Unit and the NeAC has examined draft Assessment order in accordance with the risk management strategy specified by the Board;

and the Assessment Order of NeAC is not erroneous in so far it is prejudicial to the interest of the revenue.

2 The order u/s 263 is factually and legally incorrect in view of observations and findings of the Commissioner of Income-tax (Exemption) that: -

(a) NeAC has failed to "make requisite enquiries and verification and enquiries"

(b) treating the Indian International Centre (IIC) as a commercially run hotel without appreciating fact that providing venues for seminar, art exhibitions, conferences etc. for advancement of cultural, educational and intellectual activities and providing hostel accommodation and catering activities on loss or no profit-no loss, are as basic to the activities of IIC as is for any educational institution or a religious institution or on the lines of running of Guest Houses and catering facility by the Income-tax Department.

(c) quoting the receipts and application of fund of IIC at Page 12 of the Order but ignoring the fact that interest income is at Rs 8,39,87,291/- and surplus is at only Rs 4,50,63,233/-, so providing venue, hostel and catering facilities are at a loss,

3 That various adverse findings recorded in the notice u/s 263 of the Act and, also in impugned order are factually incorrect, vague, legally misconceived and untenable.

Prayer : It is therefore prayed that:

(a) The proceedings before AO consequent to Order u/s 263 be stayed till pendency of this appeal

(b) Revision order dated 19.10.2022 under section 263 be quashed and appeal be allowed."

3. We have heard the rival submissions and perused the materials available on record. The assessee is a society registered under the Societies Registration Act of 1860 and is strictly governed by its Memorandum of Association and Rules & Regulations. The assessee filed revised return on 03.10.2018 for the Asst Year 2018-19 declaring total income of Rs Nil after claiming exemption u/s 10(23C)(iv) of the Act. The Id. AO in the assessment proceedings on perusal of the charter documents of the assessee and various details furnished from time to time that were called for by the Id. AO, concluded that the objects of the Society are wholly charitable in nature since its inception and that there is no change in the objects or the activities of the Centre right from its inception. Accordingly, the Id. AO on perusal and examination of all the details placed on record accepted the returned income of the assessee and completed the assessment u/s 143(3) of the Act on 31.03.2021. This assessment was sought to be treated as erroneous in as much as it is prejudicial to the interests of the revenue by the Id. PCIT on the following grounds:-

- a) The scrutiny assessment for the Asst Years 2016-17 and 2017-18 were completed by invoking the proviso to section 2(15) of the Act denying the benefit of exemption u/s 10(23C)(iv) of the Act and income computed under Chapter IV of the Act. The assessment for these two years are at various stages of appeal. There is no substantial change in

the financials and activities of the assessee in the year under consideration when that compared for Asst Year 2017-18 and hence the Id. AO ought not to have departed from the earlier stand taken by his predecessor for Asst Year 2017-18.

- b) From the detailed questionnaire issued by the Id. AO along with notice u/s 142(1) of the Act, no query was raised with regard to applicability of proviso to section 2(15) of the Act for the assessee in Asst Year 2018-19.

4. Accordingly a show cause notice was issued u/s 263 of the Act by the Id. PCIT on the aforesaid two grounds. The Id. PCIT also asked the assessee to explain the various details of receipts in Asst Year 2018-19 with specific reference to applicability of proviso to section 2(15) of the Act for the said receipts. The assessee filed its reply vide submissions dated 24.06.2022 by specifically stating that specific enquiries were made by the Id. AO on the same issue. It was also submitted that the assessment framed was by Faceless unit after review by more than one authority at various stages.

5. The Id. PCIT stated in tabular form in Para 4.1. of his order that though the assessee had succeeded on all the issues on merits in earlier years, the appeals of the revenue are pending at various stages in High Court and Supreme Court as the case may be. Since the matter is subjudice, the Id. PCIT held that the decision of the appellate authorities including the High Courts were not accepted by the revenue. In respect of applicability of proviso to section 2(15) of the Act, the Id. PCIT observed that even if it is presumed that a query is raised by the Id. AO regarding the same, the eventual finding given thereon is clearly erroneous in so far as it is prejudicial to the interest of the revenue since the underlying issue is still being contested before the judicial authorities. The Id.

CIT(A) had deleted the additions made in the scrutiny assessments for the Asst Years 2016-17 and 2017-18 and since further appeals were preferred by the revenue before the Tribunal against those orders, the orders of the Id. CIT(A) were not accepted by the revenue. With regard to the issue of assessee claiming refund and giving details regarding the accumulation of income and amount deemed to be income u/s 11(3) from Asst Years 2004-05 to 2018-19, the Id. PCIT simply brushed aside the same by stating that the same are not relevant to the present revision proceedings u/s 263 of the Act.

6. The Id. PCIT re-examined all the issues pertaining to assessment again by calling for the details of all the charter documents, objects, activities carried out, tariff chart for various venues, guidelines issued by the society for usage of the facilities offered by the assessee society , catering charges etc.

6.1. The Id. PCIT concluded running the catering services is an independent and substantial activity of the assessee for which it is receiving significant consideration. Therefore, bookings of IIC (assessee) venue and catering need not necessarily be aligned with the stated general public utility objects of the assessee and therefore are in the nature of trade, commerce or business or providing service in relation thereto for a consideration.

6.2. Similarly the assessee is charging fee in the form of subscription income from members for providing certain exclusive facilities which are not otherwise available to the general public. Therefore, the subscription income of the assessee is nothing but receipts from carrying out activities in the nature of trade, commerce or business or of rendering any service in relation to any trade,

commerce and business for a cess or fee or any other consideration and therefore liable to be added to its business income.

6.3. The Id. PCIT noted that assessee's receipts from food and beverages are Rs 1968.98 lakhs and expenditure on the material cost is Rs 611.21 lakhs thereby resulting in 222% profit over the expenditure. The assessee replied that besides the material cost, there are other expenses which are incurred such as salaries, fuel, electricity and water charges, which when directly attributed to the food receipts, there is a net loss from the catering activities. The Id. PCIT observed that assessee failed to furnish any detail demonstrating its claim.

6.4. The Id. PCIT noted that assessee is providing residential accommodation for the members and non-members (as guests) of the society and had shown receipt of Rs 752.39 lakhs under the head 'Hostel Rooms' and no corresponding expenses have been claimed. Therefore the corresponding expenses have also been intermingled with other expenses and the same calls for an indepth understanding and deeper investigation into assessee's accounts.

6.5. Further , the differential treatment in terms of services (like library, hostel booking, dining & bar facilities are exclusively available to members and / or their guests only) as well as tariffs for members and non-members imply that the main activities of the assessee are not for the benefit of public at large; but in the nature of trade, commerce or business or providing service in relation thereto for a consideration.

6.6. The Id. PCIT asked the assessee to prove how expenditure of Rs 3007.98 lakhs under the head 'Establishment' correlates with the objects and activities

undertaken. In response, the assessee submitted that it is related to salary and benefits provided to IIC employees and that all employees work in the Centre for fulfilling the objectives and activities undertaken by the Centre. The Id. PCIT noted that the assessee has not correlated this expense with its objects and activities undertaken.

6.7. From the aforesaid analysis, the Id. PCIT concluded that the assessee's case squarely falls within the ambit of proviso to section 2(15) of the Act and that since the aforesaid aspects were not properly examined by the Id. AO while framing the assessment, the Id. PCIT passed a revision order u/s 263 of the Act treating the order passed by the Id. AO as erroneous and prejudicial to the interests of the revenue with a direction to frame denovo assessment after proper examination of the issues raised in the revision proceedings.

7. At the outset, we find that the Id. AR vehemently submitted that the entire contentions raised by the Id. PCIT are already subject matter of consideration by this tribunal and also by the Hon'ble Jurisdictional High Court in assessee's own case. We find that this tribunal for Asst Year 2010-11 in ITA No. 3110/Del/2015 dated 14.01.2019 had passed an order in assessee's own case in favour of the assessee where the revision order u/s 263 of the Act passed by the PCIT on identical grounds were quashed. Moreover, the Hon'ble Jurisdictional High Court in assessee's own case had decided the issue in favour of the assessee in ITA 300/2018 dated 14.03.2018 holding the activities of the assessee to be charitable in nature. Hence on merits, the issue is already decided in favour of the assessee by the order of this tribunal in earlier years after duly considering the proviso to section 2(15) of the Act. There is absolutely no reason for the Id. AO to take a divergent stand when the matters on merits are already settled by this tribunal in

assessee's own case. Infact the Id. AO had followed judicial discipline, which has been completely and conveniently ignored by the Id. PCIT in the instant case. Apart from this, we also find that the Id. AO had indeed made specific enquiries on the very same issues that were raised by the Id. PCIT in his revision order. The notices issued u/s 142(1) of the Act by various officers under faceless regime are as under:-

- a) Notice u/s 142(1) of the Act dated 22.12.2020 by National e-Assessment Centre, Delhi
- b) Notice u/s 142(1) of the Act dated 15.10.2020 by National e-Assessment Centre, Delhi
- c) Notice u/s 142(1) of the Act dated 04.03.2021 by National e-Assessment Centre, Delhi

8. This goes to prove that sufficient enquiries were indeed made by the various assessing officers in the course of assessment proceedings under faceless regime. It is not in dispute that the assessee had indeed filed complete details regarding the queries raised by the various assessing officers. Infact most of the queries raised were even repetitive in nature and details were filed by the assessee repeatedly. Moreover, we find that the Id. AO under the faceless regime had even asked for the scrutiny assessment orders for the Asst Years 2016-17 and 2017-18 which were also filed by the assessee before him. Since the issues on merits were duly settled in favour of the assessee, the Id. AO by duly respecting the judicial discipline had accepted the contentions of the assessee and completed the assessment accepting the returned income. While this is so, we hold that the order of the Id. AO cannot be treated as erroneous merely because the view taken by the Id. AO is not acceptable to the Id. PCIT. Merely for substitution of a view by the Id. PCIT on matters already on record,

revision proceedings u/s 263 of the Act cannot be initiated by the Id. PCIT. Further revision proceedings u/s 263 of the Act cannot be initiated for inadequate enquiry and the same could be done only for lack of enquiry. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of *Max India Ltd reported in 295 ITR 282 (SC)* ; *Malabar Industrial Co. Ltd reported in 243 ITR 83 (SC)* and Hon'ble Delhi High Court in the case of *DG Housing Projects Ltd reported in 343 ITR 329 (Del)* ; *CIT vs Sunbeam Auto Ltd reported in 332 ITR 167 (Del)*, among other decisions.

9. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that the issues raised by the Id. PCIT is already decided in favour of the assessee on merits and further since adequate enquiries were already carried out by the Id. AO in the course of assessment proceedings, the order of the Id. AO cannot be termed as erroneous and hence the revision order passed by the Id. PCIT u/s 263 of the Act is hereby quashed. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 22.08.2023

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 22nd August, 2023.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi