

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

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

आयकर अपील सं. / ITA Nos.680 to 684/PUN/2023
निर्धारण वर्ष / Assessment Years : 2013-14 to 2017-18

St. Lawrence Education Trust, Gut No.42, Sunderwadi, Zalta Circle, Aurangabad- 431003. PAN : AAATS5598P	Vs.	PCIT, Central, Nagpur.
Appellant		Respondent

आयकर अपील सं. / ITA Nos.685 to 689/PUN/2023
निर्धारण वर्ष / Assessment Years : 2013-14 to 2017-18

St. Xaviers Education Trust, R-7/1, Town Center, CIDCO, Maharashtra- 431003 PAN : AACTS4140D	Vs.	PCIT, Central, Nagpur.
Appellant		Respondent

Assessee by : Shri Sachin P. Kumar
Revenue by : Shri Ajay Kumar Kesari

Date of hearing : 07.09.2023
Date of pronouncement : 26.09.2023

आदेश / ORDER

PER BENCH :

These are the appeals filed by the two different assesseees directed against the separate orders of Id. Pr. Commissioner of

Income Tax (Central), Nagpur ['PCIT'] dated 31.03.2022 passed u/s 263 of the Income Tax Act, 1961 ('the Act') for the assessment years 2013-14 to 2017-18 respectively.

2. Since the identical facts and common issues are involved in all the above captioned ten appeals of two different assessees, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.680/PUN/2023 for the assessment year 2013-14 are stated herein.

ITA No.680/PUN/2023, A.Y. 2013-14 :

4. Briefly, the facts of the case are that the appellant is a trust incorporated under the provisions of the Trust Act. The appellant trust was formed with the object of imparting education. The appellant trust was duly registered under the provisions of section 10(32C)(vi) of the Act. The appellant trust filed the Return of Income for the assessment year 2013-14 under the provisions of section 139 of the Act on 23.09.2013 disclosing Rs.Nil income after claiming exemption u/s 10(23C)(vi) of the Act. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Exemption Circle, Aurangabad ('the

Assessing Officer’) vide order dated 22.12.2015 passed u/s 143(3) of the Act accepting the returned income.

5. Subsequently, the survey operations under the provisions of section 133A of the Act were conducted in the business premises of the appellant trust on 27.02.2019. During the course of survey proceedings, the survey team of the Department found that the expenses booked under the head “Bonus, Perks and Allowances, Office Expenses, Tours and Travelling Expenses, Building Repairs Expenses etc” are booked in the month of March and stated to have been incurred in cash and not supported by the vouchers. When this discrepancy was pointed out, the appellant trust had come forward to disclose following income in the hands of the appellant trust and its partners during the course of statement recorded on oath u/s 131 on 06.03.2019 :

<i>Sr. No.</i>	<i>Assessment Year</i>	<i>Taxable Surplus</i>
		<i>St. Lawrence Education Trust, Aurangabad.</i>
<i>1</i>	<i>2013-14</i>	<i>669905</i>
<i>2</i>	<i>2014-15</i>	<i>1163898</i>
<i>3</i>	<i>2015-16</i>	<i>7561862</i>
<i>4</i>	<i>2016-17</i>	<i>5003983</i>
<i>5</i>	<i>2017-18</i>	<i>4003970</i>
<i>6</i>	<i>2018-19</i>	<i>9107315</i>
<i>7</i>	<i>2019-20</i>	<i>19000000</i>
	<i>Total</i>	<i>46510933</i>

6. Based on the statement u/s 131, the Assessing Officer formed an opinion that the income escaped assessment to tax and, accordingly, a notice u/s 148 was issued, which was served upon the appellant trust on 15.04.2019. In response to notice u/s 148, the appellant trust had filed the return of income on 24.04.2019. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 28.06.2019 passed u/s 143(3) r.w.s. 147 of the Act at total income of Rs.6,69,905/- assessing the income declared during the course of survey proceedings as taxable surplus income of assessee trust.

7. Subsequently, the Id. PCIT, on review of the assessment records, found that the appellant trust had booked substantial expenses under the various heads such as “Bonus, Perks and Allowances, Office Expenses, Tours and Travelling Expenses, Building Repairs Expenses etc”. Most of the expenditure was incurred in cash and booked in the month of March in every financial year. The vouchers and supporting evidence in support of that expenditure were not found in the premises of the appellant. The Id. PCIT was of the opinion that the Assessing Officer without making any enquiry as to the correctness of the claim made by the assessee trust with regard to the expenditure of Rs.8,10,51,357/- as

against gross receipts of Rs.9,09,35,800/- had simply accepted the income declared by the assessee trust, which is erroneous and prejudicial to the interests of the Revenue and, accordingly, called upon the appellant trust vide show-cause notice u/s 263 of the Act dated 03.03.2022, as to why the assessment order should not be held as erroneous and prejudicial to the interests of the Revenue. In response to the said show-cause notice, the appellant trust had filed detailed submissions vide letter dated 22.03.2022 by stating that the observation made by the ld. PCIT was merely based on the surmises and assumptions, as the assessment was completed after due verification of all the expenditures and secondly, the bills/vouchers which were found to be missing during the course of survey proceedings are lesser than the amount declared by the assessee trust and the assessment was completed after taking due approval of the Additional Commissioner of Income Tax. Thus, it was contended that it cannot be said that the assessment order passed by the Assessing Officer was without making enquiry and in the light of the settled position of law the assessment cannot be termed as “erroneous”. However, on due consideration of the submissions made by the assessee, the ld. PCIT proceeded to hold that the very fact that the Assessing Officer had recorded a finding that the

verification was made on sample basis goes to demonstrate that the entire expenditure was not verified by the Assessing Officer. The ld. PCIT given detailed findings vide para no.9.8, 9.9 and 10, as to how the assessment order suffers from the lack of adequate enquiries and had proceeded to hold that for the lack of adequate enquiry by the Assessing Officer, the assessment order is erroneous and prejudicial to the interests of the Revenue and, accordingly, the assessment order is set-aside with a direction to the Assessing Officer to make a fresh enquiry and verification in respect of the expenditure claim by the assessee trust. The ld. PCIT also formed an opinion that the action of the Assessing Officer dropping the penalty proceedings is erroneous.

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

9. It is submitted that the ld. PCIT ought not to have exercised the power of revision without appreciating the submissions made by the appellant trust. It is further submitted that the Assessing Officer after due verification of the submission had completed the assessment and, therefore, it cannot be said that the assessment order is completed without making adequate enquiries. It is further contended that the ld. PCIT cannot find fault with the Assessing

Officer in dropping the penalty proceedings, as dropping of penalty proceedings does not form part of the assessment order.

10. On the other hand, ld. CIT-DR vehemently contends that the Assessing Officer ought not to have completed the assessment without causing necessary enquiries in respect of each expenditure claimed by the assessee trust, as the assessee trust had failed to produce the vouchers in respect of the expenditure claimed by it.

11. 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”.

12. Therefore, in the light of the above legal position, we proceed to examine the facts of the present case as to whether or not the Assessing Officer had caused necessary enquiries in respect of the expenditure claimed by the appellant trust. It is an admitted position that during the course of survey proceedings, the appellant could not produce the vouchers in support of the expenditure claimed by the appellant trust. This fact is also made clear by the submissions of the appellant trust that the vouchers in respect of the expenditure incurred by the assessee trust were in the different school premises. Now, the appellant trust worked out the surplus income after disallowing the expenditure, which is not supported by the vouchers, but there is no material on record to indicate that the income offered by the assessee trust represents the entire expenditure not supported by the vouchers. The fact that the Assessing Officer had recorded a finding that the disclosure of expenditure was verified on random basis goes to demonstrate that the Assessing Officer had not verified in full the entire expenditure claimed by the assessee trust. The fact that the vouchers were not found in the premises of the appellant trust at the time of survey

proceedings, should have triggered the Assessing Officer to enquire and verify the evidence of the expenditure incurred on those items such as “Bonus, Perks and Allowances, Office Expenses, Tours and Travelling Expenses, Building Repairs Expenses etc”, which the Assessing Officer had failed to do so. Therefore, this fact clearly demonstrates that the Assessing Officer had failed to conduct necessary enquiries in respect of the above items of expenditure and, therefore, the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the Revenue. The facts of the case are hit by Explanation 2 inserted to section 263 of the Act. Therefore, we do not find any reasons to interfere with the order passed by the Id. PCIT. The Id. PCIT was justified in the facts of the present case in exercising the power of revision vested with him u/s 263 of the Act. Accordingly, the grounds of appeal raised by the assessee trust stand dismissed.

13. In the result, the appeal filed by the assessee in ITA No.680/PUN/2023 for A.Y. 2013-14 stands dismissed.

ITA Nos.681 to 689/PUN/2023,
A.Ys. 2013-14 to 2017-18 :

14. Since the facts and issues involved in all the above captioned ten appeals of two different assesseees are identical, therefore, our

decision in ITA No.680/PUN/2023 for A.Y. 2013-14 shall apply *mutatis mutandis* to the remaining nine appeals of the two different assesseees in ITA Nos.681 to 689/PUN/2023 for A.Ys. 2013-14 to 2017-18 respectively. Accordingly, the remaining nine appeals of the two different assesseees in ITA Nos.681 to 689/PUN/2023 for A.Ys. 2013-14 to 2017-18 stands dismissed.

15. To sum up, all the above captioned ten appeals of two different assesseees stands dismissed.

Order pronounced on this 26th day of September, 2023.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 26th September, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT (Central), Nagpur.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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