

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**  
**AND**  
**SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)**

**ITA No. 1340/MUM/2022**  
**Assessment Year: 2017-18**

The Synthetic & Art Mills  
Research Association,  
Sasmira Marg, Worli  
Mumbai-400025.  
**PAN No. AAATT 4271 E**  
**Appellant**

**Vs.**

The CIT(E),  
Room No. 601, 6<sup>th</sup> floor, Cumballa  
Hill, MTNL TE Building, Pedder  
Road, Mumbai-400026.  
**Respondent**

**Assessee by** : Mr. Girish Dave, Adv. &  
Mr. Tanzil Padvekar  
**Revenue by** : Mr. S. Srinivasu, CIT-DR

Date of Hearing : 29/11/2023  
Date of pronouncement : 29/11/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 24.03.2022 passed by the Ld. Commissioner of Income-tax (Exemption), Mumbai [in short 'the Ld. CIT(E)'] for assessment year 2017-18 holding the assessment order passed by the Assessing Officer as erroneous in so far as prejudicial to the interest of the Revenue.



2. The grounds raised by the assessee in appeal are reproduced as under:

*1. On the facts and in the circumstances of the case and in law, Learned Commissioner of Income-tax (Exemptions) (In short, "CIT") has erred in invoking revisionary jurisdiction under Section 263 Of the Income-tax Act, 1961 (In short, "the Act") when the entire assessment order passed by learned Assessing Officer (In short, (the "AO") is challenged in appeal and pending before learned Commissioner of Income-tax (Appeals) (In short, "CITA");*

*2. On the facts and in the circumstances of the case and in law, learned CIT has erred in holding that income should have been included to the extent of Rs. 1,71,72,136/- under the Head "Income from Other Sources" without appreciating (i) the nature of receipt, and (ii) year of accrual;*

*3. On the facts and in the circumstances of the case and in law, learned CIT has erred in holding that section 11(1) (d) is inapplicable when the issue of exemption under section 11 of the Act is pending before CITA and the appellant could not have foreseen that the exemption under section 11 would be denied by learned AO.*

3. Briefly stated facts of the case are assessee trust is engaged in carrying on research activity, predominantly for Ministry of Textile ,Government of India and other parties alongwith imparting of education in the field of textile , management etc. The assessee is registered u/s 12A of Income-tax Act, 1961 (in short 'the Act') with Income-tax Department as charitable organization. The assessee is also registered u/s 35 as an approved research organization. In the assessment order passed u/s 143(3) of the dated 18.12.2019, the Assessing Officer held that the assessee was not entitled for exemption u/s 11 of the Act on account of it being covered by the proviso to section 2(15) of the Act. Accordingly, invoking section



13(8) of the Act, the Assessing Officer denied exemption u/s 11 of the Act and assessed the total income at Rs.48,69,566/-. Subsequently, the Ld. CIT(E) called for the record and after examination and verification, he found that the Assessing Officer did not consider interest of Rs.1,04,75,821/- under the head 'building fund' and Rs.66,96,315/- under the head 'grand-in-aid' to be spent, which was appearing in the balance sheet, for the purpose of the income of the assessee, therefore, the assessment order was rendered erroneous in so far as prejudicial to the interest of the Revenue. The Ld. CIT(E) accordingly, issued notice u/s 263 of the Act dated 28.02.2022 and asked the assessee as to whether any verification of the facts on the issue was carried out by the Assessing Officer. Before the Ld. CIT(E), the assessee submitted that interest on 'building fund' and interest on 'unspent grant-in-aid' was kept separately under legal obligation fixed by the Government Authority specifically for the purpose of the building and infrastructure and other grants, and therefore same was not in the nature of the income of the assessee for the year under consideration. The Ld. CIT(E) after considering the submission of the assessee held the assessment order as erroneous in so far as prejudicial to the interest of the revenue and directed the Assessing Officer to pass a fresh assessment order after carrying out necessary verification. The relevant finding of the Ld. CIT(E) is reproduced as under:



“4. The submissions of the assessee are carefully considered. The facts in this case are undisputed. It has not been denied that the assessee is directly taking the interest of Rs.1,04,75,821/- under the head "Building Fund" and Rs.66,96.315/- under the head Grant in Aid to be Spent in the Balance Sheet. Regardless of the scenario whether the assessee is entitled to exemption or due to applicability of provisions of Section 2(15) r.w.s. 13(8) of the Act exemptions is denied, it was incumbent on the AO to have verified during the assessment proceedings whether the gross income of the assessee has been reported for computational purposes. In the present instance as mentioned earlier, the exemption to the assessee under Section 11 of the Act has been denied. It is clear that once the exemption of the assessee is denied, the income has to be computed under the normal provisions of the Act. As such, the interest income accrued and earned by the assessee during the year from Other Sources". amounting in aggregate of Rs.171.22.136/- needed to be assessed under the head Income interest of revenue. The AO has not conducted necessary verifications/enquiries on the Issue and as a result passed an order which is erroneous in so far as it is prejudicial to the interest of the revenue.

5. Argument of the assessee that interest on building fund arisen during the year forms part of corpus and hence exemption is not acceptable for two reasons. Firstly, the allowability of corpus is governed by the provisions of Section 11(1)(d) of the Act. Secondly, there is no applicability of Section 11 of the Act on the computation of the assessee during the year in view of denial of exemptions by the AO. Hence, neither the test of Section 11(1)(d) of the Act is passed by the assessee nor there can be any question and allowance of corpus in the fund of denial of exemptions. Similarly, the interest on unspent grant, the view of the assessee is that these grants are received with specific directions of utilization of specific project and accruals on unspent gains are refundable or adjusted with subsequent grants if any. In this regard, it must be stated that the arguments of the assessee, does not hold much water for the simple reason that under the provisions of the Act, all the income arising or accruing have to be reported for the purpose of taxation unless they are exempted by the specific provisions of the Act. In the present case, the assessee is duty bound to report the interest income on unspent grant and if any refunds has been given back or adjusted against subsequent grant, it is open to the assessee to make the necessary allowance in his computation of income. But the mere fact that the interest on unspent grants could be refunded or adjusted does not give the assessee license not to report income in its computation and directly take it to the balance sheet. The AO



*has ignored all these aspects and passed an order which is not in consonance with the provisions of the Act. In view of the facts and circumstances as stated above, I am satisfied that the assessment order dated 18/12/2019 is erroneous in so far as it is prejudicial to the interest of revenue within the meaning of Section 263 of the Act. Accordingly, I deem it appropriate to set aside the order dated 18/12/2019 with directions to reframe the assessment proceedings as under:*

*(i) The interest on building fund amounting to Rs. 104,75,821/- and the interest on unspent grant of Rs.66,96,315/- aggregating to Rs.171,72,136/-are required to be included in the computation of income.*

*(ii) The AO may conduct necessary verification and grant allowance to the assessee on account of expenses, if any incorporated while earning the impugned income of Rs. 171,72, 136/- under the head 'Income from Other Source'.*

*6. The AO before framing consequential order is directed to avail adequate opportunity to the assessee to present its case. The AO may further note that the scope of the consequential proceedings is limited to the issues discussed as above and may not disturb any other findings in the assessment order dated 18/12/2019 or travel beyond the scope.”*

4. Before us, the Ld. Counsel for the assessee filed a Paper Book containing pages 1 to 328. The Ld. Counsel addressing the ground No. 1 of the appeal submitted that the Assessing Officer has disallowed the entire claim of exemption u/s 11 of the Act and appeal filed against said assessment order by the assessee is pending before 1d first appellate authority i.e. the Commissioner of Income-tax(Appeals) and therefore, the Ld. CIT(E) was not justified in invoking proceedings u/s 263 of the Act during pendency of the appeal before the 1d. CIT(A). He referred to Paper Book page NO. 68 which is copy of the Form No. 35 filed before the Ld. CIT(A). The Ld.



Counsel also referred to Paper Book pages No. 58 and 59 which is a copy of the notice u/s 263 of the Act issued by the Ld. CIT(E).

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Regarding the contention of the Ld. Counsel that during the pendency of the appeal before the Ld. CIT(A), the Ld. CIT(E) is barred from invoking section 263 of the Act, we feel it appropriate to reproduce the relevant provision of section 263 of the Act as under:

*“(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the [Principal Commissioner or] Commissioner under this sub-section shall extend and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal.”*

5.1 On perusal of the above provision, it is evident that the Ld. CIT(E) is barred for invoking section 263 of the Act only when a issue in which he propose to revise the order, has been considered and decided by the Ld. CIT(A). Thus unless the issue is decided by the Ld. CIT(E), mere pendency of the appeal before Ld. CIT(A), does not bar jurisdiction of the Ld. CIT(E). More so, in the case in hand, the issue before the Ld. CIT(A) was in respect of exemption of the income u/s 11 of the Act and not as what would be the quantum of the income and therefore, issue covered u/s 263 of the Act is different from the issue , which is pending before the Ld. CIT(A). In view of our observation above, the ground No. 1 of the appeal of the assessee is dismissed.



6. As far as the ground Nos. 2 and 3 of the appeal is concerned, we find that the Ld. CIT(E) has invoked section 263 of the Act for the reason that no inquiry or verification was carried out by the Assessing Officer regarding the quantum of income to be assessed in the case of the assessee, particularly amount of the interest in respect of interest on building fund and interest on the grand in aid to be spent, which was credited directly to the balance sheet. The Ld. Counsel for the assessee referred to Paper Book page No. 72 , which is copy of query letter issued by the Assessing Officer in assessment proceedings. We find that there is no reference of any questionnaire raised by the Assessing Officer on the issue of inclusion of interest for computation of the income of the assessee for the year under consideration. The Ld. Counsel for the assessee further referred to the reply of the assessee to the said questionnaire, which is available on Paper Book pages No. 98 to 104. On perusal of the same also, we did not find any reference to inclusion of interest on building fund and grant in aid as income of the assessee. The Ld. Counsel for the assessee further submitted that assessee has already filed balance sheet for the year under consideration and earlier year, a copy of which is available on paper book page No. 42 and 303 respectively and submitted that all details were placed before the Assessing Officer and therefore, the Assessing Officer has duly considered the quantum of income to be assessed in the hands of the assessee. We do not accept this contention of the Ld. Counsel for the assessee. According to us,



when the balance sheet having details of the interest credited directly to the balance sheet was filed before the AO, then he ought to make inquiry regarding the inclusion of the same for the purpose of the computation of the income and not carrying out any such inquiry or verification, the order of the Assessing Officer is deemed to be erroneous as per Explanation-2 to section 263 of the Act.

6.1 In view of the aforesaid discussion, we do not find any infirmity in the order of the Ld. CIT(E) and accordingly , we uphold the same. The ground Nos. 2 and 3 of the appeal of the assessee are accordingly dismissed.

7. In the result, the appeal filed by the assessee is dismissed

**Order pronounced in the open Court on 29/11/2023.**

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 29/11/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**