

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 1611/Mum/2023 (A.Y.2018-19)

Bikaner Seva Sangh

28/30, Anantwadi,
Bhuleshwar, Mumbai- 400002,

PAN: AAATB3552G

..... Appellant

Vs.

CIT (Exem.)

601, MTNL Building,
Peddar Road, Dr. Gopalrao
Deshmukh Marg, Cumballa Hill,
Mumbai- 400026

..... Respondent

Appellant by : Shri Narayan Atal, Ld. AR
Respondent by : Shri Ashok Kumar Ambastha, Ld. DR

Date of hearing : 26/07/2023
Date of pronouncement : 19/10/2023

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of Ld. CIT (Exem.) dated 18.03.2023 u/s. 263 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

1. The Learned Commissioner of Income Tax (Exemptions), Mumbai (hereinafter referred to as Ld. CIT(E) erred in passing the order u/s. 263 of the Act, thereby setting aside the assessment order dated 02.03.2021 passed u/s. 143(3) r.w.s. 143 (3A) & 143 (3B) of the Act and directing the assessing officer to conduct the assessment proceedings de novo.

Your appellant submits that the order passed by the assessing officer is not erroneous in so far as it is prejudicial to interest of the revenue and ought to be set aside.

Your appellant craves leave to add to, alter or amend the aforestated ground of appeal.

2. The Brief facts of the case are that assessee is registered trust u/s. 12A of the Act, filed its return of income in the status of trust on 12.09.2018, declaring total income at Rs. NIL. Case of the assessee was selected for scrutiny under CASS to examine the issue “Large Receipts from Incidental Objects”. Accordingly, the notice u / s 143(2) of the I.T. Act, 1961 was issued to the assessee on 22.09.2019 which was duly served upon the assessee. It is worth to mention here that an order u / s 143(1) was passed in this case by the CPC on 01.10.2019 in which the gross total income of the assessee is considered as Rs. 37,13,576/- for the year under consideration without allowing deductions of amount of Rs. 42,45,384/- which is claimed to be applied during the year.

3. After going through the other details filed vis-à-vis the reasons on which the case was selected for scrutiny, a show cause notice was issued to the assessee on 09.02.2021 which reads as follows:-

"An order u/s 143(1) was passed in your case by the CPC on 01.10.2019 in which your gross total income is considered as Rs. 37,13,576/- for the year under consideration. In this regard, you are required to show cause why your gross total income should not be considered as Rs. 37,13,576/- as mentioned in the order passed by CPC dated 01.10.2019 alongwith supporting documentary evidences and details/information sought for vide notice u/s 142(1) of the I.T. Act 1961 dated 28.01.2021."

However, no submission was made by the assessee against above said show cause notice. Ultimately, AO relied upon the order of CPC u/s. 143(1) and assessed the total taxable income at Rs. 37, 13,576/- not allowing the income applied for charitable or religious purposes.

4. Thereafter, a show cause notice u/s. 263 of the Act was issued by the office of Ld. CIT (E) vide notice dated: 25.01.2023. Copy of the same is reproduced herein below as under:

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the THE INCOME TAX ACT, 1961-Assessment Year 2018-19.

In this regard, a hearing in the matter is fixed on 08/02/2023 at 12:00 PM. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

2. On verification and careful examination of the assessment records for the A.Y. 2018-19 in your case, wherein assessment was completed under section 143(3) r.w.s. 143(3A) & 143(3B) dated 02.03.2021, I am of the prima facie view that the order passed by NFAC, Delhi (hereinafter 'the Assessing Officer' or 'the AO') is erroneous in so far as it is prejudicial to the interest of revenue, in view of the following:

a. In this case, return of income filed by the assessee on 12/9/2018 was selected for scrutiny & notice u/s143(2) of the IT Act was issued on 22/9/2019 The assessment

was completed on 2/3/2021 assessing total income at Rs. 37,13,576/- by faceless assessment unit. It is seen from the Balance sheet (copy attached) filed by the assessee that it has received donation of Rs. 7,10,000/- under the head 'Educational & Medical Fund' however the assessee has not offered for taxation in return of income and the AO has also not added said amount in the assessment order. It is pertinent to mention that the auditor of the AO has certified that the assessee has not received corpus donation during the year under consideration therefore said amount needs to be taxed.

The AO has passed order without the basic verification of the above facts stated above and therefore the order is prejudicial to the interest of revenue.

3. In view of the above, may I request you to show cause why the assessment order dated 02.03.2021 should not be set aside under section 263 of the Act with appropriate directions to the AO to redo the assessment? You are accorded an opportunity to attend in person or through an Authorized Representative before the undersigned on 08.02.2023 at 12:00 P.M. at my office. Personal appearance is not necessary, and you may alternatively file a written response to this show cause notice. You may further note that if nothing is heard from you at the appointed date, it will be presumed that you have no submissions to make. Necessary action on the matter will be taken without any further reference to you.

5. We have gone through the order of AO, Notice issued u/s. 263 of the Act and order of order of Ld. CIT(E) u/s. 263 along with submissions of the assessee. For sake of clarity and further adjudication we are reproducing herewith the copies of notices issued u/s. 142(1) of the Act along with its annexures vide dated: 10.11.2020 and 29.12.2020 as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National e-Assessment Centre
Delhi



To, BIKANER SEVA SANGH 28/30 ANANTWADI, BHULESHWAR MUMBAI 400002, Maharashtra	
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PAN: AAATB3552G	Assessment Year: 2018-19	Date: 10/11/2020	DIN: ITBA/AST/F/142(1)/2020- 21/1028544183(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to notice u/s 143(2) of the Income-tax Act, dated 22/09/2019 for A.Y 2018-19 for conducting assessment proceedings under E-assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2018-19.
3. You are requested and required to kindly furnish or cause to be furnished on or before 25/11/2020 by 11:00 AM, the accounts and documents specified in the Annexure to this notice.
4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)

Yours faithfully,

Additional / Joint / Deputy / Assistant Commissioner of Income Tax,
National e-Assessment Centre,
Delhi

ANNEXURE

01. Please furnish the computation of total income derived for F.Y. 2017-18 relevant to A.Y. 2018-19.
02. Please furnish form 10 and/or 9A, if applicable.
03. Please furnish detailed note on the objects of the trust/institution & nature of the activities in which the trust is engaged in during the year alongwith all deed/memorandum/registration/trust deed certification/amendment made in the trust deed since incorporation.
04. Please furnish office address and address of the other premises from where the activity of the trust is being carried out.
05. Please furnish copy of resolution, if the option under section 11(2) was exercised, during the year under consideration.
06. Please furnish details of Trustees/Directors Name, Address (Off. & Resi.), PAN, Occupation etc.
07. Please furnish details of investments made in movable assets/fixed assets and immovable properties.
08. Please furnish details of option exercised in the earlier year u/s 11(1)(a), as deemed application for the utilization of Income during the year under scrutiny (copy of 9A may be submitted).
09. Please furnish details if depreciation claimed w.r.t. movable/immovable assets. Also specify whether the capital expenditure on account of acquisition of these assets have been claimed as application of income in the current year/previous year or not. If yes, submit justification for the same.
10. Please furnish party wise details of foreign donation received, if any. Also furnish a copy of FCRA registration, from FC-37 audit report in case donations are received during the year.
11. Please furnish details of any amount paid during the previous year to any person referred to in sub section (3) of section 13.
12. Please furnish detail of bank account alongwith bank statement maintained by the trust as per following format.

Sl. No.	Name & Address of Bank with IFSC code	Account No.	Type of bank account	Interest received or accrued

13. Please furnish reconcile 26AS details with income & expenditure accounts.

14. Please furnish details of any capital asset sold during the year under consideration alongwith approval of charity commissioner. Also submit application of capital gain.

15. Please furnish detail of corpus /Non corpus donation received during the year, if any in the following format.

Name, Address & PAN of Donor	Amount involved in Rs.	Mode of payment (Cheque, DD No. and Bank if non cash)	Nature of donation (Corpus or Non Corpus)

16. Please furnish details of accumulation made u/s 11(2), if any, in last 8 years and the details of utilization as below.

A.Y. of accumulation	Amount accumulated	Amount utilized till end of Yr. under consideration	Purpose of Accumulation	Purpose of Utilization	Balance amount unutilized.

Also furnished copies of application in Form 10& Resolution of trustees in this regard.

17. Please furnish details of the persons/institution to whom donation have been made during the year in the following format.

Name Address & PAN of Donee	Amount, Cheque, DD No. Bank Acc. No. Branch from which paid	Details of charitable activities in which Donee is engaged.

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18. Please furnish copy of last three assessment orders u/s 143(3), 143(3) r.w.s. 147 of IT Act & status of assessment, if any.

In case of non-compliance on your part on the given date, penalty u/s 272A(1)(d) of the I.T.Act, 1961 will be initiated, this may please be noted.

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National e-Assessment Centre,
Delhi



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National e-Assessment Centre
Delhi



To, BIKANER SEVA SANGH 28/30 ANANTWADI, BHULESHWAR MUMBAI 400002, Maharashtra India	
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PAN: AAATB3552G	Assessment Year: 2018-19	Date: 29/12/2020	DIN: ITBA/AST/F/142(1)/2020- 21/1029317272(1)
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Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to notice u/s 143(2) of the Income-tax Act, dated 22/09/2019 for A.Y 2018-19 for conducting assessment proceedings under E-assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in ending one uncertainty, which is pending e-Assessment in your case for the Assessment Year 2018-19.

3. You are requested and required to kindly furnish or cause to be furnished on or before 07/01/2021 by 12:57 PM, the accounts and documents specified in the Annexure to this notice.

4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax,
National e-Assessment Centre,
Delhi

Please refer to the assessment proceedings u/s 143(3) of the I.T. Act, 1961 undergoing in your case and notice u/s 142(1) of the I.T. Act, 1961 was already issued to you. However, part compliance was made by you in response to that notice. In this regard, you are further requested to furnish the information/details as mentioned below:-

1. Please furnish detailed note on the objects of the trust/institution & nature of the activities in which the trust is engaged in during the year alongwith all deed/memorandum/registration/trust deed certification/amendment made in the trust deed since incorporation.
2. Please furnish form 10 and/or 9A, if applicable.
3. Please furnish office address and address of the other premises from where the activity of the trust is being carried out.
4. Please furnish copy of resolution, if the option under section 11(2) was exercised, during the year under consideration.
5. Please furnish details of Trustees/Directors Name, Address (Off. & Resi.), PAN, Occupation etc.
6. Please furnish details of investments made in movable assets/fixed assets and immovable properties.
7. Please furnish details of option exercised in the earlier year u/s 11(1)(a), as deemed application for the utilization of Income during the year under scrutiny (copy of 9A may be submitted).
8. Please furnish details if depreciation claimed w.r.t. movable/immovable assets. Also specify whether the capital expenditure on account of acquisition of these assets have been claimed as application of income in the current year/previous year or not. If yes, submit justification for the same.
9. Please furnish party wise details of foreign donation received, if any. Also furnish a copy of FCRA registration, from FC-37 audit report in case donations are received during the year.
10. Please furnish details of any amount paid during the previous year to any person referred to in sub section (3) of section 13.
11. Please furnish detail of bank account alongwith bank statement maintained by the trust as per following format:

S. No.	Name & Address of Bank with IFSC code	Account No.	Type of bank account	Interest received or accrued

12. Please furnish reconcile 26AS details with income & expenditure accounts.

13. Please furnish details of any capital asset sold during the year under consideration alongwith approval of charity commissioner. Also submit application of capital gain.

14. Please furnish detail of corpus /Non corpus donation received during the year, if any in the following format..

Name, Address & PAN of Donor	Amount involved in Rs.	Mode of payment (Cheque, DD No. and Bank if non cash)	Nature of donation (Corpus or Non Corpus)

15. Please furnish details of accumulation made u/s 11(2), if any, in last 8 years and the details of utilization as below.

A.Y. of accumulation	Amount accumulated	Amount utilized till end of Yr. under consideration	Purpose of Accumulation	Purpose of Utilization	Balance amount unutilized.

Also furnished copies of application in Form 10& Resolution of trustees in this regard.

16. Please furnish details of the persons/institution to whom donation have been made during the year in the following format.

Name Address & PAN of	Amount, Cheque, DD No.	Details of charitable activities

Donee	Bank Acc. No. Branch from which paid	in which Donee is engaged.

17. As per schedule AI of Income Tax Return filed by you for the relevant year, you have declared substantial receipts from incidental objects. You are required to provide detailed note, working, taxability & justification for this issue.

All the details should be submitted and marked/flapped in the order (Point wise) in which they appear above. In response to this notice, if there will be no compliance from your end on or before the given date, penal proceedings u/s 272(A)(1)(d) shall be initiated. No further adjournment will be entertained in your case due to matter under limitation.

Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National e-Assessment Centre,
Delhi

6. In response to theses notices assessee filed its response vide letter dated:
06.01.2020:-

BIKANER SEVA SANGH
(Regd No.11130 Mumbai)
28/30 ANANT WADI, BHULESHWAR, MUMBAI – 40002.

Date: - 06/01/2020

To,
Income Tax Officer -1 (1)
Income Tax Office,
Mumbai-400001

Respected sir,

Ref: - Name of Assesse: M/s Bikaner Seva Sangh
PAN No.: AAATB3552G
A.Y.: 2018-19
Notice under sub-section (1) of section 142 dated 29/12/2020
Sub: - submission of documents

I, Daulal Bhattar Age 70 years old Trustee of Bikaner Seva Sangh With reference to the above mentioned notice I would like to submit our reply of your questionnaire as under: -

1. Object of the Trust: - Main object is to relief of the poor advancement of education, medical relief and advancement of any other object of general public utility not involving carrying on of any activity for profit.

2. Form 10 and/or 9A, if Applicable: 10B form Enclosed -Annexure-1

3. Office Address: - M/s Bikaner Seva Sangh,
28/30, Anantwadi, Bhuleshwar, Mumbai-400003

4. Copies of Trust Documents: - Enclosing herewith copy of followings: -

- a) Trust Deed-Annexure-2
- b) Certificate of Registration u/s 12-A-Annexure-3
- c) Certificate u/s 80G of IT Act-Annexure-4
- d) Certificate of Registration from Charity Commissioner-Annexure-5



14. Details of Corpus & Non-Corpus Donation: - This year not received any corpus fund

<u>Name Address & Pan</u> <u>No of Donor</u>	<u>Amount involved in</u> <u>Rs.</u>	<u>Mode of Payment</u> <u>(Cheque DD No. &</u> <u>Bank if Non -cash)</u>	<u>Nature of Donation</u> <u>(corpus of Non</u> <u>Corpus)</u>
<u>Nil</u>			

15. Details of Accumulation u/s 11(2): -

<u>A.Y. of</u> <u>Accumulation</u>	<u>Amount</u> <u>Accumulation</u>	<u>Amount</u> <u>Utilized till</u> <u>end of Year</u> <u>under</u> <u>Assessment</u>	<u>Purpose of</u> <u>Accumulation</u>	<u>Purpose of</u> <u>Utilization</u>	<u>Balance</u> <u>Amount</u> <u>Unutilized</u>
		<u>NIL</u>			

16. Details of donation made: - Details of donation made in prescribed format herewith.

<u>Name of Donee</u>	<u>Amount Cheque /DD No.</u> <u>Bank A/c No. & Branch from</u> <u>which Paid</u>	<u>Details of Charitable activities</u> <u>in which Donee is engaged</u>
<u>Adarsh Shikshan Santha</u>	<u>219100, Union Bank of India dt</u> <u>12.06.2017 Rs.500000</u>	<u>Paid for donation other object</u>
<u>Goopal</u>	<u>219104, Union Bank of India dt.</u> <u>28.08.2017 Rs.300000</u>	<u>Paid for donation other object</u>
<u>Educational</u>	<u>Details enclosed-Annexure-9</u>	<u>Paid for education</u>

Note: for education donation there is no PAN available for children

14. Details of Corpus & Non-Corpus Donation: - This year not received any corpus fund

<u>Name Address & Pan No of Donor</u>	<u>Amount involved in Rs.</u>	<u>Mode of Payment (Cheque/DD) No. & Bank if Non -cash)</u>	<u>Nature of Donation (corpus of Non Corpus)</u>
Nil			

15. Details of Accumulation u/s 11(2): -

<u>A.Y. of Accumulation</u>	<u>Amount Accumulation</u>	<u>Amount Utilized till end of Year under Assessment</u>	<u>Purpose of Accumulation</u>	<u>Purpose of Utilization</u>	<u>Balance Amount Unutilized</u>
		NIL			

16. Details of donation made: - Details of donation made in prescribed format herewith.

<u>Name of Donee</u>	<u>Amount Cheque /DD No. Bank A/c No. & Branch From which Paid</u>	<u>Details of Charitable activities in which Donee is engaged</u>
Adarsh Shikshan Santha	219100, Union Bank of India dt 12.06.2017 Rs.500000	Paid for donation other object
Goopal	219104, Union Bank of India dt. 28.08.2017 Rs.300000	Paid for donation other object
Educational	Details enclosed-Annexure-9	Paid for education

Note: for education donation there is no PAN available for children

17. As per schedule AI of Income Tax return filed by us for relevant year.: advancement of any other object of general public Our object is Advertisement for souvenir we choose some topic and collaborate for the same which is beneficial to all as it is use for object of the trust and souvenir printing. Enclosing herewith Advertisement Souvenir Printing for the year 2018-Annexure-10

Justification of Case: We organized Bikaner cultural Festival like Holi, Diwali, Dandiya for improvement of Bikaner culture. The Samaj to have a wide-spread participation of Youth and Ladies in the Social activities so that it can protect and preserve its traditional values, customs, faith and dignity, etc.

We also provide educational related program for trustee as well as general public to improve their advance knowledge.

We organized Award function for the famous personality like Radha Kishan Damani (Bikaner Ratan Award)

We also help to children for increase and improve best knowledge by way of Collects advertisement fund from members every year and distributes the same as loan to student for education purpose and education support. There should be an environment of encouraging individual capability and expanding capacity in the Samaj so that every child - male or female -- gets the best education according to his/her potentials, to suit the needs of changing scenario.

Organizes Members get together, Cultural Programme and felicitates bright students with gold and silver medals every year at Annual Day Celebration.

Provides financial assistance to children for educational and medical purposes and distributes products useful in schools.

We also help to improve the culture of Bikaner and pride by organized various Bikaner cultural program. We also organized different type cultural program dance, music, drama so that children can learn more and motivate. They put their effort to achieve goal. Also, to have an inspirational environment all-around, particularly to make life of Senior (Aged) Members of the family happy and peaceful.

We help to create better world for children around the world through the education and programs.
Our trust focusing on fulfilling the basic needs of the needy children.

We organized program places utmost important on the unity of the organization and function based on democratic principal, by taking all members together.

The Bikaneri Samaj to protect and preserve its traditional culture, values, faith and dignity while adopting need-based changes to continue to march forward towards social completeness.

We hope this will meet your requirement.

Thanking You,

Yours Faithfully

For Bikaner Seva Sangh
For Bikaner Seva Sangh

7. We have considered the notices issued u/s. 142(1) of the Act along with its annexures and reply thereto filed by the assessee (supra). We have considered the issue keeping in view the col. 15 and 14 respectively of notice issued u/s. 142(1) of the Act vide dated: 10.11.2020 and 29.12.2020 along with reply of the assessee in response to these notices vide letter dated: 06.01.2020. It is observed that assessee conveyed NIL against receiving of corpus donation, although the same has been reflected in the balance-sheet. We have gone through the certificate issued by the Statutory Auditor of the assessee, stating that for F.Y. under consideration, assessee trust has not received any corpus donation with specific direction. We have considered page no. 11 to 21 of the paper book

wherein the communications with the donor and receipts issued to them are furnished for corpus donation. After considering all the information and documents placed before us, we are of considered view that assessee's reply to the AO was incorrect in addition to the Statutory Auditor's certificate and even receipts issued to the donors are also not serving the purpose of assessee. A complete mess in the communication from assessee is visible, may be inadvertently. Hence in the given state of facts, we are agreed with the view of Ld. CIT (E) that requires a de-novo assessment, where assessee can represent his matter with total clarity and firmness. **In the result, grounds raised by the assessee are dismissed.**

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

Order pronounced in the open court on 19th day of October, 2023.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai, दिनांक/Dated: 19/10/2023
Sr. PS (Dhananjay)

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai