

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
(Conducted through E-Court)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No. 16/Rjt/2021

निर्धारणवर्ष/Asstt. Year:2015-2016

Samanvya Education & Charitable Trust, Nr. Bhola Darshan Apt., Station Road, Junagadh Road, Dhoraji-360410. PAN: AAJTS8062M	Vs.	The Income Tax Officer, (Exemption)-1, Ward-1, Rajkot.
(Applicant)		(Respondent)

Assessee by :	Shri Samir Divetia, A.R
Revenue by :	Shri Shramdeep Sinha, CIT. DR

सुनवाईकीतारीख/**Date of Hearing** : **13/12/2023**

घोषणाकीतारीख/**Date of Pronouncement**: **20/12/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the assessee against the order of the Ld. Commissioner of Income Tax (Exemptions), Ahmedabad, arising in the matter of order passed under Section 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The only issue raised by the assessee is that the Ld. PCIT erred in holding assessment framed u/s 143(3) of the Act as erroneous in so far prejudicial to the interest of revenue.

3. The necessary facts as arising from the order of the authorities below are that the assessee in the present case is an AOP (Trust) and engaged in providing educational activities. In the present case, the assessment was framed u/s 143(3) of the Act, after making disallowance of depreciation of Rs. 3,77,147/- vide order dated 13/02/2017.

4. On examination of the case records, the Ld. PCIT, found that the assessee *inter-alia* has claimed application of income of Rs. 35,52,152/- representing repayment of loan as evident from the computation of income. As per the Ld. PCIT, there was nothing emerging from the assessment record whether the receipt of loan was included in the income of the assessee in the year of receipt. Thus, the Ld. PCIT, issued a notice u/s 263 of the Act, dated 24/02/2020, proposing the assessment framed u/s 143(3) of the Act, as erroneous in so far prejudicial to the interest of revenue. In the notice, there were two allegations raised by the Ld. PCIT which are detailed as under:

I. Repayment of loan shown as application of income of Rs. 35,52,152/- was not verified by the AO so as to ensure that the receipt of such loan was included as income of the assessee. The Ld. PCIT in the same notice further observed that the amount shown as repayment of loan actually represent the capital expenditure as evident from the Audited Financial Statement.

II. In the later part of the notice, the Ld. PCIT observed that the assessee cannot claim capital expenditure as application of income and depreciation on such capital expenditure simultaneously. As per the Ld. PCIT there was an addition of fixed asset of Rs. 17,29,307/- on which the depreciation was claimed by the assessee. But the same was not verified.

4.1 In response to the show cause notice issued by the Ld. PCIT, the assessee replied that the amount of repayment of loan actually represents the capital expenditure. But inadvertently, the assessee has shown the same repayment of loan. The assessee further submitted that however, such mistake will not have any bearing on the income of the assessee. However, the Ld. PCIT rejected the contention of the assessee by observing as under:

7. In view of the above referred facts, it is held that the assessment had been made by the Assessing Officer without proper application of law and mind to the facts and also without proper enquiry and verification of the facts on record. Therefore it is held that the assessment order u.s 143(3) dated 13/11/2017 passed by AO in the case of the assessee is erroneous and prejudicial to the interest of Revenue as discussed above.

8. In the interest of justice, the above referred issue of repayment of loan of Rs. 35,52,152/- needs to be properly examined in light of above discussions and to be verified by the Assessing Officer in the fresh assessment to be completed in consequence to this order in accordance with the relevant provisions of Law. Accordingly, the above referred assessment order 143(3) dated 13/11 / 2017 is set aside with a direction to make a de-novo assessment for A.Y.2015-16, after allowing opportunity of being heard to the assessee as per law.

5. Being aggrieved by the order of the Ld. PCIT, the assessee is in appeal before us.

6. The Ld. AR before us filed a paper book running from pages 1 to 48 and contended that the Ld. PCIT, himself in the notice issued u/s 263 of the Act, has accepted fact that the amount of loan repayment of Rs. 35,52,152/- represents the application of income towards the capital expenditure. Therefore, there no need to carry out further verification. It is for the reason that there is no mistake in the order of the AO.

7. Likewise, the Id. AR further submitted that the depreciation claimed by the assessee on the addition of fixed asset of Rs. 17,29,307/- has already been disallowed in the assessment framed u/s 143(3) of the Act. As per the Id. AR, the depreciation of Rs. 3,77,147/- was disallowed by the AO which can be verified from the impugned assessment order. In view of the above, the Id. AR contended that there is no error in the order of the assessment framed u/s 143(3) of the Act.

8. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the Ld. PCIT has observed certain facts which are contrary to each other. As such the Ld. PCIT on one hand is proposing in holding assessment as erroneous in so far prejudicial to the interest of revenue on account of repayment of loan but on the other hand the Ld. PCIT is also accepting that the amount of repayment of loan actually represents the capital expenditure. As such we find no infirmity pointed out by the Ld. PCIT as far as repayment of loan/capital expenditure of Rs. 35,52,152/- is concern. Coming to the second allegation of the Ld. PCIT, we note that the AO himself has made the disallowance in the assessment order on account of depreciation which can be verified from the assessment order available on record. Thus, we hold that there is no infirmity in the assessment framed u/s 143(3) of the Act. In view of the above, we hold that the order passed by the Ld. PCIT, is not sustainable. Accordingly, we quash the same. Hence, the ground of appeal of the assessee is allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Court on 20/12/2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad; Dated
Manish, Sr. PS

(True Copy)
20/12/2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER