

IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH, PATNA
BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

ITA No. 112/PAT/2023
Assessment Year: 2018-19

Krishna Devi Deviprasad Kejriwal Matrisadan Trust	Vs.	CIT(Exemption), Patna
PAN: AAATK 5098 A		
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Ashish Kr. Agrawal, CA
Respondent by : Md. A.H. Chowdhary, CIT(DR)

Date of Hearing : 06.03.2024
Date of Pronouncement : 12.03.2024

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2018-19 is directed against the order dated 22.03.2023 passed by the ld. CIT(Exemption), Patna u/s 263 of the Act by setting aside the assessment order passed by AO u/s 143(3) read with section 143(3A)/143(3B) of the Act dated 30.03.2021 accepting the returned total income as nil. The ld. CIT(E) on examination of records it was found that:

"i. The assessee has shown total capital expenditure of Rs. 2,00,30,868/- whereas the audited accounts shows increase in value of fixed assets for Rs. 1,58,02,472/- only.

ii. The assessee has claimed setting apart of income u/s 11(2) of Rs. 1,07,42,866/- during F.Y. 2017-18 (A.Y. 2018-19) but the schedule-I - column (5) with heading 'amount invested or deposited in mode specified in section 11(5)' shows the amount as nil.

iii. The assessee has shown in the ITR that the total amount of accumulated u/s 11(1) of Rs. 1,89,48,518/- and amount of set apart u/s 11(2) for Rs. 1,07,42,866/- during the FY 2017-18 (A.Y. 2018-19) was Rs.

2,96,91,384/- whereas sum of increase in current asset of Rs. 2,46,00,189/- and increase in loans (given) & deposit of Rs. 8,12,347/- during the current year with respect to last year was only Rs. 2,54,12,536/-.”

2. However, the ld. CIT(Exemption) on examination of records viewed that potential issues were not examined by the ld. assessing officer while making assessment u/s 143(3) of the Act and without making any enquiry and verification of the alleged issues which should have been made. Therefore, he viewed that the alleged assessment order was erroneous and prejudicial to the interest of revenue within the meaning of section 263 of the Act. Accordingly, Proceedings u/s 263 was initiated against the assessee issuing notices u/s 263 of the Act.

3. The assessee appeared in compliance to the notices and filed submission. After considering the submission of the assessee, the ld. CIT(E) viewed that the assessment order passed by the AO deemed to be erroneous as well as prejudicial to the interest of revenue. Accordingly, he directed the AO to pass a fresh assessment order in respect of assessee pertaining to assessment year 2018-19.

4. Aggrieved by the order of ld. CIT(E), the assessee is in appeal before this Tribunal raising multiple grounds of appeal. However, the main grievance of the assessee is against invoking of power u/s 263 of the Act by ld. CIT(E) by setting aside the order passed u/s 143(3) read with section 143(3A)/143(3B) of the Act dated 30.03.2021.

5. We have heard both the parties and perused the record placed before us. The ld. CIT(Exemption), Patna by invoking jurisdiction u/s

263 of the Act is challenged by the assessee before us. On perusal of the impugned order, we find that following are the reasons for carrying out the revisionary proceeding u/s 263 of the Act:

“i. The assessee has shown total capital expenditure of Rs. 2,00,30,868/- whereas the audited accounts shows increase in value of fixed assets for Rs. 1,58,02,472/- only.

ii. The assessee has claimed setting apart of income u/s 11(2) of Rs. 1,07,42,866/- during F.Y. 2017-18 (A.Y. 2018-19) but the schedule-I – column (5) with heading ‘amount invested or deposited in mode specified in section 11(5)’ shows the amount as nil.

iii. The assessee has shown in the ITR that the total amount of accumulated u/s 11(1) of Rs. 1,89,48,518/- and amount of set apart u/s 11(2) for Rs. 1,07,42,866/- during the FY 2017-18 (A.Y. 2018-19) was Rs. 2,96,91,384/- whereas sum of increase in current asset of Rs. 2,46,00,189/- and increase in loans (given) & deposit of Rs. 8,12,347/- during the current year with respect to last year was only Rs. 2,54,12,536/-.”

6. Further, we notice that assessee has submitted his reply in following manner before Id. CIT(E):

“4. On the first issue mentioned in para-1 above, it was stated by the assessee that an error occurred while filling out of the return and Rs 63,63,198/- was inadvertently entered in Column B of the Schedule EC of the return and further stated that it was actually capital expenditure of previous year. The addition of new "column B in schedule EC" to declare capital expenditure made during the current year out of accumulated fund during earlier years was stated as the main reason of misunderstandings which caused the mistake. It was asserted that the actual capital expenditure made during the current year out of income derived during the year was only 1,36,67,670/- reported in column A of the schedule EC of the return and a sum of Rs 21,34,8011- was expended as capital expenditure which had been set apart u/s 11(2) during FY 2013-14. In support of its contention, a list of fixed assets purchased/acquired for a total sum of Rs.1,58,02,472/ was submitted. The contentions of the assessee is only superficial. The assessing officer should have conducted in depth enquiry to ascertain actual state of affairs as there were apparent inconsistencies among the particulars submitted in Income Tax Return and

accounts submitted by the assessee in the course of assessment proceedings.

5. On the second issue mentioned in para-1 above, it was submitted that the schedule-I column(5) with heading "amount invested or deposited in mode specified in section 11(5)" was inadvertently left blank at the time of filing out the ITR and in its justification it was further stated that the details required to declare in schedule "J" of the ITR in respect of investment made in accordance the conditions prescribed u/s 11(5). In the schedule "J" under the heading "Details of Investment / deposits made u/s 11(5) " details of 36 FDRs are found to have been given for total the value of initial investment of Rs 12,10,79,487/- but the total value of set apart funds as mentioned in schedule "I" is only 3,15,30,448/-. Further, investment of Rs 12,10,79,487/- shown in schedule "J" includes deposit of Rs 2200000/- made on 03.04.2018 i.e. deposit made after the end of the previous year. The figures reported in the two schedules are found entirely inconsistent. Therefore, it may be inferred that deposit made u/s 11(5) are not being subsequently utilized for the purposes for which the sums had been set apart u/s 11(2) earlier. The inconsistencies were not examined at the time of making assessment by the assessing officer which should have been examined.

6. On the third issue mentioned in para-1 above, the assessee submitted a reconciliation statement which shows that the assessee made provisions for expenditures which are adjusted with the provisions made for expenditure in last year. It could not be explained by the assessee how expenditure incurred during the current year was worked out to determine the value of application of income. However it was admitted that the Income & Expenditure accounts are maintained on mercantile basis and Income derived during the year is worked out accordingly but application of income is determined on cash basis which was not permissible under the provisions of Income Tax Act 1961 for relevant Assessment Year 2018-19. Moreover, amount set apart u/s 11(2) was found to be represented in the accounts in such a manner that it appears that the sum set apart is not accounted separately for the specific purposes for which it had been set part. The assessing officer should have inquired into these issues to examine whether conditions set out under the provisions of income tax Act have been genuinely fulfilled by the assessee and the expenditure has been made for the purposes for which the income had been set apart u/s 11(2).”

7. From the facts and documents furnished by the assessee before the Id. CIT(E), it clearly shows that the assessment order passed by the assessing officer is erroneous in so far as it is prejudicial to the interest of the revenue within the meaning of Explanation 2 of section 263 of the I.T. Act. Since assessee in its own submission clearly stated that there was apparent mistake while filing the return of income on the alleged issues raised by the Id. CIT(E) in his revisionary order passed u/s 263 of the Act. We therefore viewed that the Id. CIT(E) has rightly observed / held that the order of AO u/s 143(3A)/143(3B) of the Act is erroneous and prejudicial to the interest of revenue. We, therefore, find no infirmity in the impugned order passed u/s 263 of the Act by setting aside the assessment order dated 30.03.2021 and by directing the AO to frame the assessment order fresh after considering the observation/findings of the Id. CIT(E). The Id. CIT(E) has rightly invoked the jurisdiction u/s 263 of the Act by setting aside the impugned order passed by the AO. Thus, all the grounds taken by the assessee are dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 12.03.2024

Sd/-

(Dr. MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-

(SONJOY SARMA)
JUDICIAL MEMBER

Kolkata, Dated: 12.03.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Krishna Devi Deviprasad Kejriwal Matrisadan Trust,
Juran Chapra, Road No. 2, Muzaffarpur-842001.
2. The Respondent: CIT-Exemption, Patna.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata