

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA Nos. 3529 & 3530/MUM/2023
Assessment Year: 2011-12**

Dy. CIT (Exemption)-2(1),
6th floor, MTNL Telephone
Exchange Building, Dr. GD
Deshmukh Marg, Peddar Road,
Cumbala Hill,
Mumbai-400026.

Appellant

Vs.

Vighnahartha Trust,
56, Hurray City of Joy, Near
Railway Station, Mulund West,
Mumbai-400080.

**PAN NO. AAATV 8040 K
Respondent**

Assessee by : None
Revenue by : Mr. Ankush Kapoor, CIT-DR

Date of Hearing : 25/04/2024
Date of pronouncement : 30/04/2024

ORDER

PER OM PRAKASH KANT, AM

These two appeals filed electronically by the Revenue are directed against two separate orders, both dated 11.08.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, New Delhi [in short ‘the Ld. CIT(A)’] for



assessment year 2011-12, in relation to proceedings of quantum addition to returned income and penalty proceedings respectively.

2. The facts and circumstances involved in the appeals being identical, both the appeals were heard together and disposed off by way of this consolidated order.

3. Despite notifying none attended on behalf of the assessee and therefore, the appeal was heard ex-parte qua the assessee after hearing arguments of the Ld. Departmental Representative (DR).

4. We find that in this case, the impugned assessment order has been passed in compliance to the direction of the Ld. Commissioner of Income-tax-exemption [in short the 'CIT(E)'] passed u/s 263 of the Income-tax Act, 1961 (in short 'the Act') dated 22.03.2021 holding the assessment order passed originally by the Assessing Officer u/s 143(3) of the Act as erroneous in so far as prejudicial to the interest of the Revenue. The Ld. CIT(A) has noted that said order of the CIT(E) has been cancelled by the Co-ordinate Bench of the Tribunal in ITA No. 1284/M/2021 and therefore, the Ld. CIT(A) quashed the assessment order consequent to such order u/s 263 of the Act and has allowed the appeal of the assessee holding that order of the Assessing officer did not survive. The relevant finding of the Ld. CIT(A) is reproduced as under:

"4. The Assessing Officer erred in treating the amount of Rs 5,52,04,903, being voluntarily contribution received towards



building fund for the year under reference as anonymous donations within the meaning of section 115BBC of the Act.

The appellants contend that on the facts and in the circumstances of the case and in law, the Assessing Officer has not correctly appreciated the facts and law in its entirety, inasmuch as the appellants have given details of all the donors from whom voluntary contributions are received and as such, cannot be termed as 'anonymous donations' per the provisions of section 115BBC(3) of the Act.

5. The Assessing Officer erred in not allowing deficit of Rs 5,30,22,671 suffered by the appellants in respect of activities carried out during the year under reference to be carried forward for subsequent years for the reason that the return of income filed by the appellants for year under reference is not in prescribed form and hence, invalid.”

4.1 Similarly, the penalty proceedings u/s 271(1)(c) of the Act had also been initiated in the assessment order passed consequent to proceedings u/s 263 of the Act, which has been cancelled by the 1d CIT(A) and Revenue has challenged the said cancellation by way of appeal in ITA No. 3529/Mum/2023.

4.2 We find that the 1d CIT(A) has set aside the impugned orders of the Assessing officer in respective appeals, first, against the assessment order and second, against the penalty order, on the ground that the order u/s 263 of the Act has been quashed by the Co-ordinate Bench of the Tribunal (supra), thus, consequent assessment and penalty order don't survive. We do not find any infirmity in the order of the Ld. CIT(A) on the issues in dispute and, accordingly uphold the same. The grounds raised in both the appeals are accordingly dismissed.



5. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 30/04/2024.

**Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 30/04/2024
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