

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "D" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 250/Ahd/2024  
Assessment Year 2018-19**

The Institute of Kidney Diseases & Research Centre, Room No. 27, Civil Hospital Campus, Asarwa, Asarwa Chakla, S.O. Ahmedabad City, Ahemdabad-380016 PAN: AAATT3623N (Appellant)	Vs	The CIT (Exemption), Room No. 609, Floor-6, Aayakar Bhawan (Vejalpur), Nr: Sachin Tower, 100 Foot Road, Anandnagar-Prahladnagar Road, Ahmedabad, Gujarat-380015 (Respondent)
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**Assessee by: Shri Jignesh Parikh, A.R.  
Revenue by: Dr. Darsi Suman Ratnam, CIT-D.R.**

Date of hearing : 05-06-2024  
Date of pronouncement : 27-06-2024

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(Exemption), Ahmedabad, in proceeding u/s. 263 vide order dated 20/12/2023 passed for the assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:-

“1. That on the facts and the circumstances of the case and in law, the learned Commissioner of Income-tax (Exemptions) ("Ld. CIT(E)") has erred in initiating the revisionary proceedings and passing an order under section 263 of the Income-tax Act, 1961 ("the Act") for the year under consideration.

2. That on the facts and the circumstances of the case and in law, the proceedings under section 263 of the Act are not in accordance with law and consequently ought to be struck down.

3. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in treating the Assessment Order dated 21<sup>st</sup> April, 2021 as erroneous, considering it to be prejudicial to the interests of the revenue.

4. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in considering that the order passed u/s 143(3) r.w.s 144B by Assessing Officer ('Ld. AO') is erroneous simply on the ground that the appellant has entered the amount of exemption i.e. Rs 16,64,80,409/- against column 9 (d) in 'Part B TI' which deals with exemption u/s 10(23C)(iii) in place of Column 4(vii) in Part B TF 'Statement Of Income For The Period Ended On 31st March 2018' which deals with Section 11(2) In Return of Income whereas in Form 10, Form 10B ( Refer Column No 5) and 10BB( Refer Column No 11) it is correctly entered.

5. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in considering that the order passed u/s 143(3) r.w.s 144B by Assessing Officer ('Ld. AO') is erroneous despite the Ld CIT (E) has not found any fault with the submission of the appellant as regards the alternate claim u/s 10(23C)(iii) and Section 11 of The Income Tax Act, 1961.

6. That on the facts and the circumstances of the case and in law, the Ld. CIT(E) has erred in considering that the order passed u/s 143(3) r.w.s 144B by Assessing Officer ('Ld. AO') is erroneous ignoring the fact that the appellant trust is having valid approval u/s 10(23C)(vi) of The Income Tax Act, 1961.

7. The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

3. The brief facts of the case are that the assessee is operating a civil hospital campus at Ahmedabad and is existing solely for philanthropic purpose. The assessee trust is registered u/s 12AA and is also notified u/s 10(23C)(vi) for the year under consideration. The assessee has filed form 10 B (required for section 11 Exemption) as well as Form 10 BB (required for Section 10(23C) Exemption). The assessee is supposed to apply 85 % of its

income for the object for the trust and in case it cannot apply 85 % then shortfall can be accumulated to be applied within next five years. The said amount of shortfall was Rs 16.65 Cr. This amount of Rs 16.65 Cr has been correctly classified and reported in Form 10B however inadvertently wrongly reported in return of income and consequently intimation u/s 143(1) came to be issued denying exemption. The case was selected for scrutiny u/s 143(3) and returned income was accepted as assessed income however inadvertently the demand was raised as per intimation u/s 143(1) which was subsequently rectified u/s 154 and demand was reduced to NIL. Thereafter, the case was taken up for revision u/s 263 on the premise that the assessee has claimed exemption under wrong section i.e. Section 10(23C)(iii)ae) which AO failed to examine and disallow and hence the order is erroneous. The assessee during the revision proceedings vide various submissions submitted that the assessee being wholly and substantially funded by Government and existing solely for philanthropic purposes, its income is exempt under section 10(23C)(iii)ac) of the Act. Further the assessee is eligible for exemption under section 11 of the Act as well. Hence the income of the trust is exempt from tax and there is no loss to Revenue. The Ld CIT failed to examine the alternative contentions raised by assessee before adjudicating the order as erroneous. It is submitted that since twin conditions of Section 263 i.e. order being erroneous and also prejudicial to interest of revenue are not satisfied, the impugned order deserves to be quashed.

4. In response, the Id. Departmental Representative placed reliance on the observations made by the CIT in the 263 order.

5. We have heard the rival contentions and perused the materials available on record. We observe that the primary contention of the counsel for the assessee is that firstly the assessee is a Government funded organization operating several hospitals and existing solely for philanthropic purposes. The contention of the counsel for the assessee was that the CIT has failed in not taking cognizance of various arguments taken by the assessee during the course of 263 proceedings. The assessee had submitted before the CIT that the assessee is also eligible for claim of exemption u/s. 11 of the Act as well. Further, the assessee had taken an argument during revision proceedings that since the assessee is wholly and substantially funded by Government and existing solely for philanthropic purpose, its income exempt u/s. 10(23C)(iii)ac) of the Act. However, the Id. CIT(A) failed to examine any of the alternate contentions raised by the assessee in the order passed u/s. 263 of the Act. Firstly, the counsel for the assessee submitted that in the instant case, there was omission on the part of the assessee in claiming exemption u/s. 10(23C)(iii)ae) but instead the assessee is eligible for exemption u/s. 10(23C)(iii)ac) of the Act and also u/s. 11 of the Act. However, since the assessee is a Govt. funded organization existing solely for philanthropic purposes, in the instant case, the assessee is eligible for exemption under section 10(23)(ii)ac) of the Act and there is no prejudice caused to the Revenue in the instant facts.

5.1 On going through the records of the case, we observe that while passing the order, CIT has not commented upon various alternate arguments taken by the assessee while passing the 263 order. The assessee is a Govt. funded organization for philanthropic purposes. During the course of 263

proceedings, the assessee submitted that in the instant facts, the assessee is eligible for deduction u/s. 10(23)(iiia) and also u/s. 11 of the Act. Admittedly, the assessee incorrectly and inadvertently filed incorrect claim u/s. 10(23)(iiia) of the Act. However, owing to this mistake, no prejudice is caused to the Revenue since the assessee is a wholly Government funded organization existing solely for philanthropic purposes and is eligible for exemption u/s. 11 and 10(23C)(iiia) of the Act. We observe that while passing the order, CIT did not comment on the alternate claim u/s. 11 r.w.s 10(23C)(iiia) of the Act and simply set aside the assessment order without giving any specific finding whether the assessment order passed is prejudicial to the interest of the Revenue. In our considered view, the CIT should have considered the submissions filed by the assessee (along with supporting documents) with regard to the claim of exemption u/s. 10(23C)(iiia) and thereafter after looking into the claim of the assessee and written submission filed by the assessee CIT should have given a specific finding as to whether in the instant facts any prejudice has been caused to the Revenue i.e. whether any loss has been caused to the Revenue in the instant facts before setting aside the order u/s. 263 of the Act. One of the pre- conditions for setting aside the assessment order u/s. 263 is that the assessment order should not only be erroneous but should also be prejudicial to the interest of the Revenue. However, in the instant facts, we observe that the CIT has not given any specific finding as to whether any prejudice has been caused to the Revenue i.e. whether any loss of revenue caused to the Tax Authorities, keeping in view the alternate claim of exemption u/s. 10(23C)(iiia) of the Act and also the claim of exemption u/s. 11 of the Act. In absence of the specific finding in the 263 order with regard to the fact that

the assessment order is prejudicial to the interest of revenue, in our view 263 order is liable to be set aside.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27-06-2024

Sd/-

(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER  
Ahmedabad : Dated 27/06/2024

Sd/-

(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद