

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.177/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2018-2019)

Kalinga Institute of Industrial Technology, Patia, Bhubaneswar	Vs	CIT (Exemption), Hyderabad
PAN No. :AAATK 3103 C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri S.K.Agrawalla, CA
राजस्व की ओर से /Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	15/07/2024
घोषणा की तारीख/ Date of Pronouncement	:	15/07/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order dated 15.03.2024, passed by the Id. CIT(Exemption), Hyderabad at Bhubaneswar, in DIN & Order No.ITBA/COM/F/17/2023-24/1062703542(1) for the assessment year 2018-2019.

2. It was submitted by the Id. AR that the assessee is a charitable institution which is running educational institution. The assessee had filed its return of income for the relevant assessment year and the same came to be processed u/s.143(1) of the Act and subsequently as there was a mistake in the computation of tax, the assessment order passed u/s.143(3) r.w.s144B of the Act on 19.04.2021 was rectified vide order u/s.154 r.w.s.143(3) of the Act, dated 29.07.2021. It was the submission that the Id. CIT(E) in his order u/s.263 of the Act recognized the

rectification order but still held that the order passed u/s.143(3) r.w.s.144B of the Act dated 19.04.2021 was liable to be revised. At the outset, it was the submission that the same was not permissible in view of the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT Vs. Kalyan Solvent Extraction Ltd., reported in (2005) 276 ITR 154 (MP), wherein the Hon'ble Madhya Pradesh High Court has categorically held that the original order was subjected by the AO to rectification u/s.154 of the Act, then such original order was no more amenable to revision and it was only order passed u/s.154 of the Act, which could be revised. The Hon'ble Madhya Pradesh High Court in para 7 & 8 has categorically held as follows :-

7. It is not in dispute that on the date 21st March, 1989, when the Commissioner sought to exercise his suo motu revisional powers under s. 263 of the Act against the assessment order dt. 13th March, 1987, the same was already rectified by the AO on 14th March, 1989, under s. 154 of the Act. In this view of the matter, the Commissioner had no jurisdiction to set aside that order which stood already rectified. In other words, the Commissioner could at best have invoked his suo motu powers under s. 263 of the Act as against the order dt. 14th March, 1989, passed by the AO and not the one already passed and rectified, i.e., original assessment order dt. 13th March, 1987.

8. Once the original order stands rectified then it loses its identity at least to the extent it stood rectified. In such circumstances, the Commissioner should have invoked his suo motu powers under s. 263 of the Act against the subsequent rectified order dt. 14th March, 1989, if he was of the view that the same is erroneous and prejudicial to the interests of the Revenue.

3. It was further submitted that even on merits, the Id. CIT(E) had followed the revisionary order in assessee's own case for the immediately assessment year being the A.Y.2017-2018, wherein the identical issue of the development fee was considered. It was the submission that the

revisory order passed for the assessment year 2017-2018 was the subject matter of an appeal before the coordinate bench of this Tribunal in ITA No.48/CTK/2022, dated 13.09.2022, wherein the coordinate bench of this Tribunal had held that the order passed u/s.263 of the Act was liable to be quashed on account of no enquiry by the Id. CIT(E). The coordinate bench for the assessment year 2017-2018 in para 7 to 8 in its order has held as follows :-

7. At the outset, what is to be understood is that the assessment in the present case has been done under the faceless scheme. A perusal of the notice issued u/s.142(1) of the Act shows that a query in respect of development fees has been raised. A perusal of the reply filed by the assessee in response to the notice u/s.142(1) of the Act shows that the issue of development fees has been responded in full. The response type whether it is full or partial is system generated. It is not in the control of the assessee. A perusal of the attachment mentioned in the compliance report shows that three files have been uploaded. It is after receiving the response from the assessee that the assessment has been completed u/s.143(3) of the Act. It is an admitted fact that the assessee cannot be expected to lead the AO in respect of the assessment proceedings. The liberty is with the AO to call for the details and it is the duty of the assessee to comply with the requirement as called for by the AO. Then the issue rests on the AO to examine the evidence produced and to draw appropriate conclusion. In this case, the assessee has complied by producing all the evidences as called for insofar as the compliance report which is a system generated report shows that the compliance is in full. Thus, this cannot be said that there is "lack of enquiry" by the AO much less "inadequate enquiry" and far less "no enquiry". A perusal of the order passed u/s.263 of the Act shows that the Id. CIT(E) has taken the total revenue earned at Rs.855,46,22,497/-, this amount is inclusive of Rs.111 crores as development fees collected by the assessee from the students. When doing the computation, the Id. CIT(E) in page 2 of his order has granted 15% accumulation u/s.11(1) of the Act, he has not taken into consideration the capital expenditure which is an application of Rs.258 crores. If this capital expenditure, which is application of income of Rs.258 crores, is taken into consideration, the taxable income as computed by the Id. CIT(E) in page 2 of his order, would automatically go into a loss. It would absorb even the accumulation of 15%, which he has granted to the assessee. A perusal of the page 5 of the order of the Id. CIT(E) shows that the assessee has adopted the figure of total revenue earned at Rs.855,46,22,497/-, which is same as adopted by the Id. CIT(E) by treating the development fees of Rs.111 crores

as revenue income, which after the assessee has reduced the application in respect of the revenue expenditure without considering the depreciation and the total expenditure treated as application of income to arrive at a loss of Rs.1,10,61,219/-. A perusal of the order of the Id. CIT(E) shows that after receiving this reply of the assessee no further verification much less an enquiry has been done by the Id. CIT(E) to even make an attempt to show that the calculation as shown by the assessee is erroneous in any manner whatsoever. This is a minimum expectation. After the receipt of the reply of the assessee, the order has been passed after more than two months and there is nothing shown to show that the calculation as done by the assessee is erroneous. It is also not being rejected by the Id. CIT(E) but has just proceeded to hold that the assessment order is erroneous and prejudicial to the interest of revenue and set aside the same. This is not permissible. A perusal of para 14 of the decision of the Hon'ble Jurisdictional High Court of Orissa in the case of Orissa State Police Housing & Welfare Corporation Ltd., reported in [2022] 139 taxmann.com 207 (Orissa), as read out by the Id. CIT-DR, categorically shows that after hearing the assessee, to pass an order by making "such enquiry as he deems necessary". In the present case, clearly no enquiry has been done by the Id. CIT(E). The Hon'ble Jurisdictional High Court of Orissa in the said case further goes on to hold that "the purpose of such an enquiry would be to arrive at a subjective view that the order of the AO was erroneous insofar as it is prejudicial to the interest of Revenue". Here, the Id. CIT(E) has done nothing to arrive at the subjective view that the order of the AO was erroneous insofar as it is prejudicial to the interest of revenue. In fact, this is a case where there is "no enquiry" by the Id. CIT(E).

8. It would be worthwhile to mention here the fact that the Id. CIT(E) has also made a calculation which attempts to show escapement of income u/s.11 of the Act which is taxable, by excluding the application of income which is permissible u/s.11(1) of the Act, is nothing but a jugglery in arithmetic. This is not a case where there is incorrect application of law. This being so, we are of the view that the principle of law laid down by the Hon'ble Jurisdictional High Court of Orissa in the case of Orissa State Police Housing & Welfare Corporation Ltd (supra), is squarely applicable in the case of present assessee, insofar as there is no enquiry done by the Id. CIT(E) after receipt of the reply filed by the assessee. This view of ours also support by the decision of the coordinate bench of the Tribunal in the case of Saroj Kumar Mishra (supra) and in the case of M/s Earth Minerals Co. Ltd., in ITA No.223/CTK/2019, order dated 29.08.2022. In these circumstances, we are of the view that the order passed by the Id. CIT(E) is unsustainable and consequently, the same stands quashed.

4. It was further submitted that the order of the Tribunal was the subject matter of an appeal by the Revenue before the Hon'ble High

Court of Orissa in ITA No.38 of 2023 and vide order dated 02.03.2023, the Hon'ble Jurisdictional High Court had upheld the order of the Tribunal holding as follows :-

4. *The Assessee is a Trust running an educational institution. The original assessment for the aforementioned AY came to be concluded on 29th December 2019 under Section 143 (3) of the Act accepting the returned income.*

5. *On 12th January 2022, the CIT (E) issued a show cause notice (SCN) to the Assessee under Section 263 of the Act stating that a sum of Rs.1,11,54,33,001/- collected as development fees from its students had been directly carried to the balance sheet under the nomenclature "Development Fund" instead of being routed through the income and expenditure account. This was then treated as part of the Revenue and therefore the taxable income under Section 11 (1) of the Act was taken to be Rs.51,97,46,092/-.*

6. *In replying to the above SCN, the Assessee gave a calculation after reducing the application of income on the revenue field in respect of capital expenditure. After doing so, as per the calculation of the Assessee, the result was a loss.*

7. *In the order dated 14th March 2022, the CIT (E) did not refer to the explanation offered by the Assessee in reply to the SCN. Nor had the CIT (E) undertaken an enquiry or made any calculation to indicate how the application of the fund towards capital expenditure had been accounted for.*

8. *The CIT (E) simply stated that the impugned assessment order was erroneous and prejudicial in the interest of Revenue.*

9. *The ITAT has in the impugned order discussed in detail the explanation offered by the Assessee regarding application of funds. Inter alia, it was noticed that CIT (E) had taken the total revenue earned, granted 15% accumulation, without considering the capital expenditure to the tune of Rs.258crores. As noted by the ITAT, if the said bill taken into account the taxable income would be a loss. It would have been observed the 15% accumulation granted to the Assessee. Further, even after treating the development fees of Rs.111crores as revenue income, the net figure would still be a loss.*

10. *As noted by the ITAT, if only the CIT (E) had undertaken an inquiry, he would have come to the above conclusion and there would have been no need to act to the taxable income of the Assessee.*

11. The Court is satisfied that no error has been committed by the ITAT in concluding that the order of the CIT (E) is unsustainable in law. No substantial question of law arises. The appeal is dismissed.

5. It was the submission that the Id. CIT(E) was aware of the said order of the Tribunal in assessee's own case for the immediately preceding assessment year and consequently under the guise of an enquiry, the Id. CIT(E) called for the explanation of the assessee. The assessee has specifically submitted before the CIT(E) that the development fund had been specifically offered as income of the assessee and to prove this the details and comparison of the income between the IT Return and the annual financial report for the Financial Year 2017-2018, had already been placed before the Id. CIT(E), the same was shown at page 32 of the paper book which is as follows :-

KALINGA INSTITUTE OF INDUSTRIAL TECHNOLOGY PATIA, BHUBANSWAR-751024				
Detail Comparison of Income between IT Return & Annual Financial Report for the Financial Year 2017-18				
As per ITR FORM		As per Annual Financial Report		
Particulars	Amount	Particulars	Ref. Note No.	Amount
Voluntary contribution forming part of corpus as per section 11(1)(d) [(Ai + Bi) of schedule VC]	3,51,85,873	Corpus Fund	2.1	
Sub-Total	3,51,85,873	Sub-Total		3,51,85,873
Voluntary Contributions other than corpus(C - (Ai+Bi) of schedule VC)	15,59,22,530	Grant-in-Aid- DST	2.16	2,66,10,037
		Grant-in-Aid- UGC	2.16	2,16,000
		Grant-in-Aid-MNRE	2.16	41,14,046
		Grant-in-Aid-ICMR	2.16	29,66,784
		Grant-in-Aid-DBT	2.16	1,95,07,338
		Grant-in-Aid-CSIR	2.16	8,42,459
		Grant-In-Aid BRNS	2.16	71,34,548
		Grant-In-Aid Common	2.16	3,79,98,342
		Salmonelle Vaccins Projects	2.16	41,70,407
		DDU-GKY Project	2.16	5,23,62,569
Sub-Total	15,59,22,530	Sub-Total		15,59,22,530
Aggregate of income referred to in sections 11, 12 and sections 10(23C)(iv),10(23C)(v),10(23C)(vi) and 10(23C)(via) derived during the previous year excluding Voluntary contribution included in 1 and 2 above (9 of Schedule A)	9,65,83,14,155	Development Fee	2.2	96,43,01,068
		Admission & Tuition Fees	2.16	96,89,51,027
		Utility & Maintenance Fees	2.16	33,750
		Examination Fees	2.16	4,97,01,805
		Counselling & Registration Fees	2.16	12,71,67,678
		Hostel Fees	2.16	1,02,21,54,686
		Mess Fees	2.16	56,99,76,255
		Miscellaneous Fees	2.16	1,38,84,398
		Training Fees	2.16	46,500
		Institutional Fees	2.16	4,49,99,55,980
		Course Material Fees	2.16	3,25,000
		Transportation, Laundry Fees	2.16	3,25,48,794
		Seminar & Conference Income	2.16	39,80,034
		Consultancy Income	2.16	11,29,449
		Other Income- MDP Fees	2.16	4,08,240
		Other income	2.17	1,40,37,49,492
		Sub-Total	9,65,83,14,155	
GRAND TOTAL	9,84,94,22,558	GRAND TOTAL		9,84,94,22,558

6. It was the submission that without considering these evidences, the Id. CIT(E) in para 15.2 has held that the assessee could not satisfactorily establish the claim of the application of income of Rs.940,24,12,653/- and it needed detailed verification through reassessment. It was the submission that the fact that the Id. CIT(E) has mentioned detailed verification and also says that it should be done through reassessment clearly shows that the Id. CIT(E) was aware that proper verification had been done but only a fishing and roving enquiry is now being attempted under the guise of a revision u/s.263 of the Act. It was the submission that the order passed u/s.263 of the Act is liable to be quashed.

7. In reply, Id. CIT-DR vehemently supported the order of the AO and Id.CIT(E).

8. We have considered the rival submissions. A perusal of the order passed u/s.263 of the Act by the Id. CIT(E) for the impugned assessment year with that of the assessment year 2017-2018 which is already quashed by the coordinate bench of the Tribunal, shows that for the impugned assessment year the Id. CIT(E) has extracted the various submissions of the assessee. Nowhere in the order the Id. CIT(A) is able to point out any error in the submissions made by the assessee. What the nature of the shortfall in the examination as done by the AO in the course of original assessment, is also not coming out of the order of the Id. CIT(E). The fact that the Id. CIT(E) has taken a stand in para 16 of his order that "correct enquiry" was not carried out while allowing the claim of application of the income, shows that the Id. CIT(E) was well aware that

examination had been done by the AO. The order of the Id. CIT(E) also does not speak of the “correct enquiries” that he wants to be done by the AO. Thus, clearly shows that this is nothing but an attempt of the Id.CIT(E) to dislodge an opinion as arrived at by the AO without pointing out any error in such opinion arrived. The power u/s.263 of the Act, admittedly, for revising an order which is erroneous and prejudicial to the interest of revenue. It cannot be used for directing a detailed verification through reassessment nor can it be used for re-examination of issues which have already been examined and an opinion in respect of which the AO has already reached to the conclusion without pointing out how such opinion is not as per law or is perverse to the facts. This being so, we are of the view that the order passed u/s.263 of the Act is unsustainable in the facts of the case. Consequently, the order passed u/s.263 of the Act by the Id. CIT(E) for the impugned assessment year stands quashed in view of the reasonings given above as also the reasoning given in the order of the coordinate bench of the Tribunal for the assessment year 2017-2018, which has already been upheld by the Hon’ble Jurisdictional High Court, referred above.

9. It must be mentioned here that in view of the principle laid down by the Hon’ble Madhya Pradesh High Court in the case of Kalyan Solvent Pvt. Ltd., referred to supra, as the Id. CIT(E) has invoked his powers u/s.263 of the Act on the assessment order passed u/s.143(3) r.w.s.144B of the Act, the same has already been rectified vide an order dated 29.07.2021 u/s.154 r.w.s.143(3) of the Act, thus, the order passed u/s.263

of the Act is unsustainable and on this ground also the order passed by the Id. CIT(E) u/s.263 of the Act stands quashed.

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

Order dictated and pronounced in the open court on 15/07/2024.

**Sd/-
(MANISH AGARWAL)**

लेखा सदस्य/ ACCOUNTANT MEMBER

**Sd/-
(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 15/072024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Kalinga Institute of Industrial Technology,
Patia, Bhubaneswar
2. प्रत्यर्थी / The Respondent-
CIT(Exemption), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack