

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1002/Del/2022
Assessment Year: 2017-18

The Trained Nurses Association of India L-17, Floreence Nightingale Lane, Green Park, New Delhi-110016 PAN No.AAATT2930J	Vs.	DCIT New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Rano Jain, Advocate Ms. Mansi Jain, CA
Respondent by	Ms. Monika Dhami, CIT DR

Date of hearing:	02/09/2024
Date of Pronouncement:	05/09/2024

ORDER

PER SUDHIR KUMAR, JM:

This appeal by the assessee is directed against the order of the Commissioner of Income Tax (Exemption), Delhi [hereinafter referred to as "CIT(A)"] vide order dated 15.03.2022 pertaining to A.Y. 2017-18 and arises out of the assessment order dated 05.12.2019 under section 143(3) of the Income Tax Act 1961 [hereinafter referred as 'the Act'].

2. Aggrieved by the order of the Ld CIT(Exemption) the assessee is in appeal before us by raising the following grounds:-

1. *The Ld. Commissioner of Income Tax – Exemption (CIT) erred in law, contrary to and based on incorrect interpretation of the facts in passing an order u/s. 263 though the asesmsent order neither erroneous nor prejudicial to the interest of Revenue and in directing the assessing officer to frame the assessment afresh. Thus, the order passed u/s. 263 has been passed without fulfilling the conditions laid down by law and deserves to be quashed.*

2. *On the facts and circumstances of the case, the CIT has erred both on the facts and in law in ignoring the fact that the proceeding under Section 263 cannot be used for substituting the opinion of the Assessing Officer (AO) by that of the CIT.*

3. (i) *On the facts and circumstances of the case, the CIT has erred both on facts and in law in setting aside the issue of rent recovered from the specified persons to the file of the Ld. AO without properly appreciating the explanation of assessee given during the assessment proceedings.*

(ii) *The Ld. CIT has erred in law in passing order under Section 263 ignoring the fact that the AO had made adequate enquiries on the above issue in the course of*

assessment and the appellant had submitted all relevant information and supporting documents to the satisfaction of the AO.

4. *On the facts and circumstances of the case, the order passed by Ld. CIT under Section 263 of the Income Tax Act is unsustainable as power to revise can be invoked in case of lack of enquiry, not in the case of inadequate inquiry.*

5. (i) *On the facts and circumstances of the case, the learned CIT has erred both on the facts and in law in passing order under Section 263 holding that foreign contribution be taken as Income in the Income & Expenditure Account without appreciating that it is an undisputed provision of law of treating foreign grants as a liability at the time of receipt, however, the expenditure of foreign grant is also reflected in Balance Sheet under 'Schedule of Grants'.*

(ii) *The Ld. CIT has erred in law in treating grant money received as voluntary contributions completely ignoring the stated position of law that grant money being involuntary funds to be utilized as per specific conditions and stipulations as laid down by the donor cannot be treated as Income in the hands of the done. Thus, this issue cannot be considered for the purpose of Section 263 and the order passed under Section 263 should be cancelled.*

3. The brief case of the assessee is that assessee a trust registered under Section 12A of the Act, has filed its return of income declaring income nil claiming exemption under Section 11 of the Act. The return of income filed by assessee was scrutinized u/s.143(3) of the Act and accepted. The case was selected for limited scrutiny. A notice u/s.142(1) with questionnaires was issued. The AO after examining the record accepted the return of income. A proposal of the revision received from the AO the LD CIT (Exemption) issued the show cause notice u/s 263 of the Act to the assessee. Ld CIT(A) on careful examination of records, it was noticed that the said order was erroneous and prejudicial to the interests of revenue as the AO failed to make requisite verification and enquiries which were expected in the facts and circumstances of the case.

4 The issue raised in the show cause notice are briefly mentioned here under :

a) Assessing Officer failed to examine whether the rent recovered from the specified fair market rent prevailing in that locality.

b) Assessing Officer failed to notice that the foreign contribution of Rs.21,83,643/- received by the assessee trust during A.Y. 2017-18 was not disclosed as income in the Income & Expenditure A/c.

5. The Ld AR of the assessee has submitted that the case of the assessee was selected only for limited scrutiny and the assessee has submitted all the details of the rent recovered from the various persons and also given the reasons for recovery of the rent. He has further submitted that Ld CIT (exemption) has not given the finding as how the prejudice has been caused to the revenue. He has also submitted that Ld CIT (exemption) in his notice has raised the issue of the foreign contribution but this reason was not selected for limited scrutiny and the AO had no power to discuss the issue in the assessment proceedings. Ld CIT(Exemption) has no jurisdiction u/s 263 of the Act. In the support of the contention the assessee has filed the paper book containing page (1-104).

6. The Ld AR has stated that the Ld CIT (exemption) could not direct the AO for further enquiry and give his findings. Reliance has placed on the following decisions;

ITO vs Housing Projects Ltd (2012)343 ITR 329 (Del)

CIT vs Sandeep Kumar Aggarwal ITA 750/2018 (Del-HC)

CIT vs Kohinoor Foods Ltd ITA 757/2005 (Del-HC)

7. The AR has placed reliance upon the following judicial decisions:-

1. *Mohak Real Estate Pvt. Ltd. PCIT, ITA 1069/Del/2021 dated 25.05.2023*

2. *The above decision has been affirmed by hon'ble Delhi High Court in ITA 730/2023 dated 08.01.2024*

3. *Pr. CIT Vs. Harikishan S. Virwani R/Tax Appeal No. 164 of 2019, dated 24.06.2019 (Guj – HC)*

4. *Shruti Rahul Mane Vs. Pr. CIT, ITA 1056/ PUN/ 2016 dated 27.06.2019*

5. *Reliance Money Infrastructure Vs. Pr. CIT I.T.A No. 3259/Mum/2017 dated 06.10.2017*

6. *Narayan Tatu Rane Vs. ITO, ITA 2690/Mum/2018 dated 06.05.12016.*

8. The Ld. AO after considering the reply and the evidences of the assessee, preferred not to draw any adverse inference in this regard. The Ld. CIT (exemption) has given a finding in his order under Section 263 of the Act the following manner:-

“4. I have considered the submission made by the assessee. When it comes to trusts, enjoying the benefit of exemption of its income from taxation, provisions of Income Tax Act is very strict so that no undue benefit is enjoyed by the persons specified u/s. 13(3). In this case the property of the trust was let out to the specified persons and amount of rent was also recovered. But to verify whether these specified persons have benefitted out of this, fair market rent of this property should have been ascertained. The fair market rent is the rent the property

would fetch from the open market and there are various methods to calculate it. The AO has not made any attempt to find out the fair market rent of the said property to check whether these specified persons were benefitted or not. On this issue, by not verifying or inquiring into the reasonableness of the rent recovered from these specified persons which should have been done, the impugned order is erroneous and prejudicial to the interest of the revenue.

5. Coming to the second issue of not admitting the foreign contribution as income in the income & Expenditure A/c, TNAI had received the following foreign contributions during the relevant assessment year.

S.No	Date of receipt	Details	Amount (Rs.)
1	04.05.2016	Johnson & Johnson Consumer Inc	16,99,560
2	28.02.2017	Centre for Catalyzing change	4,84,000

It was submitted by the assessee that grant of USD 25,600 was received from Johnson & Johnson Consumer Inc. as an educational grant and the amount was to be

spent on Panel Review of Association of Women's Health, Obstetric and Neonatal Nurses guideline from the Indian perspective. Grant of Rs.4,84,000/- was received from "Centre for Catalyzing Change" for the purpose of maternal health and quality of care advocacy in India (referred to as Grant for respectful Maternity Care RMC). It was further submitted by the assessee that these grants are project grants and are not voluntary contributions to be treated as income in the hands of the assessee. The term voluntary contribution implies a contribution to be utilized by the receiving done as per its own free will without any specific direction as per its own free will without any specific direction as to its usage. It further observed that once the amount is received with stipulations and conditions as regards its utilizations the same loses the character of voluntary contributions in the hands of the recipient as it can neither spend it for any purpose it desires or in the period on its own will.

6. I have duly considered the reply of the assessee. The assessee has submitted copies of "Grant agreements" with Johnsons Consumer Inc. A letter dated 27th Nov, 2015, addressed to Johnson & Johnson Consumer Inc. was part of the agreement as Exhibit A, which is a clarification letter related to programme time table. It was mentioned in that letter that the original timings were estimated to take place from May, 2015 through end of year 2015, which is now

estimated at 6 months from the date of final approvals. The formal agreement was entered into on 09.04.2016 and Johnson & Johnson Consumer Inc made the payment on 04.05.2016. Since the period of study was only 6 months, it has to be completed before March, 2017. Nowhere in the agreement it is mentioned as a tied up grant or as a corpus donation.

9. The Ld DR has submitted that the Ld CIT(Exemption) has given the reasons in the order how the prejudice has been caused to the revenue. The AO has not made the adequate enquiry.

10. We have heard the parties and perused the material available on the record.

11. In the case of **Malabar Co. Ltd. (2000) 243 ITR 83 (SC)** held as under :-

It has been observed by the Supreme Court in the case of Malabar Industrial Co. Ltd. (2000) 243 ITR 83 (SC), that "A bare reading of this provision make it clear that the pre-requisite to the exercise of jurisdiction by the Commissioner suomoto under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial

to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely.

(ii) is prejudicial to the interests of the Revenue. If one of them is absence- if the order of the Income-tax Officer is erroneous but it is prejudicial to the Revenue- recourse cannot be had to S. 263 (1) of the act.

12. The instant case was selected for the limited scrutiny on the two points :-

i Income or property of the Trust / Institution lent to the specified persons

ii Land / building or other property pf the Trust / Institution made available for the use of the specified persons

13. The AO has made the adequate enquiry and accepted the return of the assessee. The Ld CIT (Exemption) could not impose their views, when the plausible view has been taken by the AO. Every loss of Revenue as a consequence of an order of the AO cannot be treated as prejudicial to the interest of Revenue. As regards as second issue with the respect of foreign contribution the case was not selected for scrutiny for that point because the case of assessee was selected only for limited scrutiny. The AO had no jurisdiction to discuss this issue in the assessment proceedings. The AO has no power to extend the

scope of scrutiny under limited scrutiny. When the two views were possible and AO has taken one view with which the CIT(Exemption) may not agree the said order cannot be treated as an erroneous order prejudicial to the interest of Revenue unless the view taken by AO is unsustainable. The view taken by the AO was not erroneous and prejudicial to the revenue. The appeal of the assessee is liable to be allowed.

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

Order pronounced in the open court on 05.09.2024.

Sd/-
(DR. B R R KUMAR)
ACCOUNTANT MEMBER

NEHA, Sr. PS

Date:- .09.2024

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI