

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No.1222/Mum/2024
(Assessment Year: 2016-17)

Sir Ratan Tata Trust Bombay House, 24, Homi Mody Street, Fort, Mumbai-400 001	Vs.	Dy. CIT(Exemption) – 2(1) MTNL Tele Bulding, Cumballa Hill, Peddar Road, Mumbai-400 026
PAN/GIR No. AAATS 1013 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Aatul Suraiya Shri Nilay Jhaveri
Respondent by	:	Smt. Sanyogita Nagpal
Date of Hearing	:	26.06.2024
Date of Pronouncement	:	24.09.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2016-17.

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

1. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in upholding the order u/s 144 r.w.s 263 of the Act even though the foundational revisionary order passed by the ld. CIT u/s. 263 of the Act had been quashed by the Hon'ble Income-tax Appellate Tribunal.*
2. *The ld. CIT(A) erred in not appreciating that he could not have legally sustained the order of the AO on merits, which had become non-est by virtue of the setting aside of the revisionary order by the Hon'ble Tribunal.*
3. *On the facts and circumstances of the case and in law, the Ld CIT(A) erred in holding that the ITAT order was not made available to the Assessing Officer (AO') despite the fact that the*

ITAT order quashing order w/s 263 of the Act was passed on 16.02.2022 which is before passing of assessment order dated 29.03.2022 and the copy of the ITAT order was submitted to AO by the Appellant via email during the assessment proceedings.

4. The learned CIT (A) did not appreciate that, hypothetically, even if an assessment order comes to be passed before the quashing of the revisionary order by the Hon'ble Tribunal, such an assessment order is also liable to be declared as void ab initio by the first appellate authority.

5. Without prejudice to the above, on the facts and circumstances of the case and in law, the Ld CIT(A) erred in upholding the order u/s 144 r.w.s 263 of the Act even though:

a) The order u/s 144 r.w.s 263 of the Act was passed without giving any opportunity to respond to the Appellant.

b) The AO erred in invoking provisions w/s 144 of the Act as the Appellant, due to the technical glitch on the income tax portal, could not upload its submissions in response to the notices as such notices were never uploaded on the portal. In doing so, the AO ignored the fact that the Appellant had duly emailed the submissions as and when due.

c) The AO erred in concluding the assessment without issuing notice u/s 143(2) of the Act.

d) The AO erred in not following the procedure as laid down in section 144B of the Act covering faceless assessment cases.

6. Without prejudice to the above, the Ld CIT(A) erred in upholding the denial of exemption under section 11 of the Act on the alleged violation of section 13(1)(d) read with section 11(5) of the Act.

7. Without prejudice to the above, the learned CIT(A) was not justified in approving the view of the Assessing officer that the exemption under section 11 was hit by section 13(2)(h) read with section 13(1)(c) of the Act.

8. Without prejudice to the above, the Ld. CIT(A) erred in approving the view of the Assessing Officer that the entire income of the Appellant was disentitled from claiming exemption u/s. 11 of the Act.

9. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not directing the AO to delete interest levied w/s 234B of the Act considering it to be general or consequential not requiring specific finding.

10. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in not directing the AO to drop the penalty proceedings-initiated u/s 271(1)(C) of the Act in absence of Trust furnishing inaccurate particulars of income considering it to be consequential not require specific finding.

3. Brief facts of the case are that the assessee is a Public Charitable Trust engaged in charitable activities in the field of education, medical relief and social welfare, created under a will/codicil dated 10.09.1919 registered with the Charity Commissioner Maharashtra under the Bombay Public Trust Act, 1950 and is registered u/s. 12A of the Income Tax Act dated 04.08.1975. The assessee had filed its return of income dated

05.11.2016 for the year under consideration, declaring total income at Rs.Nil. The return of income was processed u/s. 143(1) of the Act and the assessee's case was selected for scrutiny and assessment order u/s. 143(3) of the Act was passed by the learned Assessing Officer ('ld. A.O.' for short) dated 04.12.2018, where the ld. A.O. accepted the returned income filed by the assessee.

4. Subsequently, the ld. CIT(Exemption) invoked the revisionary powers u/s. 263 of the Act and vide order dated 17.03.2021 held the assessment order to be erroneous insofar as it was prejudicial to the interest of the Revenue and had set aside the assessment for passing fresh assessment order to the ld. A.O. It is observed that the assessee has been non compliant during the assessment proceeding and the ld. A.O. passed the assessment order u/s. 144 r.w.s. 263 r.w.s. 144B of the Act being the best judgment assessment vide order dated 29.03.2022, determining the total income at Rs.261,30,07,821/-.

5. Aggrieved by the said order the assessee preferred an appeal before the first appellate authority who vide order dated 19.01.2024 upheld the order of the ld. A.O. on the ground that his predecessor for A.Y. 2014-15 on identical issues have decided the said issue against the assessee and hence, confirmed the addition by taking a consistent view.

6. Aggrieved the assessee is in appeal before us, challenging the order of the ld. CIT(A).

7. The learned Authorised Representative (ld. AR for short) for the assessee contended that the order of the ld. CIT(A) is unsustainable for the reason that the

Tribunal has already quashed the revisionary order passed u/s. 263 of the Act and, hence, the consequential order would also not survive. The ld. AR further contended that the ld. CIT(A) has failed to consider this fact and prayed that the assessment order passed u/s. 144 r.w.s.263 of the Act and the impugned order of the ld. CIT(A) be *quashed*.

8. The learned Departmental Representative (ld. DR for short), on the other hand, contended that the order of the Tribunal dated 16.02.2022 was passed much before the impugned assessments order which was dated 29.03.2022 and the same was not brought to the knowledge of the ld. A.O. and stated that there was no infirmity in the order of the ld. A.O. and the ld. CIT(A). The ld. DR relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the impugned order of the ld. CIT(A) arises out of the assessment order passed in consequence of the revisionary order of the ld. CIT(E) passed u/s. 263 of the Act. Pertinently, the revisionary order u/s. 263 of the Act has been quashed by the Tribunal (in ITA No. 773/Mum/2021 for A.Y. 2016-17 vide order dated 16.02.2022) on the ground that the ld. CIT(E) has erred in exercising the revisionary jurisdiction. As the assessee has been non-compliant during the assessment proceeding, pursuant to section 263 order, the ld. A.O. presumably was unaware of the order of the Tribunal, quashing the revisionary proceeding. The ld. A.O. had proceeded to pass the assessment order and the ld. CIT(A) subsequently upheld the said order without considering the fact that the Tribunal has already quashed the section 263 order which is the very edifice of the impugned order. The ld. CIT(A) though was aware of the Tribunal's order, as emanating from the order of the ld. CIT(A), had failed to consider the

submission made by the assessee with regard to the same. We do not find any justification in the order of the Id. CIT(A) in upholding the assessment order in a scenario where the revisionary order has been held to be null and void in the eyes of law. We, therefore, are of the view that the assessment order passed u/s.144 r.w.s. 263 of the Act is liable to be quashed and, therefore, deem it fit to allow ground nos. 1 to 4 of the assessee's appeal.

10. As we have held the assessments order to be null and void, the other grounds of appeals requires no further adjudication.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 24.09.2024.

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 24.09.2024

Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai