

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 343/Ind/2024
Assessment Year: 2017-18

The Nimar Educational Society, Harsud Road, Civil Lines, East Nimar, Khandwa	बनाम/ Vs.	CIT(Exemption) , Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AABTT1409K		
Assessee by	Shri S.N. Agrawal and Shri Pankaj Mogra, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	20.08.2024	
Date of Pronouncement	20.09.2024	

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by revision-order dated 13.03.2024 passed by learned Commissioner of Income-Tax (Exemption), Bhopal ["CIT(E)"] u/s 263 of Income-tax Act, 1961 ["the Act"] which in turn arises out of two separate assessment-orders, one dated 30.03.2022 passed by NFAC, Delhi and other dated 16.05.2023 passed by Assessment Unit ["AO"], both assessment-orders having been passed in the proceedings of section 147 r.w.s. 144/144B of the Act and both relating to Assessment-Year ["AY"] 2017-18,

the assessee has filed this appeal on the grounds raised in Appeal-Memo (Form No. 36).

2. The precise facts relating to case are noted as under:

2.1 The assessee-society, engaged in educational activity, filed its original return of income of relevant AY 2017-18 u/s 139 on 07.11.2017 declaring a total income of Rs. 1,16,505/- (rounded off to Rs. 1,16,510/-) which was duly assessed.

2.2 Subsequently, based on an information of cash deposit of Rs. 17,00,000/- having been made by assessee in its bank a/c during the relevant year, the AO re-opened assessee's case through notice dated 31.03.2021 u/s 148. During proceeding, the AO asked assessee to explain the source of impugned deposit. In response, the assessee submitted that it runs 6 educational institutions and the only source of income was the fee received from students. It was also submitted that the fee received from students in cash was deposited in bank a/c. The assessee also furnished cash-book. The AO, however, rejected assessee's submission and ultimately made an addition of Rs. 17,00,000/- u/s 68 r.w.s. 115BBE on account of unexplained bank deposits and determined total income at Rs. 18,16,510/- in assessment-order dated 30.03.2022 u/s 147.

2.3 Subsequently, the AO once again re-opened assessee's case vide another notice dated 28.06.2022 u/s 148 for the very reason of cash deposit of Rs. 17,00,000/- in bank a/c but this time the AO accepted assessee's

very same explanation and did not make any addition, accordingly he determined total income of Rs. 1,16,510/- in assessment-order dated 16.05.2023 u/s 147.

2.4 Subsequently, Ld. CIT(E) examined the case record of assessee and viewed that the impugned assessment-orders dated 30.03.2022 and 16.05.2023 passed by AO were erroneous in so far it they were prejudicial to the interest of revenue which attracted revisionary-jurisdiction u/s 263. Accordingly, the CIT(E) issued show-cause notice dated 04.10.2023 and finally passed revision-order dated 13.03.2024. Aggrieved by such revision-order, the assessee has come in this appeal before us.

3. Ld. AR for assessee firstly carried us to following paras of show-cause notice issued by CIT(E) u/s 263:

3. During the proceedings it is found that the trust is not registered u/s 12A/12AA of the Act and also did not file Form 10B for claiming exemption u/s 11 or 12 of the Income-tax Act, 1961. The assessee trust claimed exemption u/s 10(23C)(iiiad) of the Act, however, on going through the audited balance sheet submitted by the assessee it was observed that the receipts of Arvind Kumar Nitin Kumar Montessori English School was Rs. 1,02,34,110/- and receipt of Poonamchand Gupta Vocational College School was Rs. 2,28,15,358 during the year. The receipts of both institutes are more than Rs. One crore which is more than the prescribed limit to, claim benefit of exemption u/s 10(23C)(iiiad) of the Act. Thus, the assessee Trust was not eligible for claim of exemption on the above referred two institutions u/s 10(23C)(iiiad) of the Act. The exemption claimed for two institutions

whose receipts were more than one crore was to be disallowed at the time of the assessment. The details are as under :-

S.No.	Name of the Institute	Total receipt	Net surplus
1.	Arvind Kumar Nitin Kumar Montessori English School	1,02,34,110/-	55,20,110
2.	Poonamchand Gupta Vocational College	2,28,15,358	1,11,40,108
		Total Surplus	1,66,60,218

4. On the basis of above facts, it is crystal clear that Net surplus amount Rs. 1,66,60,218/- (Rs. 55,20,110 + 1,11,40,108/-) had escaped from assessment during the course of assessment proceedings for the year under consideration. This fact is evident from the record available. The Faceless AO passed the assessment order without mentioning the above details of receipts of the institutes. "

Referring to same, Ld. AR submitted that there is one single issue for which the Ld. CIT(E) undertook revision. The CIT(E) has noted that the assessee claimed exemption u/s 10(23C)(iiiad) of the Act but on going through audited Balance-Sheet submitted by assessee, it was found that the receipts of 2 institutions run by assessee, namely (i) Arvind Kumar Nitin Kumar Montessori English School and (ii) Poonam Chand Gupta Vocational Educational College, were Rs. 1,02,34,110/- and Rs. 2,28,15,358/- respectively which had exceeded the prescribed limit of Rs. 1 Crore as per section 10(23C)(iiiad). Therefore, the net surplus of Rs. 55,20,110/- and Rs. 1,11,40,108/- earned respectively by those 2 institutions, aggregating to Rs. 1,66,60,218/- was taxable for which no enquiry was made by AO while

passing assessment-orders. Therefore, the assessment-orders passed by AO were rendered erroneous-cum-prejudicial to the interest of revenue warranting invocation of revision u/s 263.

4. Thereafter, the Ld. AR drew us to the final para of revision-order passed by CIT(E) reading as under:

*“7- Decision – As per the discussion made above, it is crystal clear that the orders of both the AO’s were erroneous as well as prejudicial to the interests of revenue as per section 263 of the Act. The claim of the assessee regarding exemption u/s 11/12 of the Act is not found acceptable and the assessee is not eligible to claim exemption u/s 10(23C)(iiiad) of the Act. However, the claim for benefit of revenue expenses is hereby allowed subject to verification of genuineness of expenses by the AO. **The AO is hereby directed to verify the cash deposits as per the assessment order dated 30.03.2022 and also to verify the genuineness of expenses claimed by the assessee. Hence, both the assessment orders passed earlier on 30.03.2022 and 16.05.2023 is hereby set aside for de-novo assessment.**”*

5. Having explained above, Ld. AR raised following contentions to assail the impugned revision-order:

- (i) That the CIT(E) initiated revision proceeding on the basis of alleged wrong claim of exemption u/s 10(23)(iiiad) in respect of 2 institutions run by assessee but ultimately passed revision-order directing the AO to verify the source of cash-deposits. Therefore, the revision-order is bad in law.
- (ii) That, during assessment-proceeding, the AO raised a specific query No. 12 in notice u/s 142(1) dated 10.02.2023 qua the deposit of Rs. 17,00,000/- made in assessee’s bank a/c and in reply-letter dated 28.02.2023, the assessee filed a complete explanation regarding

source of such deposit. The assessee submitted not only the complete details of various colleges/institutions run by it but also explained that the fee received from students was deposited in bank a/c. The AO was satisfied with the source explained by assessee and therefore passed assessment-order dated 16.05.2023 without making any addition.

- (iii) That the AO's twin assessment-orders u/s 147 dated 30.03.2022 and 16.05.2023 were concerned with the issue of cash deposit in bank a/c whereas the CIT(E) has initiated revisionary-action on the issue of non-allowability of exemption u/s 10(23C)(iiiad). Thus, the issue raised by CIT(E) was beyond the scope of assessment done by AO. Hence, the CIT(E) has wrongly invoked the provision of section 263 for an issue which was not the subject-matter of re-assessment proceeding by and before AO. In support of this contention, Ld. AR placed a heavy reliance upon *CIT Vs. Usha Martin Ventures Ltd. (2023) 150 taxmann.com 491 (Calcutta)* holding as under:

"4. The short issue involved in the instant case is whether the Commissioner of Income-tax (Appeals) [CIT(A)] could have assumed jurisdiction u/s 263 of the Act on the issue which was never the subject matter of the assessment in a proceeding initiated u/s 147 of the Act. On facts, the Id. Tribunal found that the issue of loss/expenditure incurred in respect of newly undertaken software product development project as capital as capital loss/expenditure was not touched by the AO in the reassessment proceedings u/s 147 of the Act. Therefore, the Id. Tribunal found that the Ld. CIT(A) was not justified in invoking the provisions of section 263 of the Act on an issue which was not the subject matter of the reassessment of the proceedings. The decision rendered by the Tribunal takes note of the correct legal position and, therefore, does not call for any interference.

[Emphasis supplied]

Another decision relied by Ld. AR is by ITAT Pune Bench 'A' in Gulab Badujar (HUF) vs. CIT (Central), Nagpur (I.T.A. Nos. 798 and 799/Pun/2015) holding thus:

"9. The question which arises is the exercise of revisionary jurisdiction by the CIT u/s 263 of the Act against the order passed u/s 143(3) r.w.s. 147 of the Act, wherein the assessment proceedings were re-opened on specific reasons recorded for re-opening. We have already referred to the additions made on the aforesaid reasons in the hands of assessee in the Para above. **Once, the re-assessment proceedings are initiated on a specific issue and the addition is made in the hands of the assessee then the CIT is precluded from exercise of jurisdiction u/s 263 of the Act on a ground which is not covered by the reasons during the reopening of the assessment since the time for completing the assessment u/s 143(3) of the Act had expired. Hence, we find no merit in the exercise of revisionary power by the CIT u/s 263 of the Act in the present facts and circumstances.**

10. We find support from the ratio laid down by the **Hon'ble Bombay High Court in the case of M/s. Ashoka Buildcon Ltd. Vs. ACIT reported in (2010) 191 Taxman 29** wherein also the question was of revisionary proceedings initiated u/s 263 of the Act against the assessment made which was re-opened u/s 147 of the Act. **The Hon'ble Bombay High Court noted that the re-assessment proceedings were in relation to a particular ground was and subsequent thereto of passing of the re-assessment and exercise of jurisdiction u/s 263 of the Act with reference to the issues, which did not form subject of re-opening of assessment cannot be exercised.**

11.

Taking strength from the order of Hon'ble Bombay High Court in Ashoka Buildcon Limited (supra), we hold that the order of revision passed in the present case, on issues which did not form subject of re-opening of the assessment or order of reassessment, cannot be upheld. Therefore, the revisionary proceedings exercised by the CIT is not correct. Hence, the said order of CIT is set-aside."

- (iv) Lastly, Ld. AR also submitted that the assessee has not claimed any exemption u/s 10(23)(iiia) as alleged by PCIT. To show this, Ld. AR firstly carried us to Page 36 of Paper-Book where a computation-sheet

of total income is placed and page 35 of Paper-Book where acknowledgement of income-tax return filed by assessee is placed. Referring to these documents, Ld. AR claimed that the assessee has declared a net income of Rs. 1,16,505/- chargeable under the head "Income from Other Sources" without claiming any exemption u/s 10(23C)(iiiad).

6. With above contentions, Ld. AR strongly prayed that the revision-order passed by CIT(E) is not sustainable and must be quashed and the AO's assessment-orders must be restored.

7. Per contra, Ld. DR for revenue raised following contentions to oppose the submissions of Ld. AR:

- (i) The assessee in present case is a society under Societies' Act but it has obtained PAN number as AOP(Trust). According to Ld. DR, there is no exemption limit for a society and the first tax-slab of a society itself is 10% for total income of Rs. 10,000/- whereas the assessee is availing exemption limit as applicable to an individual by obtaining PAN number of AOP (Trust). Therefore, the decision in ***Usha Martin*** (supra) is not applicable to assessee's case.
- (ii) In first assessment-order dated 30.03.2022, the AO made addition of Rs. 17,00,000/- but in second assessment-order dated 16.05.2023, the AO has not made such addition. Therefore, the second assessment-order dated 16.05.2023 is erroneous being contrary to the first assessment-order as well as prejudicial to the interest of revenue.

8. We have considered rival contentions of both sides and perused the impugned order as well as the material held on record to which our attention has been drawn. At first, we take note of two vital aspects of the proceeding done by Ld. CIT(E). The *first* aspect is such that the CIT(E) initiated revisionary action on the basis that the AO had not examined that the gross-receipts of 2 institutions run by assessee exceeded the prescribed limit of Rs. 1 Crore and therefore exemption u/s 10(23C)(iiiad) was not allowable in relation to those 2 institutions. The *second* aspect is such that the CIT(E) has ultimately passed revision-order with a finding that the assessee is not eligible to claim exemption u/s 10(23C)(iiiad) but the benefit of revenue expenses is allowable to assessee subject to verification of genuineness of expenses and directing the AO to verify cash deposits as deposit as per assessment-order dated 30.03.2022 and also to verify the genuineness of expenses claimed by assessee, thus setting aside both of the assessment-orders dated 30.03.2022 and 16.05.2023. Having taken note of these aspects, we find that the CIT(E) has revised the twin assessment-orders dated 30.03.2022 and 16.05.2023 which were passed by AO u/s 147. Admittedly, both of those assessment-orders were passed by AO in the proceeding of reassessments u/s 147 r.w.s. 144/144B on the issue of deposit of Rs. 17,00,000/- in bank a/c whereas the CIT(E) has initiated revisionary-action by alleging AO's lack of examination *qua* the issue of exemption u/s 10(23C)(iiiad). Thus, the issue raised by CIT(E) is clearly beyond the scope of re-assessment proceeding in which the impugned

assessment-orders dated 30.03.2022 and 16.05.2023 were passed by AO. When it so, the CIT(E) is not justified in invoking revision u/s 263 qua an issue which was not subject-matter before AO and it is for this reason that the decisions of ***Usha Martin*** and ***Gulab Badgujar*** relied by Ld. AR are directly applicable to assessee's case. Ld. DR for revenue has raised a contention that the decision in ***Usha Martin*** is not applicable to assessee for the reason that the assessee has obtained PAN number as AOP(Trust) for availing basic exemption limit as applicable to an individual whereas a society has no exemption limit, the first tax-slab of a society is 10% for total income of Rs. 10,000/-. This contention raised by Ld. DR is not valid for the reason that the assessee is a society existing for advancement of education and not a 'co-operative society'. The first tax-slab of 10% for total income of Rs. 10,000/- is applicable only to a 'co-operative society' and not to assessee-society which is engaged in educational activity. It is also a fact that the revenue has always assessed the assessee as AOP(Trust) without raising any such objection as pointed by Ld. DR. Moreover, the decision of ***Usha Martin*** is on the point that the revisionary-action u/s 263 cannot be taken by PCIT/CIT for an issue which was not subject-matter of re-assessment before AO and exactly same point is involved in assessee's present case. Therefore, we agree that the decisions in ***Usha Martin*** and ***Gulab Badgujar*** as relied by Ld. AR are applicable to assessee's case. Accordingly, following the view taken in those decisions, we too agree that the revision-order passed by CIT(E) for the issue of exemption u/s

10(23)(iiiad), which was not a subject-matter of re-assessment proceeding before AO, is not valid. However, we agree to the contention raised by Ld. DR for revenue that in first assessment-order dated 30.03.2022, the AO made addition of Rs. 17,00,000/- but in second assessment-order dated 16.05.2023, the AO has not made such addition. Therefore, the second assessment-order dated 16.05.2023 is erroneous being contrary to the first assessment-order as well as prejudicial to the interest of revenue. Being so, we uphold the direction given by Ld. CIT(E) to AO qua the issue of cash deposit in bank a/c.

9. Resultantly, this appeal is partly allowed.

Order pronounced in open court on 20.09.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 20.09.2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore