

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI B R BASKARAN, ACCOUNTANT MEMBER,  
&  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No.3940 & 3941/MUM/2024  
(Assessment Year :2016-17 & 2015-16)**

Sunil J. Jagtap, Income Tax Officer(Exemptions) - 1(2), Mumbai - 400026	Vs.	Centre for the Study of Social Change, F-Block, Plot No.6, T.P.S. Road, 12, Opposite Govt. Colony, Bldg No.326, Bandra East, Mumbai - 400051
<b>PAN/GIR No.AAATC2555L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Tanmay Padhke, AR
Revenue by	Mr. R.A. Dhyani, CIT DR
<b>Date of Hearing</b>	<b>19/09/2024</b>
<b>Date of Pronouncement</b>	<b>25/09/2024</b>

**आदेश / O R D E R**

**PER SUNIL KUMAR SINGH (J.M):**

1. These two appeals have been preferred against the impugned orders each dated 11.06.2024 passed in Appeal nos. NFAC/2015-16/10118502 and NFAC/2014-15/10118500 by the Ld. Commissioner

of Income-tax(Appeals)/National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Years [A.Y.] 2016-17 and 2015-16 respectively, wherein learned CIT(A) has quashed the assessment u/s. 143(3) based on the order u/s. 263 of the Act passed by the learned CIT(Exemptions).

2. Both the appeals in ITA No.3940/Mum/2024 and 3941/Mum/2024 have been filed by the Revenue on common grounds against the impugned orders each dated 11.06.2024, hence for the sake of brevity both the appeals are being decided by a common order.

**ITA No.3940/Mum/2024**

3. The brief facts under appeal state that the assessee is a public charitable trust registered under the Bombay Public Trust Act, 1950 and granted registration u/s.12A of the Act. In AY 2016-17, the vacant premises of the assessee were used by two charitable trusts namely All India Institute of Local Self Government (AIIILSG) and Life Supporters Institute of Health Sciences (LIHS) registered under Section 12A of the Act to the extent of 35,000 and 2585.29 sq.ft respectively. According to the assessee, it did not receive any consideration in form of rent and therefore no income was offered to tax in the return of income regarding the same. The return was scrutinized by the learned Assessing Officer and an assessment order dated 22.12.2018 was passed under section 143(3) of the Act by making the following additions (i) Addition of Rs. 18,61,409/- on account of the notional rental income under the head income from other sources with regard to the premises utilized by LIHS

(ii) Addition of Rs. 4,80,00,000/- on account of the alleged cessation of a liability.

3.1. On the basis of the original assessment order of the AY 2016-17, the learned CIT(Exemptions)- Mumbai, vide order dated 26.02.2021, passed u/s. 263 of the Act, set aside the original assessment order dated 22.12.2018 and directed the learned Assessing Officer to carry out the necessary enquiries and pass a fresh assessment order in this regard.

3.2. Aggrieved, assessee went in appeal before the Tribunal. The matter was heard on 25.01.2022 and the order is awaited as on date. In response to the order of the learned CIT(Exemptions)- Mumbai, the learned CIT(A), National Faceless Assessment Centre, issued notices to the assessee from time to time that were duly responded to. During the course of the assessment proceeding, a show cause notice was issued to the assessee proposing the addition of Rs. 7,50,61,409/-, to which the assessee filed a very detailed submission in response. At the outset, it was pointed out to the learned CIT(A), National Faceless Assessment Centre that the proposed additions of Rs. 18,61,409/- and 4,80,00,000/- were exceeding the jurisdiction as the said issues were not the subject matter of Section 263 proceeding. With regard to the proposed addition of Rs. 2,52,00,000/-, assessee submitted that-

- (i) both the charitable trusts do not fall within the ambit of section 13(3) of the Act and thus, the addition proposed by invoking sections 13(2) and 13(1)(c) were not tenable in law/
- (ii) the proposed addition on account of notional rental was contrary to the real income theory as expounded by the Hon'ble Courts

- (iii) section 14 does not have any role to play since the assessee is a charitable entity and the income of the assessee is liable to be computed as per the provisions of section 11 to 13. In other words, the addition proposed under the head income from other sources was not in consonance with the provisions of the Act.
- (iv) There is no provision contemplating an addition on account of the notional rental income under sections 11 to 13 of the Act and thus, the proposed addition was untenable in law.
- (v) The assessee did not receive any donations from the aforesaid two charitable trusts.

3.3. Meantime, learned Assessing Officer passed assessment order u/s. 143(3) r.w.s. 263 of the Act, on 28.03.2022 and made addition of Rs.7,50,61,409/-. Aggrieved, assessee went in appeal before the learned CIT(A), who allowed the appeal of the assessee.

4. Revenue has filed this appeal on the ground that the learned CIT(A) was not right in setting aside the assessment order u/s. 143(3) based on the order u/s. 263 of the Act, only on the basis of the decision of ITAT, since the Department has filed an appeal before the Hon'ble High Court.

5. Perused the records and heard arguments on behalf of the learned representatives for both the parties.

6. Learned representative for the assessee has submitted that the assessment order passed u/s. 143(3) was based on the revisional order u/s.263 of the Act. ITAT in ITA No.675/Mum/2021 for AY 2015-16 and in ITA No.676/Mum/2021 for AY 2016-17, vide consolidated order dated

22.4.2022, set aside the order u/s. 263 of the Act for the relevant two AYs. Prayed to dismiss the Revenue's appeal.

7. Learned DR fairly agreed that the order passed u/s. 263 has been quashed by the ITAT, as stated above, however, learned DR reiterated that the Revenue has filed an appeal against the said order dated 22.4.2022 passed by the ITAT before Hon'ble High Court.

8. We have gone through the order dated 22.4.2022 passed by the ITAT in assessee's own case in ITA No.675/Mum/2021 for AY 2015-16 and in ITA No.676/Mum/2021 for AY 2016-17. The relevant para-11 is reproduced as under:

*"11. Taking into consideration entire facts of the case, we do not find that the view taken by the Assessing Officer was in any manner erroneous. For invoking the provisions of section 263 of the Act twin conditions i.e. the assessment order should be erroneous and prejudicial to the interest of revenue should be satisfied. If any one of the above conditions are not met, the assessment order cannot be a subject matter of revision under section. 263 of the Act. The view taken by the Assessing Officer in the impugned assessment year in respect of rent from AILSG is the view which has been consistently followed since 2005 and accepted by the Department. Since, we have held that the assessment order is not erroneous, one of the two mandatory condition as set out in section 263 of the Act is not satisfied. Ergo, the CIT(E) has erred in exercising revisional powers in the present case. Consequently, the impugned order is set-aside and appeal by the assessee is allowed.*

9. In view of the aforesaid ITAT order dated 22.4.2022, the order, dated 26.02.2021 passed u/s. 263 of the Act by learned CIT(Exemptions), has already been set aside, hence the assessment order passed u/s. 143(3) based on this order u/s. 263 of the Act, does not survive, since the foundation collapses, the structure does not survive. We do not find any illegality or infirmity in the impugned order. Therefore, the impugned is sustained.

10. In the result, appeal of the Revenue is dismissed.

**ITA No.3941/Mum/2024**

11. Since the facts in ITA No.3940/Mum/2024 for AY 2016-17 are identical to ITA No. 3941/Mum/2024 for AY 2015-16, the aforesaid finding given by us while deciding the said appeal would mutatis mutandis apply to the present appeal. Hence, this appeal of the Revenue is also dismissed.

12. In the result, both the appeals, ITA No.3940/Mum/2024 and ITA No. 3941/Mum/2024 filed by the Revenue are dismissed, subject to the outcome of appeal, said to be pending before Hon'ble High Court. Let copy of this order be placed on ITA No.3941/Mum/2024.

Order pronounced in open court today on 25.09.2024

Sd/-  
**(B R BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated: 25/09/2024

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**