

आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SHRI SONJOY SARMA, JUDICIAL MEMBER

I.T.A. No. 852/KOL/2024
Assessment Year: 2018-19

Global Alumni Association of Bengal Engineering and Science University Bengal Engineering and Science University Ground Floor, Shivpuri, Howrah-711103, West Bengal [PAN : AABTG2062K]	Vs	CIT (Exemption) 10B, Middleton Row (6th Floor), Kolkata, West Bengal, 700071
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Sanjay Bhattacharaya, FCA
Revenue by :	Shri Subhendu Datta, CIT DR

सुनवाई की तारीख/Date of Hearing : 21.08.2024
घोषणा की तारीख /Date of Pronouncement : 30.10.2024

आदेश/O R D E R

PER SONJOY SARMA, JUDICIAL MEMBER:

The captioned appeal filed by the assessee, pertaining to assessment year 2018-19 directed against the order passed by the Learned Commissioner of Income Tax (Exemption), Kolkata (hereinafter referred to as the 'Id. CIT(E)') dated 1st March, 2024 passed u/s 263 of the Income Tax Act, 1961 ('Act'), which is arising out of the assessment order u/s 143(3) read with section 144B of the Act vide order dated 21st April, 2021.

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

“1. That the Ld. Commissioner of Income-tax (Exemption), Kolkata was wrong in holding the Assessment Order dated 21/04/2021 passed u/s 143(3) as allegedly erroneous and prejudicial to the interest of revenue within the meaning of Section 263 and in partly setting aside the said Assessment Order.

2. That without prejudice to the contention raised in Ground No.1 above, the Ld. Commissioner of Income-tax (Exemption), Kolkata failed to appreciate the fact that as per Section 12A(1)(b) furnishing of the Return of Income u/s 139(4) by the appellant had been due compliance of the provisions of Section 12A(1)(b) and thus he erred in holding the Assessment Order dated 21/04/2021 as allegedly erroneous and prejudicial to the interest of the revenue.

3. That without prejudice to the contention raised in Ground No.1 above, the Ld. Commissioner of Income-tax (Exemption), Kolkata failed to appreciate that the appellant had not claimed any deduction u/s 11(2) for accumulation and accordingly the Assessing Officer did not allow any accumulation u/s 11(2) and thus he erred in holding the Assessment Order dated 21/04/2021 as allegedly erroneous and prejudicial to the interest of the revenue.”

3. Although the appellant / assessee aggrieved by the order of ld. CIT (E) on multiple grounds, but primarily that the assessment order dated 21st April, 2021, is not erroneous or prejudicial to the interest of the Revenue, as held by the ld. CIT (Exemption) while passing the Revisionary order. The core issue arises due to the ld. CIT's invocation of power u/s 263 of the Income-tax Act, 1961 (the Act), whereby the ld. CIT alleged that the ld. AO failed to examine the key facts and law while granting certain exemptions u/s 11 of the Act. The ld. CIT also observed that the appellant did not file the return of income within the due date prescribed u/s 139(1) of the Act. Therefore, the benefits of exemption u/s 11 of the Act, ought not to have been granted to the assessee.

4. Brief facts of the case are that the appellant is a charitable trust registered u/s 12AA of the Act claiming exemption u/s 11 of the Act for the A.Y. 2018-19. In the case of the assessee, the assessment for the year under consideration was completed by the ld. AO u/s 143(3) on 21st April, 2021, whereby the total income of the assessee was determined at ₹2,45,330/-. While passing the

assessment order the ld. AO allowed the exemption u/s 11 of the Act as claimed by the appellant/ assessee, despite the return of income have not been filed belatedly i.e. on 28.12.2018. After the due date specified u/s 139(1) of the Act, which was to be filed on 31.10.2018. Subsequently, the above facts brought to the notice of the ld. CIT (Exemption) and invoked the provisions of Section 263 of the Act on the ground that;

- a. The ld. AO did not take into account of provision of Section 12A (1)(ba) of the Act, which mandates that for availing exemption u/s 11 of the Act, the return must be filed within the time limit allowed u/s 139(1) of the Act or Sectio 139(4A) of the Act.
 - b. Certain expenses amounting to Rs.13,96,826/- incurred out of the corpus funds were incorrectly treated as application of income.
 - c. The accumulation of 52,06,495/- u/s 11(2) of the Act was to be disallowed since form no.10 was filed after due date and the return was not filed within the prescribed time.
5. On this, issue the appellant contested the CIT's observation and argued that;
- a. The return was filed within the extended time as allowed u/s 139(4) of the Act and should be considered as compliant for the purpose of section 12A(1)(ba) of the Act.
 - b. No deduction was claimed u/s 11(2) of the Act for accumulation, since, no surplus funds was available.

Therefore, the proposed disallowance u/s 11(2) of the Act as alleged by ld. CIT (Exemption) was not correct.

- c. The application of corpus funds for charitable purpose was correctly accounted for as application of income, and, ld. CIT(Exemption) interpretation of Section 11(1)(d) was incorrect.

6. At the time of hearing the ld. Authorised Representative stated that the power conferred upon the ld. CIT (E) u/s 263 of the Act are wide but not unbridled. It is settled law that for an order to be revised u/s 263 of the Act two conditions must be satisfied;

- a. The order must be erroneous
- b. The order must be prejudicial to the interest of the Revenue.

7. Mere error in judgement of deferring interpretation of law does not warrant revision u/s 263 of the Act unless it is shown that the AO's order was palpably erroneous, which lead to loss of Revenue.

8. In the present case, the ld. CIT (E) invoked the section 263 of the Act on the ground that the ld. AO allowed exemption u/s 11 despite the return being filed after the due date u/s 139(1) of the Act. The CIT (E) further alleged that the ld. AO failed to scrutinise the corpus fund application and accumulation u/s 11(2) of the Act. However, the contention made by the ld. CIT(E) are not sufficient to uphold the Revisionary order. The ld. Counsel for the assessee also stated that the main thrust of the impugned order reveals that Section 12A(1)(ba) of the Act which mandates for availing the exemption u/s 11 of the Act, the return must be filed within the

due date specified u/s 139 (4) of the Act. In the present case of the assessee the return was filed u/s 139(4) of the Act, which allow the filing of the return up to the end of assessment year. He therefore, contended that that the appellant return was validly filed u/s 139(4) of the Act and the ld. AO rightly allowed the exemption u/s 11 of the Act. Therefore, the ld. CIT (E) observation context is not tenable. The ld. Counsel for the assessee further stated that the expenses incurred out of corpus fund could not be treated as application of income as corpus donation are exempted u/s 11(1)(d) of the Act. The ld. AR stated that the expenses incurred by the appellant out of corpus funds for the charitable purposes were rightly considered as application of income and the view taken by ld. CIT (E) on this matter is incorrect. The ld. Counsel for the assessee also stated that the CIT (E) disallowed the accumulation of ₹52,06,495/- u/s 11(2) of the Act, on the ground that form no. 10 was filed after due date of the filing of the return. However, the appellant contended that no claim of accumulation was made in the return as no surplus was available for such accumulation.

9. On the other hand, the ld. DR supported the Revisionary order passed by ld. CIT (E) and objected to such prayer made by the assessee before the Bench. We after hearing the rival submissions of the parties and perusing the material available on record, we find that the power conferred upon the ld. CIT (E) u/s 263 of the Act are wide but it is settled law for revisionary order u/s 263 of the Act, two conditions must be satisfied; (1) the order must be erroneous and then the order must be prejudicial to the interest of the Revenue. (2) while passing the revisionary order mere error in the judgement or deferring interpretation of law does not warrant a revision proceedings u/s 263 of the Act unless it is

shown that the ld. AO's order was erroneous and lead to loss of Revenue.

10. In the present case, the ld. Ao allowed the exemption u/s 11 of the Act, return being filed after due date u/s 139(1) of the Act and the ld. CIT (A) further alleged that the ld. AO failed to scrutinize the corpus funds u/s 11(2) of the Act are not correct. On this context the appellant relied on the decision of hon'ble Supreme Court in case of **CIT vs. The Nagpur Hotel Owners Association (2001) 247 ITR 201 dated on 13 December, 2000**, has held that if form no.10 requires to be filed u/s 11(2) of the Act read with Rule 17 is furnished on or before the completion of the assessment proceedings by the Ld. AO then benefit of exemption u/s 11 of the Act cannot be denied to the Trust u/s 11(2) of the Act. In the present case the assessee although filed its return belatedly but within the time specified u/s 139(4) of the Act. Therefore, it cannot be said that return was filed after a due date and benefit of Section 11 of the Act cannot be denied on this ground alone. In the light of the above decision, we find that the appellant's return was validly filed u/s 139(4) of the Act and therefore, the ld. AO rightly allowed the exemption u/s 11 of the Act. Accordingly, the ld. CIT's (Exemption) observation in this regard is not tenable on the another issue regarding application of the corpus fund. The expense incurred by the appellant out of the corpus funds for the charitable purposes, were rightly considered as application of income and the ld. CIT(E)'s view on this matter is incorrect, besides that the ld. CIT (E) proposed to disallowed the accumulation of ₹52,06,495/- u/s 11(1) of the Act on the ground that form no.10 was filed after the due date of filing of return. However, the contention of the assessee is that no claim for accumulation was made in the return as no surplus was available

for such accumulation and the assessee relied on the decision of Tribunal decision of Pune Bench as in the case of **The Nagpur Hotel Owners Association** (*supra*), held that if form no. 10 requires to file u/s 11(2) read with Rule 17 is furnished on or before the completion of the assessment proceedings by the ld. AO then benefit of exemption u/s 11 of the Act cannot be denied to the trust u/s 11(2) of the Act. Considering the same, the question of disallowing the benefit of accumulation u/s 11(2) of the Act does not arise following the same view and applying in the present case since, the appellant did not claim any accumulation u/s 11(2) of the Act, therefore, the ld. CIT(E)'s order disallowing the same is not sustainable. In view of the above discussion and judicial precedents cited above, we find that the assessment order dated 21st April, 2021 passed by the ld. AO u/s 143(3) of the Act was neither erroneous nor prejudicial to the interest of the Revenue. The return was validly file u/s 139(4) of the Act. The application of the corpus fund was correctly treated as application of income as no accumulation under section 11(2) of the Act was claimed by the appellant/ assessee. In terms of the above, the order passed by the ld. CIT(E) u/s 263 of the Act is set aside and the appeal of the assessee is allowed.

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

Order pronounced in the Court on 30th October, 2024 at Kolkata.

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated 30.10.2024

*SS, Sr.Ps



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

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आदेशानुसार/ BY ORDER,

Sr. PS/ Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata