

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2923/MUM/2024
Assessment Year: 2016-17**

Indian Education Society, 135/145, Raja Shivaji Vidyasankul, L.N. Road, Hindu Colony, Dadar (East), Mumbai 400 014 (PAN : AAAT12540P)	Vs.	Commissioner of Income Tax (E), Mumbai
(Assessee)		(Respondent)

Present for:

Assessee : Shri Devendra Jain, Advocate
Revenue : Shri Jayant Jhaveri, CIT, DR

Date of Hearing : 29.10.2024
Date of Pronouncement : 30.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(Exemptions), Mumbai, vide order no. ITBA/REV/F/REV5/2023-24/1063061178(1), dated 21.03.2024 passed under section 263 of the Income-tax Act (hereinafter referred to as the "Act") against the reassessment order passed by the National E-Assessment Centre, Delhi, u/s. 147 r.w.s. 144B, dated 25.03.2022, for Assessment Year 2016-17.

2. The solitary issue involved in this appeal is challenging the jurisdiction of the Id. CIT(E) for invoking the provision of section 263 of the Act on the ground that the assessment order passed by the Id. Assessing Officer is erroneous and prejudicial to the interest of the Revenue.

3. Brief facts of the case are that assessee is a charitable trust registered under Bombay Public Trust Act, 1950 and a society registered under Societies Registration Act, 1860. It is also registered u/s. 12A of the Act claiming benefit of exemption u/s.11. Assessee has 17 campuses comprising of 65 schools, three colleges and one students' hostel. Primary objective of assessee is to impart and promote education. Assessee filed its return of income on 10.10.2016 reporting total income at Nil. Re-assessment proceedings were initiated u/s. 147 by issue of notice u/s.148 on 31.03.2021. Reasons to believe recorded by the Id. Assessing Officer was based on information received from JDIT(Inv.)(OSD) Unit-2(3), Mumbai in respect of collection of capitation fees and false claim of exemption u/s. 10(23) of the Act by falsely showing capitation fees as donation from benevolent donors amounting to Rs. 2,83,11,680/-. In the said reasons to believe, Id. Assessing Officer noted that assessee has not shown any income or receipt on account of capitation fee or development fund. Further, assessee in the course of investigation had not furnished any documentary evidence to establish that capitation fees/development fund received by the assessee was forming part of excess of income over expenditure and was utilised for acquiring movable and immovable assets for educational purposes.

3.1. Ld. Assessing Officer thus formed the belief that assessee had received capitation fees or development fund in cash or kind which has

not been disclosed in the return, resulting in escapement of income. In the course of re-assessment proceedings, assessee was called to furnish the required details and evidences. Considering the same, ld. Assessing Officer concluded that corpus donation received by the assessee shall be treated as general donation to the trust and thereby re-computed the exemption available u/s. 11 and 12 which resulted in the total assessed income at Rs.2,40,46,410/- for which assessee went in appeal before the ld. CIT(A).

4. In the meanwhile, ld. CIT(E), Mumbai noted from the perusal of assessment records that in Form No.10 filed by the assessee for Assessment Year 2016-17, it had shown total accumulation of Rs.17,54,96,993/- u/s.11(2) for Assessment Year 2015-16. According to him, in the computation of income for Assessment Year 2016-17, assessee had claimed utilisation of accumulation amount of Rs.15,95,41,824/- and remaining amount of Rs.1,59,55,169/- was added back to the income of the assessee. Assessee then claimed accumulation of Rs.19,00,00,000/- u/s.11(2) which included unutilised amount of Assessment Year 2015-16. He, thus formed a prima facie view that the re-assessment order passed u/s.147 r.w.s. 144B is erroneous in so far as prejudicial to the interest of Revenue. A show cause notice, dated 18.12.2023, was issued u/s. 263 of the Act by invoking revisionary proceedings.

4.1. Assessee furnished its reply explaining the claim of exemption towards accumulation along with documentary evidences. After considering the submissions made by the assessee, ld. CIT(E) drew his consideration that ld. Assessing Officer has not verified the said accumulation and application for the year under consideration for the purpose of the object of the trust for which the amount was set apart.

He found that ld. Assessing Officer has not conducted necessary verification of expenditure claimed out of accumulated funds of Rs.1,59,55,169/-. Ld. Assessing Officer was thus, directed to examine whether the expenditure so incurred by the assessee is in conformity with the purpose stated in Form 10 at the time of accumulation.

5. On the above stated facts, ld. Counsel for the assessee challenged the jurisdictional issue of the impugned order passed u/s.263 which is barred by limitation. He submitted that originally the return was processed u/s.143(1) for which intimation was issued on 07.12.2017, accepting the returned income with no adjustments made therein.

5.1. Later the case was taken up for re-assessment by initiating proceedings u/s.147 for which the re-assessment order was passed on 25.03.2022. Ld. Counsel contested that re-assessment proceedings u/s.147 were taken up on the issue relating to receipt on capitation fees/development fund alleged by the ld. Assessing Officer which has not been shown as income or receipt in the return filed by the assessee. The said re-assessment proceedings were completed by passing an order in which total income was assessed at Rs.2,40,46,410/- against Nil income reported by the assessee, which was on account of capitation fee/development fund treated as general donation.

5.2. According to the ld. Counsel, issue raised by the ld. CIT(E) in the show cause notice issued u/s. 263 invoking revisionary proceedings is in respect of claim of Rs.1,59,55,169/- out of accumulated funds which has not been verified by the ld. Assessing Officer in the re-assessment proceedings. He thus, strongly submitted that the issue

raised in the impugned revisionary proceedings is not arising out of the re-assessment proceedings and the re-assessment order passed thereupon. According to him, revisionary proceedings can be taken up only on issues which had been the subject matter of assessment/re-assessment. When there is no occasion with the ld. Assessing Officer to have dealt with the subject matter, there cannot be revisionary proceedings for that subject matter to hold it as erroneous in so far as it is prejudicial to the interest of Revenue.

5.3. To buttress his contentions, ld. Counsel placed reliance on the decision of Hon'ble jurisdictional High Court of Bombay in the case of CIT vs. Lark Chemicals Ltd. (2015) 55 taxmann.com 446 (Bom) wherein *inter alia* substantial question of law on similar issue was dealt with. Ld. Counsel pointed out similarity in the facts of this case with the case of the assessee by referring to para 6 of this decision wherein it is stated that –

“6. On March 17, 2009, the Commissioner of Income-tax issued a show-cause notice to the respondent under section 263 of the Act seeking to revise the order dated June 28, 2006, passed during the reassessment proceeding. The issues raised in the above notice under section 263 of the Act sought to revise the issues decided not only in the order dated June 28, 2006, but also issues which were in fact accepted/assessed by order/intimation under section 143(1) of the Act.”

5.4. Hon'ble Court observed that except the issue of non-genuine purchases, all other issues dealt with by the ld. CIT in order dated 30.03.2009 were not a subject matter of the assessment order passed on 28.06.2006 u/s. 143(3)/147 of the Act. All the other issues on which ld. CIT sought to exercise jurisdiction u/s.263 were concluded by virtue of an intimation u/s.143(1) which admittedly was done beyond a period of two years prior to the show cause notice dated 14.03.2022 issued u/s. 263. According to the Hon'ble Court, it is an admitted position that ld. CIT has not exercised revisional jurisdiction

in respect of intimation passed u/s. 143(1) within two years of it being passed. Therefore, exercise of jurisdiction on those issues u/s.263 is time barred. Hon'ble Court considered the decision in the case of CIT vs. Anderson Marine & Sons (P) Ltd. (2004) 266 ITR 694 (Bom) as well as decision of Hon'ble Apex Court in the case of Alagendran Finance Ltd. (2007) 293 ITR 11 (SC) who held that jurisdiction u/s. 263 cannot be exercised on issue which was not subject matter of consideration while passing the order of re-assessment u/s. 143(3) r.w.s. 147 of the Act but was part of an assessment done earlier under the Act. According to the Hon'ble Court principle laid down in the aforesaid decisions is that a notice u/s. 263 of the Act cannot be issued beyond a period of two years from the date when the orders sought to be revised is passed. Accordingly, decision was held in favour of the assessee.

5.5. Ld. Counsel also placed reliance on the decision of Hon'ble High Court of Madras in the case of Indira Industries vs. PCIT (2018) 95 taxmann.com 292 (Mad) which on similar set of facts, accepted the submissions of the assessee and held that the impugned notice u/s. 263 is bad in law. Ld. Counsel also referred to the relevant paragraph of the decision of Hon'ble Supreme Court in the case of Alagendran Finance Ltd. (supra) which is reproduced as under:

"15. We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income-tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section (2) of Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income-tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceedings a nullity."

5.6. Accordingly, on the strength of the above judicial precedents covering the present facts of the case, ld. Counsel asserted that the

impugned proceedings u/s. 263 and the order passed thereon are liable to be quashed, barred by limitation.

6. Per contra, ld. CIT DR emphasised on the fact that re-assessment order u/s. 147 is dated 25.03.2022 and the impugned revisionary order u/s. 263 is dated 21.03.2024 which is within the prescribed time limit of two years and hence justified.

6.1. In the rebuttal, ld. Counsel for the assessee referred to para 5 of the re-assessment order u/s. 147 to point out that ld. Assessing Officer had computed taxable income of the assessee by taking into consideration corpus donation as general donation. He also pointed out that section 147 contains that ld. Assessing Officer shall bring to tax, income which has escaped assessment, where he has reasons to believe and also any other income chargeable to tax which has escaped assessment and which has come to his notice subsequently in the course of the proceedings under this section. He thus laid emphasis that for any other income to bring it to tax in the proceedings u/s.147, it has to come to his notice in the course of the said proceedings itself. Where the subject matter of revisionary proceedings u/s.263 has not come to the notice of the ld. Assessing Officer in the course of re-assessment proceedings u/s. 147, there is no occasion for ld. CIT(E) to invoke revisionary proceedings for the re-assessment order passed u/s.147. The issue so raised in the show cause notice u/s. 263 relates back to the intimation issued u/s. 143(1) which falls beyond the period of two years as prescribed u/s. 263. Accordingly, ld. CIT(E) had no jurisdiction to invoke revisionary proceeding on the issue referred by him in the said proceedings.

7. We have heard both the parties and perused the material on record. We have also given our thoughtful consideration to the judicial precedents relied upon. The issue dealt with by Id. Assessing Officer in the re-assessment proceedings and the order passed u/w. 147 and the one dealt in the revisionary proceedings u/s.263 and the order passed thereon by Id. CIT(E) are altogether un-related and different in their character. Id. CIT(E) has sought to revise the re-assessment order on a subject matter which had not come to the notice of the Id. Assessing Officer in the re-assessment proceedings since the issue dealt by him as recorded in the reasons to believe was on a different footing. For the issue raised by the Id. CIT(E) to invoke revisionary proceedings u/s.263, it had to necessarily relate to intimation passed u/s.143(1) which falls beyond the bracket of two years prescribed u/s. 263 of the Act. Facts in this respect are undisputed and uncontroverted as narrated above.

7.1. We thus, are in agreement with the contentions raised by the Id. Counsel of the assessee. We draw force from the decision of Hon'ble jurisdictional High Court of Bombay in the case of Lark Chemicals Ltd. (supra) as well as decision of Hon'ble High Court of Madras in the case of Indira Industries (supra) both of which had considered the decision of Hon'ble Supreme Court in the case of Alagendran Finance Ltd. (supra). Accordingly, at the threshold of the jurisdictional issue, relating to impugned revisionary order barred by limitation, we allow the appeal of the assessee and quash the revisionary order passed u/s. 263 of the Act.

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

Order is pronounced in the open court on 30 October, 2024

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 October, 2024

MP, Sr.P.S.

Copy to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai