

INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH : VISAKHAPATNAM

[THROUGH VIRTUAL HEARING]

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.110/VIZ./2021
Assessment Year 2016-2017

GMR Varalakshmi Foundation, Srikakulam. PAN AACCG6476B	vs.	The CIT (Exemption) Hyderabad at Vizag.
(Appellant)		(Respondent)

For Assessee :	Shri Manish V. Shah, CA Shri Sunil Jain, CA
For Revenue :	Dr. Satyasai Rath, CIT-DR

Date of Hearing :	24.02.2025
Date of Pronouncement :	21.03.2025

ORDER

PER MANJUNATHA G, A.M. :

This appeal filed by the assessee has been directed against the order of the learned CIT-(Exemption), Hyderabad at Vizag, dated 30.03.2021, passed u/sec.263 of the Income Tax Act, 1961 [in short “the Act”], relating to assessment year 2016-2017.

2. Facts of the case, in brief, are that the assessee viz., GMR Varalakshmi Foundation has been incorporated u/sec.25 of the Companies Act, 1956 [No.1 of 1956]. The assessee is running educational institutions, hospital and engaged in community services. It had e-filed its return of income on 03.10.2016 for the impugned assessment year 2016-2017 admitting total income at Rs.-NIL-, after claiming exemption u/sec.11 of the Income Tax Act, 1961. Subsequently, the case of the assessee trust was selected for scrutiny under CASS. Accordingly, the Assessing Officer issued notice u/sec.143(2) Act dated 04.07.2017 and statutory notices u/sec.142(1) along with questionnaire on 05.01.2018 and 18.05.2018 which were duly served upon the assessee. In response to the said notice dated 18.05.2018, the assessee trust filed information electronically through e-filing portal of the Department. The Assessing Officer carefully examined the 12A registration certificate of the assessee trust and noted that the said certificate was issued in favour of "Sri Grandhi China Sanyasi Raju Memorial Educational Institute" and as per

the return of income the name of the assessee is "GMR Varalakshmi Foundation". Therefore, the Assessing Officer asked the assessee to clarify on this aspect. In response to the above mentioned query, the assessee has filed its reply dated 26.10.2018 contending inter alia that "Sri Grandhi Chinna Sanyasi Raju Memorial Educational Institute" was established and registered as a Society under the Societies Act, in Rajam on 13.11.1991. Later the name of the assessee society is changed to "GMR Foundation" w.e.f. 15.02.2002 and that the society has converted to company on 09.12.2003 under the provisions of Companies Act, 1956. Later again changed its name to "GMR Varalakshmi Foundation" w.e.f. 31.03.2005. The assessee submitted that the change in name and status of the society was intimated to Income Tax Department and accorded relevant approvals including approval required u/sec.80G of the Income Tax and uploaded the relevant approvals also for verification of the Assessing Officer. The Assessing Officer after considering the documents placed on record, noted that the assessee society has not furnished any evidence with

reference to sec.12A certificate issued by the Competent Authority in the name of the assessee society viz., GMR Varalakshmi Foundation. Therefore, the Assessing Officer again issued notice u/sec.142(1) dated 03.12.2018 asking the assessee to furnish 12A certificate in the name of GMR Varalakshmi Foundation. In response to the said notice, the assessee contended that it has initiated the process of making representation to the authority to record the change in name as 'GMR Varalakshmi Foundation'. Since the assessee was failed to submit the details as called for by the Assessing Officer, on being not satisfied with the explanation offered by the assessee and in absence of Certificate of Registration u/sec.12A of the Act in the name of 'GMR Varalakshmi Foundation', the Assessing Officer rejected the claim of exemption u/sec.11 of the Act.

2.1. The Assessing Officer issued show cause notice dated 03.12.2018 wherein the assessee was asked to file the complete information with respect to 'Utilization Statement' in the prescribed format. In response thereto, the assessee filed it's statement. The Assessing Officer on perusal of the

statement noted that the assessee trust has gross receipts of Rs.69,92,38,750/- and the expenditure is of Rs.96,61,34,141/- and the assessee has also furnished the source of excess expenditure sum of Rs.26,68,95,381/-. However, the Assessing Officer noticed as per the balance sheet as on 31.03.2016 that 'there were no withdrawals from the Corpus Fund'. With respect to expenditure towards 'Charities and Donations' on perusal of the information furnished by the assessee through CD, noted that out of the total expenditure of Rs.80,42,50,618/-, the assessee has claimed a sum of Rs.15,58,16,895/- under 'Charities and Donations' and several amounts were paid towards expenses relating to other than charities and donations viz., Mobile bill of P. Janardhana, Punjabn Dairy & Sweets, Shahdol-Towards purchase, Ashwin Sweets etc., and running into numerous entries. Since there were no withdrawals from 'Corpus Fund, the Assessing Officer noted that the excess utilization and the sources explained by the assessee thereof cannot be treated as 'genuine'. Therefore, the assessee was asked to show cause as to why it's claim

for the sources for excess utilization should not be treated as anonymous donations received u/sec.115BBC and are to be taxed in it's hands. In response to the same, the assessee filed it's CD on 20.12.2018. in Tappal and not submitted the explanation through electronic mode which was automatically closed on 28.12.2018. The Assessing Officer completed the assessment by accepting the returned income of the assessee at Rs.NIL vide order dated 30.12.2018 passed u/sec.143(3) of the I.T. Act, 1961.

3. The learned CIT(E), on perusal of the assessment order dated 30.12.2018 noted that the order of the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue. He, therefore, proposed to revise the said assessment and initiated revisionary jurisdiction by exercising his powers u/sec.263 of the Act. The assessee filed it's reply dated 06.03.2021 before the learned CIT(E). The learned CIT(E), however, did not satisfy with the explanation offered by the assessee and in absence of any 12A Registration Certificate in the name of assessee society i.e., GMR Varalakshmi Foundation, in absence of any

documentary evidence with respect to excess utilization sum of Rs.26,68,95,381/- and under the head “Charities & Donations” also the assessee did not submit any details of beneficiaries. Therefore, the learned CIT(E) directed the Assessing Officer to examine the above issues and re-do the assessment, after verification of the issues, in accordance with law, vide order dated 30.03.2021 passed u/sec.263 of the Income Tax Act, 1961.

4. Aggrieved by the order of the learned CIT(E), the assessee carried the matter in appeal before the Tribunal contending inter alia denial of exemption u/sec.11 of the Act on the ground that assessee is registered u/sec.12A of the Act, treating the amount of Rs.26,68,94,381/- being excess utilization over the receipts during the year as unexplained anonymous donation u/sec.115BBC and treating the sum of Rs.15,58,16,895/- spent towards ‘Charities & Donations’ as not being towards attainment of the objectives of the assessee-society.

5. During the course of hearing, Learned Counsel for the Assessee submitted that there is no dispute between the parties that the assessee is a society registered under the Income Tax Act, 1961 and had issued Certificate u/sec.12A of the Act. The dispute is only to the extent of change of name in favour of the assessee in the present appeal i.e., GMR Varalakshmi Foundation. The assessee has made representation to the Department and the Department has to take action on it. In fact, the assessee society is established with an avowed object of providing education facility to the poor children and taking-up various other activities to withstand families on their own feet and for this noble cause, the assessee society is spending crores of rupees in the vicinity of Srikakulam. There is no dispute at all that the assessee society was established and registered as a Society under the Societies Act in Rajam on 13.11.1991 and granted Registration u/sec.12A by the CIT, Visakhapatnam in H.Qrs.No.III-74/92-93 dated 14.05.1993. Since then the assessee society is enjoying sec.11 exemption. However, for the first time, the Assessing Officer

denied exemption u/sec.11 of the Act, for the impugned assessment year 2016-2017 on account of filing of return of income in the name of assessee i.e., 'GMR Varalakshmi Foundation' instead of "Sri Grandhi Chinna Sanyasi Raju Memorial Educational Institute" which is brought to the notice of the Department by the assessee itself with a request to change the name as 'GMR Varalakshmi Foundation', which is under process with the Department. In such an event, without taking action on the representation/documentary evidences furnished by the assessee society either for change of name or in spending the amounts towards "Charities and Donations", directing the Assessing Officer to re-do assessment by the learned CIT(E) is not in accordance with law and, pleaded that the order of the learned CIT(E) be set aside and restore that of the Assessing Officer in the interest of justice. In support of it's contentions, the Learned Counsel for the Assessee drew the attention of the decision of Hon'ble Supreme Court in the case of Maharishi Institute of Creative Intelligence U.P. Lucknow vs., CIT (Exemption) [2023] 151 taxmann.com 300

(SC) and pleaded that the order passed by the learned CIT(E) u/sec.263 of the Act be set aside in the interest of justice.

5.1. Learned counsel for the assessee further submitted that the CIT(E) has invoked provisions of section 263 of the Income Tax Act 1961 [in short “the Act”] and set aside the assessment order dated 30.12.2018 passed by the Assessing Officer u/sec.143(3) of the Act on the ground that the Assessing Officer has not verified the issues with regard to eligibility of the assessee claiming the benefit of exemption u/sec.11 of the Income Tax Act, 1961 and also source for excess application of income for the stated objects of the trust/society, but, the fact remains that the Assessing Officer has examined the issue in light of various evidences filed by the assessee during the course of assessment proceedings which is evident from the discussions of the Assessing Officer in the assessment order dated 30.12.2018 wherein the Assessing Officer has thoroughly discussed the issue of change of name of the assessee trust/society and also the source for excess

application of income. Further, although, the Assessing Officer has called for further information with regard to issue at the fag end of assessment proceedings and provided time up-to 28.12.2018, but, the assessee could not upload the relevant details in electronic facility because the system was automatically closed on 28.12.2018. Therefore, the assessee has submitted all the details through physical form on 31.12.2018. However, by that time the Assessing Officer passed assessment order on 30.12.2018.

6. The assessee has challenged the assessment order dated 30.12.2018 passed by the Assessing Officer before the learned CIT(E) and the appeal filed by the assessee is pending for adjudication. Therefore, once the issues on which the CIT(A) has assumed jurisdiction and the order passed by the learned CIT(E) u/sec.263 of the Act are subject matter of an appeal before the First Appellate Authority, then there is no scope for the PCIT or CIT(E) to revise the assessment order on very same issues. Learned Counsel further submitted that the issues considered by the learned CIT(E) has already been subject

matter before the First Appellate Authority in appeal filed by the assessee and as per the provisions of section 263(1) Explanation-(1)(c) of the Act, where any order referred to in this sub-section and passed by the Assessing Officer has been subject matter of any appeal, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal. Therefore, once the matter has been *sub judice* before the CIT(A), the CIT(E) cannot assume jurisdiction on the very same issues and set aside the assessment order. In this regard he relied upon judgement of Hon'ble Madras High court in the case of CIT vs., M/s. Farida Shoes Private Limited, 259 ITR 342 (Mad.) and the decision of Hon'ble Bombay High court in the case of Ranka Jewellers vs. ACIT [2010] 328 ITR 148 (Bom.) (HC).

7. Learned counsel further referring to various issues discussed by the CIT(E) in his order u/sec. 263 of the Act submitted that the CIT(E) denying the benefit of exemption u/sec.11 of the Act only on the ground that the

Registration Certificate issued u/sec.12A of the Act is not in the name of the assessee even though the assessee has explained the reasons with relevant evidences including original Certificate of Registration issued u/sec.12A of the Act in the year 1993 and subsequent change in the name of the society and its constitution. Although, the assessee has explained the relevant details, the CIT(E) has invoked the provisions of section 263 only on the ground that there is no registration in the name of the assessee-company ignoring the fact that even the very same CIT(E) has issued Certificate u/sec.80G of the Income tax Act 1961 to the assessee-company. Learned counsel further submitted that the CIT(E) has questioned the issue of source for excess application of income when compared to gross receipts of assessee trust for the year under consideration and amount applied for objects of the trust and also that assessee has spent excess application of Rs.26,68,95,381/-. However, the source for the said excess application has been explained by the assessee by filing relevant cash flow statement and explained the source out of term loan and working capital

loan borrowed from banks, utilization out of corpus funds of the trust and other non-cash outflow. Further, the learned CIT(E) examined the application of income being charities and donations under various streams of charities only on the ground that out of total amount of charities and donations Rs.15,58,68,825/-, the assessee has spent an amount of Rs.2,90,250/- towards non-charitable purposes like mobile bill of Mr P. Janardhan and other expensive ignoring the fact that those expenses are in the nature of administrative expenses incurred while achieving the main objects of the trust/ society. Although, the assessee has furnished relevant evidences, the learned CIT(E) by ignoring all the evidences filed by the assessee simply set-aside the assessment order passed by the Assessing Officer in terms of sec.263 of the Act. Therefore, the Learned Counsel for the Assessee submitted that the order passed by the CIT(E) should be set aside.

8. The Learned DR, on the other hand, relied on the order of the learned CIT(E). He submitted that the learned CIT(E) has denied exemption u/sec.11 of the Act on account

of change in the name of assessee society i.e., GMR Varalakshmi Foundation' instead of "Sri Grandhi Chinna Sanyasi Raju Memorial Educational Institute". Since the assessee could not furnish satisfactory explanation either to the Registration Certificate u/sec.12A or to the amounts spend towards 'Charities & Donations', he rightly directed the Assessing Officer to re-do the assessment. He accordingly submitted that the order of the learned CIT(E) be confirmed in the interest of justice. In this regard, the Learned DR relied on the decision of Hon'ble Allahabad High Court in the case of CIT vs., Harshit Foundation Sehmalpur Jalalpur, Jaunpur [2022] 139 taxmann.com 55 (All.) which has been upheld by the Hon'ble Supreme Court while dismissing the SLP filed by the assessee reported in [2022] 447 ITR 372 (SC). The Learned DR submitted that there is no merit in the arguments of the Counsel for the Assessee that the CIT(E) does not have any power to revise the assessment order on the points which has been subject matter of appeal before the CIT(A) and decide the said appeal because in the present case the assessee only

challenges the assessment order before the CIT(A) by raising various grounds. However, the First Appellate Authority has not considered and decided the issues and, therefore, the arguments of the assessee in light of provisions of section 263(1) Explanation (1)(c) does not hold good. In this regard, he relied upon the decision of Hon'ble High Court of Kerala in the case of Prestige Marketing Division vs. PCIT reported in [2023] 155 taxman.com 410 [Kerala]. He accordingly, pleaded that the order of the learned CIT(E) should be upheld.

9. We have heard the rival submissions, perused the orders of the authorities below and also carefully considered relevant case laws referred to by both the parties in support of their contentions. The CIT(E) assumed jurisdiction u/sec. 263 of the Act and set aside the assessment order passed by the Assessing Officer u/sec.143(3) of the Act vide order dated 30.12.2018 and directed the Assessing Officer to re-examine the eligibility of the assessee for claiming exemption u/sec.11 of the Act in light of Registration Certificate issued u/sec.12A of the Act in the name of "Sri

Grandhi China Sanyasi Raju Memorial Educational Institute" and further taxability of excess utilization of Rs.26,68,95,351/- in light of provisions of sec.115BBC of the Act and also allowability of deduction towards application of income being expenditure incurred under the Head "Charities and Donations" in light of non-genuine in nature and various expenditure like expenditure in the name of personal benefit to various persons. The CIT(E) discussed the issue at length in light of various evidences filed by the assessee and came to the conclusion that, unless the assessee possesses a valid Registration Certificate issued by the Competent Authority u/sec.12A of the Act in name of the assessee-trust, the assessee cannot claim benefit of exemption u/sec.11 of the Act on the basis of Certificate issued in the name of erstwhile foundation by name "Sri Grandhi China Sanyasi Raju Memorial Educational Institute". The CIT(E) further observed that although, the assessee filed relevant reconciliation explaining the source for excess application of income for charitable purposes in light of relevant cash flow statement,

but, on perusal of cash flow statement filed by assessee, the claim of the assessee is devoid of merit for the simple reason that assessee has not withdrawn any amount from corpus fund which means the claim of the assessee that source for excess application of income is out of corpus fund is not explained with relevant evidences. The CIT(E) further was of the opinion that the assessee has claimed expenditure under the Head “Charities and Donations”, however, several amounts were paid towards expenses relating to other than charities and donations which are in the nature of telephone expenses to individuals and other entertainment expenses which is nothing to do with the stated objects of the assessee-trust/society. The Assessing Officer, although verified the issues during the assessment proceedings, but, has not rejected or denied exemption u/sec.11 of the Act and or made any additions to the total income. Therefore, the learned CIT(E) was of the opinion that the assessment order passed by the Assessing Officer dated 30.12.2018 is erroneous in so far as it is prejudicial to the interest of the revenue because the Assessing Officer has failed to examine

the issues in light of relevant provisions of the Act on the basis of evidences submitted by the assessee, which resulted in lawful taxes payable to the Government has not been paid.

10. The provisions of section 263 of the Act deals with revisionary powers of the Principal Commissioner or Commissioner. As per section 263 of the Act, the Ld. CIT(E) may conduct enquiry or call for relevant information and after giving opportunity of being heard to the assessee, pass order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment, if the said assessment is prejudicial to the interest of the Revenue. Explanation 2 to section 263 defines the circumstances, under which the assessment order can be treated as erroneous and as per the said explanation, the order passed by the Assessing Officer shall be deemed to be erroneous, in so far as it is prejudicial to the interest of the Revenue, if in the opinion of the Principal Commissioner, the order passed is without making enquiries or verification, which should have been made and so on. From the plain reading of the said provisions, it is abundantly clear that in order to invoke jurisdiction u/s 263 of the Act, the twin

conditions embedded there in must be satisfied, i.e. firstly, the order is erroneous and secondly, the same is also prejudicial to the interest of the Revenue. Whether a particular assessment order passed by the Assessing Officer is erroneous or not, depends upon the subjective satisfaction of the Ld. PCIT. Before assuming jurisdiction, the PCIT should satisfy with valid reasons that the assessment order passed by the Assessing Officer on any particular issue is erroneous, which caused prejudice to the interest of the Revenue. Unless the PCIT brings out the reason and explain how the assessment order passed by the Assessing Officer is erroneous then, in our considered view, simply for the purpose of further verification, the assessment order cannot be set aside, in terms of section 263 of the Act and this legal principle is supported by plethora of judicial precedents including the decision of Hon'ble Supreme Court in the case of Malabar Industries Co. Ltd [2000] 243 ITR 83 (SC), wherein, it is clearly held that in order to invoke jurisdiction u/sec.263, the order of the ITO in question, must not only be erroneous but also the error in the order of the ITO must be of such a kind, that it can be said that it is prejudicial to the interest of the Revenue. In other words, merely, because, the Assessing Officer's order is erroneous, the PCIT cannot interfere. Again,

merely because, the order of the Assessing Officer is prejudicial to the interest of the Revenue then, again that is not enough to confer jurisdiction on the PCIT to interfere in revision. The sum and substance of the ratios laid down by various courts including the Hon'ble Supreme Court is that before invoking jurisdiction u/sec.263, the PCIT must give reasons to come to a conclusion that the issues in question were not examined by the Assessing Officer, in light of relevant provisions of the Act and evidences placed on record.

11. In light of above factual and legal background, if we examine the reasons given by the learned CIT(E) to invoke jurisdiction u/sec.263 of the Act and set-aside the assessment order passed by the Assessing Officer, we need to understand, whether the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue and the reasons given by the learned CIT(E) has brought out the fact of an erroneous order passed by the Assessing Officer which causes prejudice to the interest of the revenue. Admittedly the CIT(E) has questioned three issues in order passed u/sec.263 of the Act. As we have already narrated all those

three issues, the first and foremost issue questioned by the learned CIT(E) is eligibility of the assessee for claiming benefit of exemption u/sec.11 of the Act in light of Certificate of Registration issued u/sec.12A of the Act in the name of "Sri Grandhi China Sanyasi Raju Memorial Educational Institute". Admittedly, the assessee-trust was initially registered under the Societies Registration Act under the name of "Sri Grandhi China Sanyasi Raju Memorial Educational Institute" and the society was granted registration u/sec.12A of the Act by the CIT, Visakhapatnam in H.Qrs.No.III-74/92-93 dated 14.05.1993. The name of the society was changed to "Chinna Sanyasi Raju Memorial Education Society as per the Certificate of Registration issued by the Registrar of Societies on 11.02.2002. Further the name was changed to "GMR Foundation" vide Certificate issued by the Registrar of Societies on 15.02.2002 and the change in the name was taken on record by the CIT-(Central), Hyderabad and accordingly, approval was granted u/sec.80G of the Income Tax Act, 1961 in the new name of "GMR Foundation" vide

Order dated 11.06.2003. The society, later on, obtained licence u/sec.25 of the Companies Act, 1956 and was incorporated under the Companies Act which is evident from the Certificate of Incorporation issued by the Registrar of Companies dated 25.11.2003. Subsequently, the name of the entity was changed from GMR Foundation to “GMR Varalakshmi Foundation” and a fresh Certificate of Incorporation was issued by Registrar of Companies, State of Andhra Pradesh on 31.03.2005. The assessee has intimated change of name in the company and its constitution vide letter dated 18.02.2004 to the Commissioner of Income Tax-(Central), Hyderabad and intimated the licence obtained u/sec.25 of the Company’s Act, 1956 and requested to issue fresh Registration Certificate u/sec.12A and Approval u/sec.80G of the Act. The CIT-(Central), Hyderabad issued renewal of approval u/sec.80G for the period from 01.04.2004 to 31.03.2007 in the name of GMR Varalakshmi Foundation vide Certificate dated 06.09.2004. Further the renewal of approval u/sec.80G of the Act has been extended up-to 31.03.2010

vide Order dated 25.09.2007 by the Commissioner of Income Tax-1, Visakhapatnam. The assessee has requested the Assessing Officer to issue Certificate u/sec.197 of the Act vide letter dated 30.04.2012 in the name of “GMR Varalakshmi Foundation” [i.e., the present assessee] and the Assessing Officer has issued Certificate on 28.03.2014 in the name of present foundation i.e., “GMR Varalakshmi Foundation”. Further, an Order dated 26.02.2021 was issued u/sec.12AA(1)(b) of the Act by the Commissioner of Income-tax (Exemption), Hyderabad and granted provisional registration to the assessee-trust vide Certificate dated 26.02.2021. From the evidences filed by the assessee-trust, it is undoubtedly clear that the change in the name of the assessee-trust/society and its constitution has been intimated to the Department way back in the year 2004 and the same has been taken on record by the Commissioner of Income-tax (Exemption) which is evident from the fresh Certificate issued u/sec. 80G of the Act for granting approval u/sec.80G from time to time. The assessee-trust had also brought out another important evidence in the

form of assessment order passed by the Assessing Officer for the assessment year 2017 2018 which is subsequent to the assessment order passed by the Assessing Officer for the year under consideration where the Assessing Officer has allowed exemption to the assessee-trust u/sec.11 of the Act, after examining the evidences filed by the assessee-trust including Registration Certificate issued u/sec.12A of the Act in the name of erstwhile society ““Sri Grandhi China Sanyasi Raju Memorial Educational Institute”. From the above, it is undisputedly clear that, the Department was in the knowledge of change of name of the assessee-trust/ society and also recognised the assessee trust as a charitable trust which is evident from exemption allowed to the assessee u/sec.11 of the Act right from assessment year 1993-94 to assessment year 2020-2021, except for assessment year 2016-2017. Therefore, we are the considered view that, the CIT(E) invoking jurisdiction u/sec.263 of the Act for denial of exemption u/sec.11 of the Act to the assessee-trust only on the ground that the assessee-trust does not have valid Registration Certificate

u/sec.12A of the Act in it's name is incorrect and devoid of merits. This is because, as per the prevailing law applicable to the assessee-trust for the year under consideration, the assessee-trust needs to intimate to the Commissioner of Income-tax (Exemption) any change in the constitution of the "Assessee-Trust" or change in the name of the "Trust". However, the assessee-trust does not require to obtain prior permission from the CIT(E) for change in objects of the trust or change in name of the trust, unless such changes are repugnant to the provisions of secs.11 and 12 of the Income Tax Act, 1961. In the present case, going by the facts available on record, the assessee-trust has not carried-out any changes to its objects which is evident from objects prevailing at the time of passing the order by the learned CIT(E) and the main objects which were incorporated in the Original Memorandum of Association of the Society in the year 1993. Therefore, in our considered view, unless the CIT(E) makes-out a case that the assessee-trust has carried out changes to it's Trust Deed or Memorandum of Association which is repugnant to the provisions of secs.11

and 12 of the Act, in our considered view, merely for the reason of change in the name of the Trust or Society, the benefit of exemption u/sec.11 cannot be denied. In the present case, except change in the name of the company, absolutely, there is no change in the objects of the trust which are repugnant to the provisions of secs.11 and 12 of the Income tax Act, 1961 and, therefore, in our considered view, the learned CIT(E) has erred in assuming the jurisdiction u/sec.263 of the Act on this issue. This principle is supported by the decision of Hon'ble Supreme Court in the case of Maharishi Institute of Creative Intelligence vs., CIT(E) reported in [2023] 454 ITR 533 (SC).

12. Coming back to the issue of excess application of income and explanation of assessee with regard to source for such excess application of income for the objects of the Trust. There is no dispute with regard to the fact that the assessee-trust has applied excess income for the objects of the trust to the extent of Rs.26,68,95,381/- and the assessee-trust has explained the inflow of funds in the form of cash flow statement and as per the cash flow statement

filed by the assessee, the gross receipts of the Trust for the year under consideration was at Rs.69,92,38,750/-, whereas, the utilisation of income for the objects of the Trust including capital expenditure and repayment of loan was at Rs.96,61,34,131/- and thereby there is excess application of income to the extent of Rs.26,68,95,381/-. The assessee has filed cash flow statement along with return of income and also filed relevant cash flow statement before the CIT(E) during revision proceedings. The assessee has explained excess application of income out of loan borrowed from banks, receipt of corpus funds and increase in sundry creditors for the year. The assessee-trust has also filed relevant evidences in the form of financial statements to explain the cash flow statement filed for reconciliation of excess application of income. On going through the cash flow statement filed by the assessee, we find that there is no anonymous funds as alleged by the learned CIT(E) which is evident from cash flow statement filed by the assessee where the inflow of funds and out-flow of the funds has been clearly explained. Although, the learned CIT(E), in

principle, agreed that the assessee-trust has explained the out-flow of funds, but, rejected the explanation of assessee-trust only on the ground that on perusal of financial statements there is no withdrawal from corpus fund as claimed by the assessee-trust. In our considered view, the learned CIT(E) grossly erred in reading the financial statements of the assessee-trust for the year under consideration, because as observed by the learned CIT(E), the question of release of funds does not arise as long as the receipts in the form of income including corpus fund is sufficient to explain the out-flow of funds being application of income for the objects of the Trust. Since the assessee has explained the inflow of funds and out-flow of funds, in our considered view, the observations of the learned CIT(E) that there is no withdrawal of fund out of corpus fund is totally a case of ignorance of relevant accounting principles and, therefore, devoid of merits and cannot be appreciated.

13. The learned CIT(E) had also questioned the issue of 'application of income' being "Charities and Donations" of Rs.15,58,16,895/-. The CIT(E) was of the opinion that the

evidences of donations and charities is not proved by filing relevant details of beneficiaries and further the assessee-trust has spent certain expenditure which are not in the nature of charities and donations. The CIT(E) took few examples of expenses like mobile bill for the month of April 2015 for Rs.375/- and expenditure incurred for purchase of sweets from Punjab Dairy & Sweets, Shahdol at Rs.14,875/- and payment to Raju News Paper Agencies at Rs.6,985/- and purchases of certain electrical items, , payment towards Kitchen Brick Wall with plastering & Co. etc., and observed that these are the expenditure not in the nature of 'Charities and Donations' and, therefore, the entire expenditure incurred under the Head "Charities and Donations" is non-genuine which needs to be brought to tax.

14. We have gone through the relevant details submitted by the assessee along with the relevant evidences and we find that, the assessee-society is engaged in the activity of imparting education by running various educational institutes and hospitals for the poor people. The assessee-trust/society is also engaged in various

community activities including providing Health and livelihood to various poor people and the various activities carried-out by assessee for the year under consideration has been listed in pages 11 to 13 of the CIT(E) order. On perusal of various activities carried out by the assessee across the country, in our considered view, all these activities carried-out by the assessee-trust/society are in the nature of charitable activities, i.e., either in the field of imparting education or relief to the poor and advancement of any other object of general public utility. Therefore, in our considered view, once the activities conducted by the assessee are charitable in nature, merely for the reason of spending certain expenditure which are in a nature of general administrative expenses necessary for achieving the main objects of the Trust, the benefit of exemption u/secs.11 and 12 of the Act cannot be denied on total expenditure incurred by the assessee-trust/society. Therefore, we are of the considered view, that the learned CIT(E) is clearly erred in not appreciating the facts while assuming jurisdiction u/sec.263 of the Act on this issue

and, therefore, we reject the reasons given by the learned CIT(E) to set-aside the assessment order on this issue.

15. Coming back to the observation of the CIT(E) in para 6 of his order. Although, the CIT(E), in principle, approved that the assessee-trust has filed all these evidences even during the assessment proceedings and during appellate proceedings, but ignored the details filed by the assessee-trust/society merely on the ground that the assessee-trust/society has filed relevant details before the Assessing Officer on 31.12.2018, however, the Assessing Officer has passed assessment order on 30.12.2018 which means the evidences filed by the assessee-trust/society are not before the Assessing Officer when the Assessing Officer passed the assessment order. In our considered view, the reasons given by the learned CIT(E) is contrary to law which is clearly evident from the provisions of sec.263(1) and Explanation-(b) where the term 'record' has been defined which include and shall be deemed always to have included of records relating to any proceeding under this Act available at the time of examination by the Commissioner.

From the plain reading of sec.263(1), Explanation-(1)(b) makes it very clear that even in a case where the evidences are not placed before the Assessing Officer at the time of passing of the assessment order, but the said evidences are made available to the Commissioner at the time of proceedings u/sec.263 of the Act, in our considered view, the learned CIT(E) should consider the records available at the time of passing the order u/sec.263 of the Act and come to the conclusion that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue. In the present case, going by the evidences available on record, the learned CIT(E) while passing order u/sec.263 of the Act, the assessee-trust has filed relevant reconciliation explaining the difference between income and application of income for charitable purposes and also explained the discrepancies noticed in amounts incurred under the Head "Donations and Charities" and, therefore, in our considered view, the learned CIT(E) having the benefit of said evidences should have examine the case in light of the evidences filed by the

assessee-trust before coming to the conclusion that the assessment order passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue. In the present case, going by the evidences filed by the assessee-trust, in our considered view, the reasons given by the learned CIT(E) is contrary to evidences available on record and, therefore, we cannot appreciate the reasons given by the learned CIT(E) to set-aside the assessment order passed by the Assessing Officer in terms of sec.263 of the Income-tax Act, 1961. This principle is supported by the decision of Hon'ble Supreme Court in the case of South India Steel Rolling Mill vs. CIT [1997] 224 ITR 654 (SC) wherein it has been clearly held that in terms of Explanation-1 to sec.263 Explanation clause-(b) records shall include and shall be deemed always to have included as all records relating to any proceedings under this Act available at the time of examination by the Commissioner. Therefore, we are of the considered view, that the learned CIT(E) is clearly erred in setting aside the assessment order on these three issues discussed hereinabove.

16. Coming back to another arguments of the Learned Counsel for the Assessee that, the assessment order passed by the Assessing Officer u/sec.143(3) of the Act dated 30.12.2018 is subject matter of appeal before the CIT(A) and the assessee-trust has a challenged all the three issues discussed by the Assessing Officer before the learned CIT(A) and all the three issues are *sub judice* before the First Appellate Authority and are pending for adjudication. Therefore, as per the provisions of sec.263(1) Explanation-(1)(c) where any order referred to in sub-section-(1) and passed by the Assessing Officer has been made a subject matter of any appeal, the powers of PCIT under this sub-section shall extend to such matters as had not been considered and decided in such appeal. In other words, once the issues questioned by CIT(E), are subject matter of appeal before the CIT(A), then, the powers of the CIT(E) shall be deemed to have been extended to those issues which are not subject matter of appeal before the CIT(A). In the present case, going by the assessment order passed by the Assessing Officer and order passed by the

CIT(E) u/sec.263 of the Act, the issues challenged by the assessee before the CIT(E) and the issues discussed by the CIT(E) in the order u/sec.263 of the Act are one and the same and, therefore, the powers exercised by the CIT(E) is beyond scope of powers of u/sec.263 of the Act and cannot be upheld.

17. The PCIT can exercise powers u/sec.263(1) of the Act, if he is considers that an order passed by the AO is erroneous in so far as it is prejudicial to the interest of the revenue. Explanation (c) to section 263(1) of the Act, provides that where any order referred to in this sub-section (1) and passed by the AO has been made a subject matter on any appeal, the powers of the PCIT under this sub-section shall extend to such matters as had not been considered and decided in such appeal. In other words, the powers u/s. 263(1) of the Act is in respect of an order passed by the AO, where the order as regarded has being erroneous and prejudicial to the interests of the revenue. But, said powers is limited to the issues which has not been considered and decided in the appeal. For better

understanding, the relevant provisions of section 263(1) of the Act and Explanation (1) are reproduced below:

“Under 263. (1) of the Income Tax Act, the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.-For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,

(a) an order passed on or before or after the 1st day of June, 1 988 by the Assessing Officer shall include

(i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A:

(ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or

Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;

(b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal."

18. For better understanding and interpretation of provisions of section 263(1) and Explanation provided therein, it would be relevant to look into the clause of notes on Finance Bill, 1988 relating to the amendment u/s. 263 of the Act by the Finance Act, 1988 and Memorandum to Finance Bill, 1988 explaining the purpose of amendment to sub section. For better understanding notes on clause (c) of Finance Bill 1988 and Memorandum to Finance Bill, 1988 are reproduced as under:

:39:

"Notes on Clauses to Finance Bill 1988

"Clause (c) of the Explanation clarifies that where any order passed by the Assessing Officer has merger with the order of Commissioner (Appeals) or the Appellate Tribunal, the Commissioner may revise that part of the order which has not been considered and pronounced upon by the appellate authority."

Memorandum to Finance Bill 1988

48(b) Regarding the circumstances under which order of an Assessing Officer merges with that of an appellate authority: Here again, there have been conflicting decisions on the question as to whether the entire order of assessment passed by an Assessing Officer merges with the order of the first appellate authority or the merger is only with respect to that part of the order of the Assessing Officer which relates to the matters considered and decided by the appellate authority. Some High Courts have held that there is complete merger once an appeal is decided against an order even on one or two points alone, while a number of High Courts have held that there is only partial merger and not the merger of the whole order in case where only one or some particular aspects have been contested. To eliminate litigation and to clarify the legislative intent in respect of the provisions in the three Direct Tax Acts, it is proposed

to clarify the legal position in this regard in the Explanation to the relevant sections. The proposed amendments are intended to make it clear that "record" would include all records relating to any proceedings under the concerned direct tax laws available at the time of examination by the Commissioner. Further, as held by several High Courts, the Commissioner will be competent to revise an order of assessment passed by an Assessing Officer on all matter except those that have been considered and decided in appeal."

19. From plain reading of provisions of section 263(1) of the Act and Explanation (1)(c) provided therein and also notes on clause to Finance Bill, 1988 and Memorandum to Finance Bill, 1988, it is evident that the powers of PCIT u/s. 263 extends to such matters which had not been considered and decided in an appeal. The use of the word "considered and decided" makes it clear and unambiguous that if some issue is decided by CIT(A) in an appeal against the assessment order, then that issues cannot be subject matter of revision proceedings u/sec.263 of the Act. In our considered view, Explanation (1)(c) provided u/section 263

of the Act is based on the Doctrine of Merger and according to which, there cannot be more than one operative order governing the same subject matter at a given point of time. In the instant case, it is undisputed that the issues which are considered by the CIT(E) in the impugned order, which are under challenge, has been subject matter of appeal before the First Appellate Authority namely, CIT(A), pending for adjudication. Therefore, in our considered view, the CIT(E) in terms of Explanation (1) to section 263 of the Act, cannot assume a valid jurisdiction to revise an order when an appeal filed by the assessee on identical issues pending for adjudication before the learned CIT(A) and therefore, on this account itself, order passed by the CIT(E) u/sec.263 of the Act cannot be sustained and liable to be quashed. This principle is supported by the decisions of various courts, including the Hon'ble High Court of Madras in the case of CIT vs Farida Prime Tannery, 259 ITR 342 (Mad) and also in the case of Renuka Philip vs ITO 409 ITR 567. A very similar issue has been considered by the Hon'ble Madhya Pradesh High Court in the case of CIT vs Shalimar Housing

& Finance Ltd 320 ITR 157.

20. At this stage, it is relevant to consider the decision of Hon'ble High Court of Bombay in the case of Ranka Jewellers vs ACIT [2010] 328 ITR 148, where the Hon'ble High Court under identical set of facts and in light of powers of CIT and PCIT u/s. 263 of the Act, held that once the issue has been considered and decided in the appeal then there is no scope for the PCIT to invoke his jurisdiction u/s. 263 of the Act on said issue and set aside the assessment order. The relevant findings of the Hon'ble High Court are as under:

“17. The power under [Section 263\(1\)](#) can be exercised by the Commissioner where he considers that any order passed by the 3 (2000) 243 ITR 83 4 (2007) 295 ITR 282 Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Explanation (c) to the provision provides that where any order referred to in Sub-section (1) and passed by the Assessing Officer has been made a subject matter of any appeal, the powers of the Commissioner under the sub-section shall extend to such matters as had not been "considered and decided" in the appeal. In

other words, the exercise of power under [Section 263\(1\)](#) is in respect of an order passed by the Assessing Officer, where the order is regarded as being erroneous and prejudicial to the interest of the Revenue. Where an order passed by the Assessing Officer is subject to an appeal that has been filed, the power of the Commissioner to invoke his revisional jurisdiction under [Section 263](#) can only extend to such matters which have not been considered and decided in the appeal. The words which have been used in Explanation (c) to Sub-section (1) of [Section 263](#) are "considered and decided". In other words, it is not merely a consideration that disables, but the matter has to be considered and decided in the appeal. The submission of Counsel appearing on behalf of the Revenue that the CIT(A) has not decided the issue, while dealing with the question of enhancement, cannot be accepted. The submission which has been urged on behalf of the Revenue is that the CIT(A) was requested to exercise his power of enhancement in pursuance of the request made by the Additional Commissioner of Income Tax on 20th May 2005 and that the request which was made was to carry out an estimation of the initial investment for the first year of the block period. Now, the power of the CIT(A) is structured by the provisions of [Section 251](#). [Section 251](#) inter alia provides that in disposing of an appeal

the Commissioner of Income Tax (Appeals) shall have the power in an appeal against an order of assessment to confirm, reduce, enhance or annul the assessment. Consequently, when a request for enhancement was made to the Commissioner of Income Tax (Appeals), he had the jurisdiction, in terms of [Section 251](#), to confirm, reduce, enhance or annul the assessment. A reading of the order passed by the CIT(A), particularly paragraph 16.5 of the order, would lead to the conclusion that the Commissioner of Income Tax (Appeals) had considered and decided the issue. Once the issue was considered and decided by the Commissioner of Income Tax (Appeals), the remedy of the Revenue cannot lie in the invocation of the jurisdiction under [Section 263](#). The Revenue has already invoked its remedy in the form of a substantive appeal before the Tribunal which will be decided in accordance with law. The observations in this order are confined to determining whether the invocation of jurisdiction under [Section 263](#) was valid. These observations will not affect the determination of the issues which are raised in the appeal to the Tribunal.”

21. The Hon’ble High Court of Bombay in the case of CIT vs Slum Rehabilitation Authority, Income Tax Appeal No.

1359 of 2016 by considering identical issue in light of clause (c) of Explanation (1) to section 263 of the Act, held that clause (c) of Explanation (1) may be worded in a manner as suggesting the extent of the powers of the Commissioner for taking an order in revision, its effect is of circumscribing such powers in cases where the order passed by the Assessing Officer has been subject matter of any appeal and such subject matter has been considered and decided in such appeal. This provision, thus, statutorily recognizes the Principle of Merger and avoids any conflict of opinion between two quasi-judicial authorities of the same rank. The sum and substance of ratio laid down by various courts including Hon'ble High Court of Madras in the case of CIT vs., Farida Prime Tannery (supra), is that the powers of the PCIT u/s. 263 of the Act are limited to those issues which has not been considered and decided in the appeal by the First Appellate Authority. Once, the issue has been considered and decided by First Appellate Authority, then there is no scope for the CIT(E) to assume his jurisdiction u/sec.263 of the Act on

said issue. This issue is further supported by the decision of Hon'ble Bombay High court in the case of CIT vs., K. Sera Sera Productions Ltd., [2015] 374 ITR 503 (Bom.) (HC) and the decision of Hon'ble Supreme Court in the case of CIT vs., Nirma Chemical Works Private Limited [2009] 309 ITR 67 (SC).

22. In this view of the matter and considering the facts of the case and also in the light of ratio of various case laws discussed hereinabove, we are of the considered view that, the assessment order passed by the Assessing Officer u/sec.143(3) of the Income Tax Act, 1961 dated 30.12.2018 is neither erroneous nor prejudicial to the interest of revenue on three issues questioned by the learned CIT(E). The learned CIT(E) without appreciating the relevant facts has simply set-aside the assessment order passed by the Assessing Officer by exercising powers conferred u/sec.263 of the Income-tax Act 1961. Thus, we quash the order passed by the CIT(E) u/sec.263 of the Act dated 30.03.2021.

23. In the result, appeal of the Assessee is allowed.

Order pronounced in the open Court on 21.03.2025.

Sd/-
[LALIET KUMAR]
JUDICIAL MEMBER

Sd/-
[MANJUNATHA G.]
ACCOUNTANT MEMBER

Hyderabad, Dated 21st March, 2025.

VBP

Copy to

1.	GMR Varalakshmi Foundation, Srikakulam.
2.	The CIT (Exemption) Hyderabad at Vizag.
3.	The PCIT, Vijayawada.
4.	The DR, ITAT DB-Hyderabad, Hyderabad
5.	Guard File.

//By Order//

//True copy//