IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No. 2725/Mum/2024
Assessment Year : 2018-19

Mumbai Metropolitan Region Development Authority, Plot C14 & C15, Bandra Kurla Complex, Bandra (East), Mumbai-400051. PAN : AAATM7106R	vs.	Commissioner of Income Tax (Exemptions), Room No. 601, 6th Floor, Cumballa Hill, MTNL Building, Peddar Road, Dr. Gopalrao Deshmukh Marg, Mumbai-400026.
(Appellant)		(Respondent)

For Assessee :	Shri Ronak Doshi
For Revenue :	Shri Milind V. Patil, CIT-DR

Date of Hearing :	05-06-2025
Date of Pronouncement :	13-06-2025

O R D E R

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Exemptions)-Mumbai ['Ld.CIT(E)'], dated 23-03-2024, wherein the assessee has taken the following grounds of appeal:

"GROUND NO. 1: IMPUGNED REVISION ORDER PASSED BY INVOKING PROVISIONS OF SECTION 263 OF THE ACT IS BAD IN LAW:

1. On the facts and in the circumstances of the case and in law, Ld. CIT(E) erred in invoking the provisions of section 263 of the Act and setting aside the assessment order passed under section 143(3) as erroneous and prejudicial to the interest of the revenue and directing the Ld. AO to pass a

speaking order after verifications and carefully enumerating the facts of the case.

2. The Ld. CIT(E), inter-alia, failed to appreciate and ought to have held that:

i) Provisions of section 263 of the Act cannot be invoked without examination of records available at the time of initiation of such revisionary proceedings;

ii) In light of Explanation 1(c), provisions of section 263 of the Act cannot be invoked once the issue forms part of a subject matter of an appeal:

iii) Merely because the decision of the appellate authority is not acceptable to the department and the same is challenged in further appeal, it cannot be the basis for invoking revision under section 263 of the Act;

iv) Provisions of section 263 of the Act cannot be invoked when the assessment order is passed after making adequate inquiries:

v) Provisions of section 263 of the Act cannot be invoked where the AO has adopted a legally possible view;

vi) The twin conditions for invoking provisions of section 263 of the Act for an order being erroneous in so far as is prejudicial to the interest of the revenue are not satisfied in the facts of the present case:

vii) Once a legal issue is decided on the material already on record, there would be no useful purpose in asking the assessing officer to carry out the same exercise and come to the same conclusion:

viii) Once the assessment is carried out under the faceless assessment scheme as provided u/s. 144B of the Act, involving inter-alia, the Review Unit as a part of overall assessment procedure, non-examination and/or non-application of mind by the assessing officer cannot be the basis for invoking provisions of section 263.

3. The Appellant prays that revision order passed under section 263 of the Act be quashed as bad in law.

WITHOUT PREJUDICE TO GROUND NO. 1:

GROUND NO. 2: DISALLOWANCE OF CAPITAL EXPENDITURE INCURRED TOWARDS FURTHERANCE OF OBJECTS OF THE APPELLANT - RS. 29,27,22,50,703/-:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(E) erred in directing the Ld. AO to verify the allowability of capital*

expenditure amounting to Rs. 29,27,22,50,703/-incurred towards furtherance of Appellant's objects.

2. *The Appellant prays that the direction of Ld. CIT(E) to the Ld. AO to verify the allowability of capital expenditure be deleted since the said expenditure is an allowable application of income towards the Appellant's objects."*

2. Briefly the facts of the case are that the assessee filed its return of income claiming exemption u/s. 11 of the Income Tax Act, 1961 ('the Act'). Thereafter, the assessment was completed u/s. 143(3) r.w.s. 144B of the Income Tax Act, 1961 ('the Act') wherein the AO denied the exemption claimed by the assessee u/s. 11 of the Act and determined the assessed income at Rs. 25,95,88,000/-. Thereafter the assessment records were called-for and examined by the Ld.CIT(E) and it was noticed by him that the AO has denied the exemption claimed by the assessee under the proviso to section 2(15) of the Act and thereafter the tax has been computed in the hands of the assessee. However, while computing the business income, the assessee has been allowed deduction of Rs. 29,27,22,50,703/- being capital expenditure incurred during the year. As per the Ld. CIT(E), once the exemption has been denied to the assessee, the income has to be computed by treating assessee-trust as AOP (Association of Person). However, the AO did not examine the issue of capital expenditure though the details were available on the records and has allowed the claim of capital expenditure which resulted in the order passed by the AO as erroneous and prejudicial to the interest of the Revenue and a show cause was issued to the assessee. Thereafter, after considering the submissions filed by the assessee, and not finding the same acceptable, the assessment order passed by the AO was set aside with a direction to verify the allowability of the capital expenditure so incurred by the assessee.

3. Against the said findings, the assessee is in appeal before us. During the course of hearing, our reference was drawn to the findings of the Ld.CIT(E) which are contained in para 9.1 to 12 of the impugned order and the contents thereof read as under:

> *"9.1 Further, the assessee is relied upon the decision of Hon'ble ITAT in the assessee's own case for A.Y. 2010-11 to 2015-16 bearing ITA Nos. 4391 to 4395/Mum/2019 and ITA No. 34 & 35/Mum/2020 wherein on issue of proviso to section 2(15) of the Act, the Hon'ble ITAT has allowed the appeal in the favour of the assessee. Further, it is pertinent to mention here that the decision of Hon'ble ITAT was not accepted by the department and appeal in all the years were filed before Hon'ble Bombay High Court and the same is pending for adjudication. Hence, the contention of the assessee with respect to the proviso to section 2(15) of the Act is not acceptable.*
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> *9.2 Furthermore, it is also needs to submit here that the of Ld.CIT(A) vide its order dated 28.08.2023 for the year under consideration has decided the appeal in favour of the assessee stating that the activities of the assessee are not in the nature of trade and commerce and hence proviso to section 2(15) is not applicable in the case of the assessee for A.Y 2018-19. However, the revenue has not accepted the decision of Ld.CIT(A) and filed appeal before Hon'ble ITAT which is pending for adjudication.*
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> *10. The assessee's contention is not acceptable as in the order u/s 143(3) r.w.s 144B the activities of assessee trust was discussed in detail and treated as business and proviso to section 2(15) were applied. The Assessing officer has failed to examine the allowable expenditure claimed by the assessee for the year under consideration. Having denied the exemption claimed by the assessee, the assessee should be treated as a business entity or AOP for computation of income vis-à-vis allowability of expenditure claimed. Once the status of the assessee is no more charitable trust, the capital expenditure need to be disallowed. Further the assessee's submission is not clear about the issue of allowability of capital expenditure which is the main aspect of invoking 263 provision of I.T. Act. The same has been brought to the notice of the assessee vide show cause dtd. 18.01.2024. However, the assessee has not dwelt much into this issue in its submissions.*
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> *11. In view of the facts and circumstances on record, I am satisfied that the AO has not conducted inquiries or verifications on the impugned issues. This non verification renders the assessment order dated 18.06.2021 is erroneous in so far as it was prejudicial to the interest of revenue within the meaning of Explanation 2 to Section 263 of the Act.*

> *12. Hence, by virtue of powers vested in the undersigned vide the provisions of Section 263 of the Income Tax Act, the assessment order u/s 143(3) r.w.s. 1448 of the Act dated 18.06.2021 is set aside with a direction to verify the allowability of capital expenditure of Rs. 29,27,22,50,703/- The allowance of depreciation if applicable, may be allowed and limited to an asset, acquisition of which has not been claimed as application of income in the same or any other previous year. Necessary due verification in this regard may be made. It is further directed that AO should give sufficient opportunity to assessee to present its case, and pass a speaking order carefully enumerating facts, circumstances, verifications and findings. The AO may further note that the remit of the consequential proceedings is limited to the examination of the issues mentioned above in the present proceedings only in the assessment order dated 18.06.2021."*

4. It was submitted by the Ld.AR that the Ld.CIT(E) has taken note of the fact that against the order passed by the AO, on appeal by the assessee, the Ld.CIT(A) has decided the matter in favaour of the assessee and has held that the proviso to section 2(15) of the Act is not applicable. However, given the fact that the appeal filed by the Revenue is pending for adjudication before the Tribunal, he has gone ahead and passed the impugned order. It was accordingly submitted that the very foundation of the impugned order is denial of exemption u/s. 11 of the Act by the AO.

5. In this regard, it was submitted that since the passing of the impugned order, the Tribunal has decided the matter in favour of the assessee vide consolidated order passed in ITA No. 3791/Mum/2023 and others for the AYs. 2016-17, 2017-18 and 2018-19, dt. 28-05-2025 and our reference was drawn to the findings of the Co-ordinate Bench of the Tribunal which are contained in paras 16.5 and 17.2 and the contents thereof read as under:

> *"16.5. Considering the factual matrix of the case, extensive documents placed on record, elaborate discussion made on the applicable provisions of the Act and the decisions in the assessee's own case as well as those by Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) and the provisions of governing statutes of MMRDA Act*

and MRTP Act, we summarised our conclusions on the core issue as stated above. We find that assessee is held to be a charitable institution carrying on the object for which it is established under the MMRDA Act read with MRTP Act, falling under the category of General Public Utility as per section 2(15) of the Act. The registration granted to the assessee u/s 12AA still continues and is not revoked by the Revenue. Keeping the litigation history and the entire discussion made above in perspective, it is held that assessee is a charitable trust and ld. Assessing Officer is not justified in applying the proviso to section 2(15) of the Act for denying the claim of exemption u/s.11 of the Act. Thus, we do not find any reason to interfere with the findings arrived by ld. CIT(A) as adjudicated by him on the issue who has followed the decision of the Coordinate Bench in assessee's own case. Accordingly, ground no.3 and 5 raised by the Revenue are dismissed.

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17.2. In respect of appeals for Assessment Year 2017-18 and 2018-19, similar issue in respect of TDRs is raised in ground no. 4 on the same footing as that of lease premium treatment. This issue is also held in terms of finding given for treatment of lease premium in appeal for Assessment Year 2016-17.

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20. In the result, appeal of the Revenue for Assessment Year 2016-17 is dismissed. Since identical issues are involved in appeals for Assessment Year 2017-18 and 2018-19, there being no change in the factual matrix and applicable law, our observations and findings in appeal for Assessment Year 2016-17 applies mutatis mutandis to the appeals for the said two Assessment Years. These two appeals of the Revenue are also dismissed."

6. It was accordingly submitted that where the proviso to section 2(15) of the Act has been held as not applicable by the Co-ordinate Bench of the Tribunal and it has been held that the AO is not justified in denying the claim of exemption u/s. 11 of the Act, the very foundation of impugned order does not survive and on this limited ground, the impugned order may be set aside.

7. Per contra, the Ld.CIT-DR is heard, who has relied on the order passed by the Ld.CIT(E).

8. We have heard the rival contentions and perused the material available on record. We find that the Ld.CIT(E) has set aside the assessment order for the purposes of verifying the claim of the capital expenditure while computing the income under the normal provisions of the Act. The same is basis the denial of exemption by the AO by invoking the proviso to section 2(15) of the Act. Given that the Co-ordinate Bench of the Tribunal has since decided the matter in favour of the assessee and has directed the AO to allow exemption u/s. 11 of the Act to the assessee, we agree with the contentions advanced by the Ld.AR that the very foundation for exercise of jurisdiction u/s. 263 of the Act vis-à-vis the claim of the capital expenditure does not survive and hence, we set aside the order passed by the Ld.CIT(E).

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 13-06-2025

Sd/-	Sd/-
[ANIKESH BANERJEE]	[VIKRAM SINGH YADAV]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 13-06-2025

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, ITAT, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai