

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2378/Mum/2024

Assessment Year: 2012-13

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| Bhagwan Vardhman Shwetamber Murtipujak Tapagacch Jain Sangh Ground Floor, G Bldg Vardhman Nagar Dr. R P Road Mulund West Maharashtra - 400080 [PAN: AAATB9453E] | Vs | Commissioner Income Tax (Exemptions), Mumbai |
| अपीलार्थी/ (Appellant) | | प्रत्यर्थी/ (Respondent) |

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|---------------|--------------------------------------|
| Assessee by : | Shri Dharan Gandhi, A/R |
| Revenue by : | Shri Satyaprakash R. Singh, CIT, D/R |

सुनवाई की तारीख/Date of Hearing : 21/07/2025
घोषणा की तारीख /Date of Pronouncement: 23/07/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the Id. CIT (Exemptions), Mumbai [hereinafter 'the Id. CIT(E)'] dated 06/03/2024 framed u/s 263 of the Act by which the Id. CIT(E) treated the order dated 31/03/2022 framed u/s 147 r.w.s. 144 of the Act as erroneous and prejudicial to the interest of the revenue.

2. Briefly stated the facts of the case are that the assessee filed its return of income on 18/03/2014 declaring therein gross receipts at Rs.8,65,837/-. The return was selected for scrutiny assessment and

accordingly, notices were issued and served upon the assessee. None attended the proceedings and the AO was forced to frame the order *ex-parte* to the best of his judgment u/s 144 of the Act.

3. While scrutinising the return of income, the AO noticed that the assessee has received corpus donation of Rs. 38,42,558/- against which corpus expenditure of Rs. 10,97,699/- has been claimed to have been incurred. Since the assessee was not registered u/s 12A of the Act, the receipts were treated as revenue receipts in the absence of any documentary evidence the balance corpus donation to the tune of Rs. 27,44,859/- was treated as income of the assessee and the returned income of the assessee was assessed at Rs.36,10,696/-.

4. Assuming power confirmed upon him by the provisions of section 263 of the Act, the ld. CIT(E) issued a show cause notice to the assessee, which reads as under:-

“On verification and careful examination of the assessment records for the A.Y. 2012-13 in your case, wherein assessment was completed under section 147 r.w.s. 144 r.w.s. 144B of the I.T. Act, 1961 dated 31.03.2022, I am of the prima facie view that the order passed by NFAC, Delhi (hereinafter 'the Assessing Officer' or 'the AO') is erroneous in so far as it is prejudicial to the interest of revenue, in view of the following:

As per assessment records of AY 2012-13, return of income was filed for A. Y. 2012-13 on 18.03.2014, declaring gross receipts at Rs. 8,65,837. However, during the P.Y. 2011-12, it was noticed that in the balance sheet, the assessee trust had declared to have received corpus donation to the tune of Rs. 38,42,558 against which, corpus expenditure to the tune of Rs. 10,97,699 has been declared to have been incurred.

Therefore, balance corpus donation works out to Rs. 27,44,857. Since assessee was not registered under section 12A of the Act for the relevant year, therefore, the receipts during the year, in the earmarked fund, was to be treated as revenue receipts. On verification of assessment order, it was noticed that the A.O. made addition of balance corpus donation of Rs. 27,44, 857 treating it as revenue receipts. It is apparent that the assessee trust was not registered u/s 12A of the Income Tax Act. The total receipts of corpus donation of Rs. 38,42,558 was required to be treated as revenue. The addition of balance corpus donation of Rs. 27,44,857/- instead of total

receipts of corpus donation of Rs. 38,42,558/- is erroneous and prejudicial to the interest of the revenue.

Further, as per provisions of section 11(1)(d) of the Act, income in the form of voluntary contributions received with a specific direction that they shall form part of the corpus of the trust or institution is exempt. In your case, trust was not registered under section 12A of the Act, which is primary condition for applicability of provisions of section 11, therefore your entire receipts as corpus donation of Rs.38,42,558/- is not allowable for deduction.

The power to revise any order comes from section 263 of the Income Tax Act, the provisions of section 263 are reproduced here as under for ready reference.

" section263. (1) The Principal Commissioner or 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 Assessing 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, 1988 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.

Explanation 2. – For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner, –

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation. – In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded"

4.1 In view of the above, the AO has passed order without making inquiries or verification which should have been made for verification of the above facts stated above and therefore the order is erroneous and prejudicial to the interest of revenue.

5. In this regard, you are hereby show caused as to why the assessment order dated 31.03.2022 should not be set aside under section 263 of the Act with appropriate directions to the AO to redo the assessment? You are accorded an opportunity to attend in person or through an Authorized Representative before the undersigned on 04.01.2024 at 11.30 A.M. at my office. Personal appearance is not necessary, and you may alternatively file a written or online response to this show cause notice. You may further note that if nothing is heard from you at the appointed date, it will be presumed that you have no submissions to make. Necessary action on the matter will be taken without any further reference to you."

4.1. The assessee replied to the notice as under:-

The assessee submitted that he had filed a writ petition before Hon'ble Bombay High Court on 22.11.2019 (W.P 3187 of 2019) and the notice u/s 148 was stayed. Subsequently, the appeal was withdrawn and stay was vacated. The assessee further raised following grounds.

1. From the date of High Court order the AO had 60 days from the date of High Court order to complete the assessment.

2. The assessee was never served any notice of hearing during proceeding u/s 147.

3. The impugned order dtd 31.03.2022 is time barred.

4. The assessment order is passed by NFAC therefore you have no jurisdiction to invoke 263 of the Act.

5. There is no error in the order which is amenable to revision u/s 263 of the act.

5. The contentions of the assessee were dismissed by the Id. CIT(E) who was of the firm belief that the AO did not make any enquiry and because of which the expenditure claimed by the assessee was allowed and only the balance corpus was assessed to tax which made the assessment order erroneous and prejudicial to the interest of the revenue.

6. Before us, the Id. Counsel for the assessee strongly contended that since the assessment order was an *ex-parte* order by which the AO assessed income of the assessee to the best of his judgement, therefore, the judgement of the AO cannot be substituted with the judgement of the Id. CIT(E). Strong reliance was placed on the decision of the Coordinate Bench in *ITA No. 321/Nag./2024, order dated 10/02/2025*. The relevant findings read as under:-

9. *We have gone through the details furnished by the parties as well as the arguments put forth by the parties and on a careful consideration of the facts and circumstances of the case and the arguments of the parties, we are inclined to agree with the submissions made by the learned counsel for the assessee. We find force in the argument of the assessee that this is a case where the assessment has been completed under section 144 of the Act which empowers the Assessing Officer to complete the assessment to the best of his judgement. The assessment having been completed by the Assessing Officer to the best of his judgement cannot be faulted with as best possible judgement exercised by the Assessing Officer cannot be bettered by the learned PCIT as that would amount to interfering and disturbing the best judgement exercised by the Assessing Officer. A judgement/view having exercised by the Assessing Officer which under law is deemed to be best possible judgement can by no stretch of imagination be held to be erroneous as the Assessing Officer vide vested right granted to him under section 144 of the Act has exercised his best possible judgement and which led him to estimate the income of the assessee in the best possible manner and best possible mode and manner having already been exercised by the Assessing Officer vide the powers conferred to him under section 144 of the Act, the said mode, manner and view of the Assessing Officer cannot be deemed to be erroneous merely because the learned PCIT is of the view that the Assessing Officer ought to have estimated the profit at a different rate. This would*

amount to tinkering with the rights given by the statute under section 144 to the Assessing Officer which cannot be permitted under law. If this is permitted then each and every case where income is estimated by the Assessing Officer exercising the powers under section 144 of the Act would be amenable to the provisions of section 263 of the Act and which would make the powers conferred under section 144 of the Act to the Assessing Officer dependent and take away independence of the AO to exercise his best possible judgement in section 144 of the Act.

10. *We further find force in the arguments of the learned counsel for the Assessee that when a power has have been exercised under section 144 of the Act, this cannot be held to be a case of lack of enquiry as held by the learned PCIT so as to invoke the powers conferred under section 263 of the Act as the Assessing Officer was compelled to exercise his powers under section 144 of the Act considering that there was inadequate reply by the assessee to the queries raised by him during the course of assessment proceedings and which compelled the Assessing Officer to complete the assessment under section 144 of the Act. There being inadequate compliance by the assessee leading to the Assessing Officer exercising power under section 144 of the Act cannot now be held to be a case where the Assessing Officer has done inadequate enquiries before completing the assessment as held by the learned PCIT justifying invocation of the provision of section 263 of the Act. Once an order is passed under section 144 of the Act it is after taking into account all relevant material which the Assessing Officer has gathered and after considering the entire case records in totality, the law grants power to the Assessing Officer under section 144 of the Act to complete the assessment to the best of his judgement and to determine the sum payable by the Assessee on the basis of such assessment. We find that such power granted under section 144 is absolute for the Assessing Officer. The Assessing Officer having exercised his best possible judgement under section 144 of the Act, his best possible judgement cannot under any means be held to be erroneous which is one of the conditions for invoking the powers under section 263 of the Act. We further find force in the argument of the learned counsel for the Assessee that considering the assessed income of Rs. 6,18,304, is substantially higher than Rs. 5,30,794, as referred to by the learned PCIT in the order passed under section 263 of the Act and consequently no prejudice caused to the Revenue which again is one of the conditions for invoking powers under section 263 of the Act. On a conspectus of the above facts, the twin conditions prescribed under section 263 of the Act are non-existent in as much as the order of the Assessing Officer neither can be held to be erroneous nor prejudicial to the interests of the Revenue so as to warrant invoking powers under section 263 of the Act and the learned PCIT fell into an error in revising the order. Consequently, considering the facts and circumstance of the case, we hold that the present case is not a fit case for invoking the provisions of section 263 of the Act and consequently the impugned order passed by the learned PCIT under section 263 of the Act is hereby quashed."*

7. It is the say of the ld. D/R that the facts of the Coordinate Bench are clearly distinguishable from the facts of the case in hand inasmuch as in that case the assessed income was higher than the income which would have been assessed if the order of the ld. PCIT was upheld.

8. We have given a thoughtful consideration to the contention of the ld. D/R, however, we are of the considered view that it cannot be denied that u/s 144 of the Act, the AO makes a best judgement assessment and, therefore, the judgement of the AO cannot be substituted by the judgement of the ld. CIT(E). To this extent, the findings of the Coordinate Bench squarely applies on the facts of the case and respectfully following the same, we set aside the order of the ld. CIT(E) dated 06/03/2024 and restore that of the AO dated 31/03/2022.

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

Order pronounced in the Court on 23rd July, 2025 at Mumbai.

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 23/07/2025

SC S.P.

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, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai