

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
[DELHI BENCH : "B" NEW DELHI]
BEFORE SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

I.T.A. No. 3637/DEL/2024 (A.Y 2016-17)

Children Welfare Trust (Regd) C/o. Gita BalNiketan Senior Secondary School, 3-E, NIT, Faridabad PAN: AABTC6957B	Vs	National Faceless Assessment Centre, Delhi (NaFAC) Delhi
Appellant		Respondent
Assessee by	Sh. Pavan Ved, Adv, Shri Mohit Gupta, CA, Sh. Mirza, CA and Shri Sarthakhh Aggarwal, CA	
Revenue by	Ms.Pooja Swaroop, CIT(DR)	
Date of Hearing	24/07/2025	
Date of Pronouncement	08/08/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The present appeal is filed by the Assessee against the order of Ld. Commissioner of Income Tax (Exemptions), Chandigarh ('Ld. CIT(E) for short), New Delhi dated 19/03/2024 passed u/s 263 of the Income Tax Act, 1961 ('Act' for short) pertaining to Assessment Year 2016-17.

2. The grounds of Appeal are as under:-

"1. That on the facts and in the circumstances of the case, the order passed by the Ld. CIT(Exemptions) u/s 263 of the Act is bad in law, violative of principles of natural justice & void-ab-initio.

2. That on the facts and in the circumstances of the case, the Ld. CIT(E) has erred in law and on facts in initiating revisionary proceedings u/s 263 of the Act against a well examined order passed u/s 147 of the Act by Ld. AO (i.e.,

NFAC, Delhi) whereby returned income of the appellant has been accepted after in-depth examination of the books of accounts and submissions of the appellant made during the course of assessment proceedings.

3. That on the facts and in the circumstances of the case, the Ld. CIT(E) has erred in law in invoking provisions of Sec. 263 of the Act totally against the principles of natural justice and without any merit as there is/was no occasion to initiate the revisionary proceedings u/s 263 of the Act.

4. That on the facts and in the circumstances of the case, the Ld. CIT(E) has erred in law and on facts in treating the capital receipts of Rs. 1,13,08,822/- as revenue receipts when the said fact have duly been substantiated by the appellant during the course of assessment proceedings that such receipts are only capital in nature and not a revenue receipt and the explanation in this regard has duly been accepted by the Ld. AO (NFAC, DELHI) in its order u/s 147 of the Act dated 30.03.2022.

5. That on the facts and in the circumstances of the case, the Ld. CIT(E) has erred in law in wrongly invoking provisions of Sec. 11(6) of the Act in order to wrongly disallow the depreciation claimed of Rs. 55,75,733/- by the appellant.

6. That on the facts and in the circumstances of the case, the Ld. CIT(E) has erred in law in assuming jurisdiction u/s 263 of the Act beyond the reasonable period of time and framing an adverse order u/s 263 of the Act without providing a reasonable opportunity of being heard to the appellant which is a mandatory pre-requisite before passing order u/s 263 of the Act.

7. That the order so framed by the Ld. CIT(E) is bad in law and on facts (to the extent as elaborated above) and needs to be quashed in the interest of principles of natural justice.”

3. Brief facts of the case are that, the Assessee filed return of income u/s 139 of the Act for Assessment Year 2016-17 at NIL income by claiming refund of Rs. 3,15,334/-. The case of the Assessee trust

was selected for 'Complete Scrutiny' and an assessment order came to be passed on 30/12/2018 u/s 143(3) of the Act by accepting the returned income. Thereafter the case of the Assessee was reopened u/s 148 of the Act on account of '*increase in amalgamated fund and building fund*' amounting to Rs. 1,13,08,822/-. After making the specific queries on the reopening issue raised by the A.O. and considering the submissions made by the Assessee, the A.O./NFAC, Delhi once again accepted the returned income of the Assessee vide assessment order passed u/s 147 of the Act dated 30/03/2022.

4. The Ld. CIT(E), Chandigarh, exercising the power conferred u/s 263 of the Act, passed an order on 19/03/2024, wherein set aside the assessment order dated 30/03/2022 passed u/s 147 r.w. 144B of the Act as the same held to be erroneous in so far as it is prejudicial to the interest of the Revenue and directed the A.O. to decide the issues afresh. Aggrieved by the order of the Ld. CIT(E), the Assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee submitted that the Ld. CIT(E) while exercising the jurisdiction dealt with the issue i.e. depreciation claimed by the Assessee, which are not the subject matter of the assessment proceedings initiated u/s 147 of the Act and the Ld. CIT(E) dealt with the issue involved in the original assessment proceedings completed u/s 143(3) of the Act, therefore, the limitation

for framing the assessment is barred as per Section 263 of the Act. The Ld. Counsel has also relied on the Judgment of Hon'ble Supreme Court in the case of CIT Vs. Industrial Development Bank India Ltd. (2023) 152 Taxman. Com 591 (S.C) and the Judgment of Hon'ble Madras High Court in the case of Indira Industries Vs. PCIT, Chennai-8 (2018) 95 Taxman.com 103 Madras. Thus, submitted that the order impugned dated 19/03/2023 is barred by limitation.

6. The Ld. Counsel also submitted that the Ld. CIT(E) erred in law and on facts in treating the capital receipts of Rs. 1,13,08,822/- as revenue receipts when the said fact was duly substantiated by the Assessee during the course of the assessment proceedings that such receipts are only capital in nature and not revenue receipt. Further submitted that the said explanation given by the Assessee during the re-assessment proceedings has been duly accepted by the A.O. in its order u/s 147 of the Act. Further submitted that the Ld. CIT(E) has wrongly invoked the provision of Section 11 (6) of the Act, in order to wrongly disallow the depreciation claimed of Rs. 55,75,733/- claimed by the Assessee. Therefore, submitted that the A.O. has taken the 'plausible view' and the order of the Ld. CIT(E) is nothing but 'change of opinion', therefore, sought for allowing the appeal.

7. Per contra, the Department's Representative vehemently contended that the duty of the Ld. CIT(E) u/s 263 of the Act as to see whether the order passed u/s 147 of the Act is erroneous in so far as it is prejudicial to the interest of the Revenue or not. Further submitted that the FAO allowed the depreciation without making the enquiry as to whether the Assessee claimed the application of capital expenditure in the earlier years on the assets on which the depreciation claimed, therefore, the assessment framed is not only erroneous, but also prejudicial to the interest of the revenue. The Ld. Department's Representative has also relied on the Judgment of the Hon'ble High Court of Karnataka in the case of Herbalife International India Pvt. Ltd. vs. the Commissioner of Income Tax in ITA No. 433/2018 and submitted that the Appeal of the Assessee is liable to be dismissed.

8. We have heard both the parties and perused the material available on record. In the present case, the case of the Assessee has been selected for complete scrutiny and the assessment u/s 143(3) of the Act has been concluded on 30/12/2018, wherein the return income has been accepted by the DCIT(E)/A.O. During the assessment proceedings u/s 143(2) of the Act, a specific query with regard to amalgamation and building fund was asked to the Assessee and after considering the reply of the Assessee, no adverse view has

been taken and the assessment was framed u/s 143(3) of the Act vide order dated 30/12/2018 at returned income. The case of the Assessee was reopening by issuing notice u/s 148 of the Act on 28/03/2021 and an order u/s 147 of the Act came to be passed on 30/03/2022 on a sole issue of 'increase in amalgamated fund and building fund' amounting to Rs. 1,13,08,822/-. During the proceedings u/s 147 of the Act, on specific query on the reopening issue were raised by the A.O.regarding to 'Increase in amalgamated fund and building fund'. The relevant portion of the Notice issued u/s 142(1) of the Act during the re-assessment proceedings u/s 147 of the Act dated 11/01/2022 is reproduced as under:-

“7. It is seen that surplus of Rs. 88,81,042/- is transferred to capital fund whereas amounts in amalgamated fund and Building Fund are considered under the head Reserve Fund. Therefore, the amount Rs. 1,13,08,822/-(1,06,72,322+6,36,500) was directly taken to Balance Sheet and not routed through Income & Expenditure account. The amount of Rs. 1,13,08,822/- is not disclosed as income, neither in income & Expenditure/ Receipt & payment account nor in ITR under the schedule 'Voluntary Contributions'. Substantiate your claim in this regard with supporting documents.”

9. The Assessee filed detailed submission/reply to the said notice dated 11/01/2022 issued during the reassessment proceedings in following manners:-

“It is respectfully submitted that the fee received from students is credited under various heads, building and amalgamation funds being one of them. It is further submitted that building fund is the amount collected from

new admissions and it is spent for the purpose of construction of building. Amalgamation fund is the amount collected from new students for spending on non-routine development items such as library, Cultural activities etc. These amounts are not credited to profit and loss account but are credited to Building and Amalgamation fund as the funds are designated to be used for building construction and other expansion activities. As and when these funds are used for the capital expenses as mentioned above, same would be treated as capital expenditure of the society. These are corpus fund and hence, in the nature of capital receipts and therefore, these may not be added as income of the assessee society.”

10. The Ld. A.O. after verifying the above reply accepted the return income of the Assessee. However, the proceedings u/s 263 of the Act has been initiated on the order passed u/s 147 of the Act dated 30/03/2022 on following issues:-

“1) Receipts credited under Amalgamation and Building Fund - Rs. 1,13,08,822/-

2) Depreciation claimed by the assessee trust keeping in view provisions of Sec. 11(6) - Rs. 55,75,733/-.”

11. It is clear from the above that, the proceedings u/s 263 of the Act has been initiated on two issues. The issue of depreciation claimed by the Assessee trust (second issue) is not at all the subject matter of the order dated 29/03/2025 passed u/s 147 of the Act and the said issue had been taken up in the complete scrutiny itself and vide assessment framed u/s 143(3) of the Act dated 30/12/2018, the same has been adjudicated and decided the issue in favour of the Assessee by accepting the return income by the A.O. Thus, the Ld. PCIT committed

erred in invoking the provision of Section 263 of the Act beyond the period of limitation as prescribed u/s 263 of the Act i.e. two years from the end of financial year in which the order sought to be revised was passed. Therefore, invocation of the power conferred u/s 263 of the Act by the Ld. CIT(E) in so far as the second issue i.e. depreciation claimed by the Assessee trust to the tune of Rs. 55,75,733/- is barred by limitation.

12. It is also relevant to mention that, the said issue of depreciation picked by the Ld. Ld. CIT(E) has also been decided in favour of the Assessee by the A.O. vide order dated 29/03/2025 passed u/s 147 r.w. Section 263 of the Act. Therefore, the said issue becomes irrelevant and in-fructuous as well.

13. In so far as the first issue i.e. amalgamation and building fund of Rs. 1,13,08,822/- is concerned, the Ld. A.O. has raised specific query vide notice issued u/s 143(2) of the Act dated 11/01/2022. The relevant portion of the query raised by the Ld. A.O. during the re-assessment proceedings are reproduced as under:-

“Findings of the AO:-

It is seen that surplus of Rs. 88,81,042/- is transferred to capital fund whereas amounts in amalgamated fund and Building Fund are considered under the head Reserve Fund. Therefore, the amount Rs. 1,13,08,822/-(1,06,72,322+6,36,500) was directly taken to Balance Sheet and not routed through Income & Expenditure account. The amount of Rs. 1,13,08,822/- is not disclosed as income, neither in income & Expenditure/Receipt &

payment account nor in ITR under the schedule 'Voluntary Contributions'.

6. basis of forming reason to believe and details of escapement of income:-

In view of the above facts, amount of Rs. 1,13,08,822/- is to be added back to the taxable income of the assessee trust. I have, therefore, reason to believe, that amount of Rs. 1,13,08,822/- chargeable to tax has escaped assessment. Further, the case will be assessed on any other issue which may come to notice during the assessment proceedings.

7. In this case a return of Income was filed for the year under consideration and regular assessment u/s 143(3) was made on 30.12.2018. Since 4 years from the end of the relevant year has not expired in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above.

It is pertinent to mention here that in this case an assessment was made as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. However, as discussed in reason to believe in this case income chargeable to tax has been under assessed by an amount of Rs. 1,13,08,822/-.

In view of the above, provisions of clause (c) of explanation 2 to section 147 are applicable to the facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

This case is within four years from the end of the assessment year under consideration. Hence necessary sanction to issue notice u/s 148 is required in this case from Addl. Commissioner of Income Tax (Exemptions), Range-2, Chandigarh as per the provisions of Section 151 of the Act.

The case is submitted for your kind approval to issue notice u/s 148.

In this connection your case for the said year is reopened for assessment/reassessment u/s 147 of the I.T.Act, 1961. Notice u/s 148 of the Act was issued and served on 28.03.2021, asking for a Return of Income of the said year. Notice u/s 143(2) of the Act issued and served on 22.06.2021. Now you are requested to

furnish the following details. These informations are sought u/s 142(1)(ii) of the Act.

1. Please provide a brief note on the business carried out by you during the F.Y 2015-16 relevant to the A.Y 2016-17.

2. Copy of financials in the form of Balance sheet, Profit & Loss account, Tax Audit report and computation of Income for the year under consideration.

3. Please furnish the copy of the assessment order u/s 143(3) of the Act for the year under consideration.

4. Furnish copy of the certificate of Registration of trust Deed/ Memorandum of Association.

5. Copy of approval obtained/ granted u/s 12AA, u/s 80G/ 10(23C)(vi), if any.

6. Details of All bank accounts held in the name of the Trust with bank statements for the year under consideration.”

14. On receipt of the notice dated 11/01/2022, the Assessee filed detailed reply on 09/02/2022 which is reproduced as under:-

“Sir

Sub: Reply to notice u/s 142(1) of Income Tax Act, 1961 of M/s Children Welfare Trust for A.Y. 2016-17,

Kindly refer to notice no ITBA/AST/F/142(1)/2021-22/1038641384(1), dated 11.01.2022. In continuation of earlier submission dated 22.07.2021, it is respectfully submitted as under:-

1. The main object and activities of assessee trust/school is to provide education facility for the students and to promote good education and develop the character and personality of the students.

2. Copy of Audited Balance sheet, Profit & Loss Account with complete annexures along with Form 10B is enclosed as Ann-1.

3. Copy of computation of income and acknowledgment of income tax return for the year under consideration filed u/s 148 is enclosed as Ann-2.

4. *Copy of assessment order passed u/s 143(3) is enclosed as Ann-3.*

5. *Copy of trust deed/ by laws of the Children Welfare Trust is enclosed as Ann-4.*

6. *Copy of Registration u/s 12AA is enclosed as Ann-5.*

7. *Copies of bank statements as on 31.03.2016 along with reconciliations are enclosed as Ann-6,*

8. *It is respectfully submitted that the fee received from students is credited under various heads, building and amalgamation funds being one of them. It is further submitted that building fund is the amount collected from new admissions and it is spent for the purpose of construction of building. Amalgamation fund is the amount collected from new students for spending on non-routine development items such as library, Cultural activities etc. These amounts are not credited to profit and loss account but are credited to Building and Amalgamation fund as the funds are designated to be used for building construction and other expansion activities. As and when these funds are used for the capital expenses as mentioned above, same would be treated as capital expenditure of the society. These are corpus fund and hence, in the nature of capital receipts and therefore, these may not be added as income of the assessee society.*

9. *It is respectfully submitted that assessee trust has maintained complete books of accounts, which are duly audited and all items of income and expenditure accounts are duly vouched. Books of accounts, bills and vouchers are duly produced and enclosed herewith as Annexure 7 for your verification. We hope you would find the same in order.”*

15. After considering the reply of the Assessee dated 09/03/2022, the A.O. passed order dated 30/03/2022 u/s 147 of the Act by accepting the returned income. The Ld. CIT(A) once again taken up the very same issue i.e. amalgamation and building fund of Rs. 1,13,08,822/- in the proceeding's initiated u/s 263 of the Act which amounts to review of the opinion already taken by the Ld. FAO while framing assessment u/s 147 of the Act. The Ld. A.O. while framing

the assessment u/s 147 of the Act has taken plausible view and the action of the Ld. CIT(A) tantamount to change of opinion which is not permissible under law.

16. The Hon'ble Calcutta High Court in case of PCIT vs KARAN POLYMERS PVT. LTD. in IA No: GA/2/2023 wherein vide order dated 27.02.2023, held as under:

"The short issue involved in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata-2 (PCIT) under Section 263 of the Act was justified.

The learned Tribunal has passed an elaborate order, firstly taking note of the legal position under what circumstances the power under section 263 of the Act could be invoked. The Tribunal referred to the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Pvt. Ltd. vs. CIT, (2000) 243 ITR 83 and the decision in the case of CIT vs. Max India Limited, 295 ITR 0282 and the other decisions of the various High Courts and then proceeded to examine the factual aspect. The learned Tribunal noted that the issue based on which the PCIT assumed jurisdiction under Section 263 of the Act was the very same issue which was the subject matter of the reopening proceedings, which was done by the Assessing Officer under Section 148 of the Act. The learned Tribunal also noted that the assessee had filed a detailed submission to the reopening proceedings by reply dated 2nd August, 2018 and records were placed before the Assessing Officer in the form of a paper book and after examining all the documents the Assessing Officer was satisfied that the assessee had not entered 3 into any bogus/accommodation entry/transaction with the party in question and there is no element of undisclosed income.

Thus, in our considered view, the learned Tribunal rightly applied the legal position and also took note of the facts and held that the power under Section 263 of the Act could not have been invoked."

17. It is a settled position of law that when the Ld. AO examined the issue and decided the matter, then the assessment order cannot be held erroneous & prejudicial to the revenue arbitrarily by the Ld. CIT(E) which tantamount to wrong exercise of power conferred upon the Ld. CIT/PCIT u/s 263 of the Act.

18. The Hon'ble High Court of Gujarat in the case of Siddhi Infrabuild (P.) Ltd. v. PCIT [2025] 172 taxmann.com 232 (Gujarat) vide order dated 28.01.2025 held as under: -

"34. Considering the facts of the case as well as the settled legal position as enumerated herein above, the following issues arising in these petitions vis-a-vis the jurisdiction of the respondent no. 1 can be summarized as under:

(1) The respondent no.1 could not have assumed the jurisdiction only when the Assessing Officer has not made any inquiry with regard to any issue, which is the subject matter of the revision proceedings. In the facts of the case, it is not in dispute that the Assessing Officer has made inquiries with regard to disallowance under Section 14 A of the Act read with Rule 8D of the Rules during the course of the regular assessment. Therefore, the Assessing Officer while carrying out the re-assessment proceedings could not have again made any inquiry for the said issue.

(ii) Moreover, assuming the contention of the petitioner that irrespective of the issue of limitation, the respondent no.1 Assessing Officer could not have assumed the jurisdiction by invoking explanation (ii) of Section 263 is also tenable as the issue of disallowance under Section 14A of the Act was already subject matter of inquiry and therefore, the issue as to whether the inquiry was insufficient or not, could not have been the subject matter of revisional proceedings as it would amount to mere change of opinion."

19. The Co-ordinate Bench of the Tribunal in case of Daffodills Pharmaceuticals Ltd. v. PCIT [2023] 157 taxmann.com 195 (Delhi - Trib.) vide order dated 19.09.2023 held as under: -

"19. The Id. AO satisfied about the correctness of the above and after calling for the details from the assessee and came to a conclusion that there was no necessity of any addition on the above issues and duly framed the assessment u/s 143(3) r.w.S. 147 of the Act.

20. when Id. AO adopted one of the courses presumably in the law and it has resulted in loss of revenue, or where two views are possible and the Id. AO has taken one view with that Id. PCIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Id. AO is unsustainable in law. In the present case, the assessment framed by Id. AO u/s 143(3) r.w.s. 147 of the Act and the A.O. had recorded various reasons for reopening assessment and went on framing the assessment on the said basis and collected the information with reference to the reasons so recorded for reopening of the assessment and the A.O. was satisfied with the explanation given by the assessee regarding various issues raised by him. Now the Id. PCIT cannot find fault with the action of the Id. AO and direct A.O. to carry out further enquiry on the materials or judgments of the Hon'ble High Court which are not part of the assessment records. Accordingly, we do not find any merit in the issues raised by the Id. PCIT in the order passed u/s 263 of the Act. Accordingly, we quash the order passed u/s 263 of the Act by the Id. PCIT."

20. The Hon'ble High Court of Gujarat in case of CIT-I v. Amit Corpn. [2012] 21 taxmann.com 64 (Guj.) vide order dated 01.02.2012 held as under:-

"When, during the course of framing of the assessment, the Assessing Officer had access to all the records of the assessee, after pursuing such record the Assessing Officer framed the assessment, such assessment could not have been re-opened in exercise of revision power under Section 263 of the Act for making further inquiries."

21. In the present case, the Ld. CIT(E) in its order not mentioned as to what enquiries Ld. FAO failed to undertake while exercising the power conferred u/s 263 of the Act. As could be seen from the record and as discussed above, FAO has examined the very issue of reopening i.e. the receipts credited under amalgamation and building fund in detail by issuing notice u/s 142(1) of the Act and the Assessee has replied to the same. After considering the reply of the Assessee no adverse view has been taken by the FAO and accepted the returned income in the order passed u/s 147 of the Act dated 30/03/2022. The Judgment of Hon'ble High Court of Karnataka relied by the Ld. Department's Representative in the case of Herbalife India Pvt. Ltd.(supra) is not applicable to the present case. Therefore, in our considered opinion, the exercise of power conferred u/s 263 of the Act by the Ld. CIT(E) is totally in violation of settled position of law as the very order passed u/s 263 of the Act dated 19.03.2024 has only led to the Change of Opinion which is impermissible under law and therefore, the impugned order passed u/s 263 of the Act is hereby quashed.

22. In the result, Appeal of the Assessee is allowed.

Order pronounced in the open court on 08th August, 2025

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:- 08.08.2025
R.N, Sr.P.S*

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. **Appellant**
2. **Respondent**
3. **CIT**
4. **CIT(Appeals)**
5. **DR: ITAT**

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**