

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD
BEFORE SH. SUBHASH MALGURIA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No. 181/ALLD/2024
A.Y. 2013-14

Shri Mahaveer Charitable Trust, 46, Rajendra Nagar, Baluaghat, Allahabad-211003, U.P.	vs	Income Tax Officer (Exemption), Allahabad
PAN: AAHTS9123K		
(Appellant)		(Respondent)

Assessee by:	Dr. Pawan Jaiswal & Sh. Ajit Kumar, Advocates
Revenue by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	22.07.2025
Date of pronouncement:	14.10.2025

ORDER

PER NIKHIL CHOUDHARY, A.M.

This is an appeal filed by the assessee against the order of the Id. CIT, NFAC dated 28.09.2024, wherein the Id. CIT(A) has dismissed the appeal of the assessee that was filed against the orders of the Income Tax Officer (Exemption), Allahabad dated 30.03.2018. The grounds of appeal are as under: -

"1. BECAUSE the impugned order of the Ld. CIT(A) dated 28.09.2024 affirming the addition of Rs. 1,97,69,650/- on account of donation received and rejection of the submissions of the appellant that appeal proceedings pending against the order passed under Section 143(3) dated 30.03.2016 are infructuous is absolutely illegal and against the principles of law.

2. BECAUSE the Hon'ble Supreme Court in the case of CIT v. Alagendran Finance Ltd. [27.07.2007] had observed that when an order of assessment is reopened, the previous assessment will be held to be set aside and the whole proceedings would start afresh and in the case in hands the assessment order dated 30.03.2016 has been set-aside by the then incumbent Ld. CIT(E); that is to say that no assessment existed on the date when order dated 28.02.2018 under Section 263 of the Act was passed by the then incumbent CIT(E).

3. BECAUSE Section 263 of the Act grants power to the jurisdictional Commissioner to direct for revision of orders and reads as under (relevant Statute quoted):

"Revision of orders prejudicial to revenue.

263. (1) *The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may call for and examine the record of any proceeding under may be, is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the appellant 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,-*

(1) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment, or

(ii)

(ii)

A bare perusal of the afore-said Section reveals that the jurisdictional Commissioner has the power to pass such order as the circumstances of the case justify which may include:

(i) an order enhancing or modifying the assessment,

(ii) cancelling the assessment and directing a fresh assessment.

Hence, in the case in hands i.e. of the appellant; the Ld. CIT(E) had exercised the other option of "cancelling the assessment and directing a fresh assessment" thereby eroding the existence of Assessment Order dated 30.03.2016. Had the then incumbent CIT(E) had any opinion of enhancing or modifying the assessment order dated 30.03.2016, he would have done the same and not instead set aside the assessment order dated 30.03.2016.

4. BECAUSE in light of the order dated 28.02.2018 passed under Section 263 of the Act; we can fairly and lawfully conclude that no assessment order existed for the year under consideration Le. A.Y. 2013-14 [i.e. assessment order dated 30.03.2016 was exhausted] till the time fresh assessment was made by the Ld. Assessing Authority vide its order dated 28.12.2018. Thus, any appeal filed against the original assessment order dated 30.03.2016 will automatically become redundant and any action of CIT(A) adjudicating such redundant appeal is uncalled for.

5. BECAUSE the appellant had filed an appeal [ie. the present appeal] against the original assessment order passed under Section 143(3) of the Act but the same become an unfruitful exercise after the passing of order dated 28.02.2018 under Section 263 by the Ld. CIT(E) as the same was set aside by the Ld. CIT(E) and directing the Assessing Authority for fresh assessment in the order dated 28.02.2018 passed under Section 263 of the Act.

6. BECAUSE the Hon'ble ITAT has set aside the order of the Ld. CIT(E) dated 28.02.2018 vide its order dated 03.08.2021; meaning thereby the Ld. CIT (E) has to pass a fresh order for an Assessment Year [i.e. A.Y. 2013-14 in the present case]; of which no order exists. Thus, any presumption taken by the Ld. CIT(A) for passing the impugned order for appeal filed against Assessment Order dated 30.03.2016 which does not exist is absolutely illegal and misconstrued.

7. BECAUSE the Ld. CIT(A) vide its order dated 10.01.2024 has allowed the appeal of the appellant filed against the order of the Assessing Authority dated 28.12.2018 passed under Section 143(3) read with Section 263 of the Act. Meaning thereby none of the Assessment Orders passed in the case of the appellant survive because Assessment Order dated 30.03.2016 has already been set-aside vide order of CIT(E) dated 28.02.2018 passed under Section 263 of the Act.

8. BECAUSE the proceedings under Section 143(3) and 263 have been exhausted / arrived conclusion, hence adjudicating of appeal for original assessment order dated 30.03.2016 passed under Section 143(3) will start a series of legal fracas and procrastination of justice for the appellant resulting in unnecessary harassment for the appellant financially and otherwise.

9. BECAUSE the order appealed against is contrary to the facts, law, principles of natural justice and against the binding precedence and decisions of hon'ble high courts and tribunal.

10. BECAUSE the addition so sustained by the CIT(A) in the impugned appellate order deserves to be set-aside and the return income disclosed by the appellant is liable to be sustained.

11. The appellant reserves the right to alter, amend or take any fresh ground before Your Honour at the time of the hearing of this Appeal."

2. The facts of the case are, that the assessee is a Charitable Trust registered under section 12AA of the Income Tax Act, 1961. It filed its return of income for the year under consideration on 30.03.2015, declaring returned income at rupees Nil after claiming exemption under sections 11 and 12 of the Act. The case was taken up for scrutiny and the ld. AO completed the scrutiny assessment under section 143(3) at a total income of rupees Nil. However, the donations of Rs.1,97,69,650/- were treated as anonymous donations and therefore, were brought to tax under section 115BBC of the Income Tax Act, 1961.

3. Being aggrieved by the said assessment order, the assessee filed an appeal before the ld. CIT(A) on 11.06.2016. However, before the ld. CIT(A) could examine the issue, the ld. CIT (Exemption) revised the assessment order under section 263 of the Act, holding it to be erroneous and prejudicial to the interest of Revenue and he directed the ld. AO to make fresh assessment, by setting aside the assessment order dated 30.03.2016. This order under section 263 of the Act was passed on 28.02.2018.

4. Being aggrieved by the order of the Id. CIT (Exemption), the assessee preferred an appeal before ITAT which was registered as appeal number ITA No. 190/ALLD/2018. The ITAT held, that proper opportunity had not been provided to the assessee before the passing of the said revision order and therefore, restored the matter back to the file of the Id. CIT (Exemption) for *de novo* consideration, after affording proper opportunities to the assessee. In the meanwhile, the Id. AO, acting under the orders of the Id. CIT (Exemption), had already passed another assessment order under section 143(3) r.w.s. 263 on 28.12.2018. Subsequently, the Id. CIT(A), vide his order dated 10.01.2024, and after taking cognizance of the order of the Hon'ble ITAT Allahabad dated 3.08.2021, allowed the Appeal No. CIT(A) Allahabad / 10351/2018-19 filed against the orders of the Id. AO under section 143(3) r.w.s. 263, observing that since the Hon'ble ITAT had set aside the order passed under section 263 of the Act, the assessment order passed under section 143(3) r.w.s. 263 does not survive. Meanwhile, after receipt of the orders of the ITAT dated 3.08.2021, the Id. CIT (Exemption) issued a show cause notice to the assessee on 23.02.2024, for furnishing of documents in support of its submission and after receipt of such submissions, vide his order dated 27.03.2024, dropped the proceedings under section 263. After all this had transpired, the Id. CIT(A), NFAC took up the appeal of the assessee against the assessment order dated 30.03.2016 and vide his orders dated 28.09.2024, the Id. CIT(A) NFAC dismissed the said appeal. The assessee is aggrieved at the dismissal of the appeal and has accordingly come before us against the same.

5. Dr. Pawan Jaiswal and Sh. Ajit Kumar, Advocates (hereinafter referred to as the Id. ARs) appearing on behalf of the assessee pointed out that the appeal before the Id. CIT(A) had been filed on 11.06.2016 against the order under section 143(3) dated 30.03.2016. However, on 28.02.2018, the Id. CIT (Exemption) had passed an order under section 263 setting aside the order under section 143(3) for fresh assessment. An appeal was filed against this decision of the Id. CIT (Exemption) before the Hon'ble ITAT. However, before this appeal could be

decided, the assessment order under section 143(3) r.w.s. 263 was passed by the ld. AO on 28.12.2018 and the assessee filed an appeal against this assessment order on 29.01.2019 before the ld. CIT(A). On 3.08.2021, the ITAT set aside the order passed by the ld. CIT (Exemption). Thereafter, the ld. CIT (A) allowed the appeal of the assessee against the order passed under section 143(3) r.w.s. 263 by observing that since the proceedings under section 263 had been set aside by the ITAT, the subsequent assessment order could not survive. Subsequently, the ld. CIT(E) issued a notice to the assessee on 23.02.2024 for reopening the matter under section 263, but being satisfied with the response of the assessee, he closed the proceedings on 27.03.2024. The ld. ARs submitted before us, that the Hon'ble Supreme Court in the case of CIT vs. Alagendran Finance Limited, vide their order dated 27.07.2007, had observed that when an order of assessment is reopened, the previous assessment would be held to be set aside and the whole proceedings would start afresh. In the present matter, the assessment order dated 30.03.2016 had been set aside by the then CIT(E) and thereafter no assessment order existed after 28.02.2018 when the order under section 263 was passed by the then ld. CIT (Exemption). It was further submitted that the subject matter of the appeal against the assessment order under section 143(3) dated 30.03.2016 and order dated 28.12.2018 under section 143(3) r.w.s. 263 that were made before the ld. CIT(A) were the same in verbatim and the latter order had been allowed by the ld. CIT(A), vide his order dated 10.01.2024. It was, therefore, submitted that once an issue had been decided by an appellate authority, the same could not be addressed again by an authority parallel in jurisdiction and office. Our attention was invited to the meaning of the word, "set aside" as illustrative in the oxford dictionary, which defined it as, "declare a legal decision or process to be invalid". Thus, after the order of the ld. CIT (Exemption) dated 28.02.2018, the assessment order dated 30.03.2016 automatically became invalid and the same could not be re-visited for fresh assessment, as held by the Hon'ble Supreme Court in the case of CIT vs. Alagendran Finance Limited. Our attention was also invited to the provisions of section 263 and it was pointed out that in the instant case, the ld. CIT (Exemption) had exercised the option of,

“cancelling the assessment and directing a fresh assessment”. Thereby, he had eroded the existence of the assessment order dated 30.03.2016. Thus, no assessment order existed for the year under consideration and the appeal filed against the original assessment order automatically became redundant, which had been grossly ignored by the ld. CIT(A), while passing the impugned order dated 28.09.2024. It was further submitted that though the assessee had filed an appeal against the original assessment order dated 30.03.2016 passed under section 143(3), the same had become an unfruitful exercise after the passing of the order dated 28.02.2018 under section 263 by the ld. CIT (Exemption). Subsequently, the ld. CIT (Exemption’s) order had been set aside by the ITAT and had been dropped by the ld. CIT (Exemption). The ld. CIT(A) hearing the appeal against the order under section 143(3) r.w.s. 263 had also allowed the appeal of the assessee holding the same to be invalid on account of the fact that the order under section 263 had ceased to survive. Thus, it was prayed that the confirmation of addition of Rs. 1,97,69,650/- by the ld. CIT(A), vide his order dated 28.09.2024 deserves to be deleted by the Tribunal and the submissions of the assessee that appeal proceedings against the order passed under section 143(3) dated 30.03.2016, had been rendered infructuous, deserved to be upheld.

6. On the other hand, Sh. A.K. Singh, Sr. DR (hereinafter referred to as the ld. DR) invited our attention to the orders passed by the ld. CIT (Exemption) under section 263 on 28.02.2018 and pointed out that the order had been held to be erroneous and prejudicial to the interest of Revenue because the assessment had not been completed in accordance with the provisions of section 13(7) of the Income Tax Act, 1961. Furthermore, the ld. CIT (Exemption) had been of the opinion that the AO had failed to make proper enquiries to ascertain the possible nexus between the society and its donors, which could attract the provisions of section 68 of the Income Tax Act, 1961. The ld. CIT (Exemption) had further observed that even though the anonymous donations amounting to Rs. 1,97,69,650/- had been charged to tax under section 115BBC, the interest under section 234A and 234B had not been charged. The ld. Sr. DR pointed out that this order under section 263

was challenged by the assessee before the Tribunal and the Tribunal had set aside the matter back to the file of the Id. CIT (Exemption) as it was of the opinion that the Id. CIT (Exemption) had not provided proper opportunities to the assessee. The Id. Sr. DR pointed out that once the order under section 263 ceased to be operative on account of the orders of the ITAT dated 3.08.2021, then the assessment order subsequently passed under section 143(3) r.w.s. 263 on 28.12.2018 stood automatically vacated and the assessment order dated 30.03.2016, that had earlier been cancelled, stood automatically revived. Therefore, he argued that the Id. CIT(A) was perfectly justified in allowing the appeals of the assessee against the order under section 143(3) r.w.s. 263, but he submitted that that appeal had been allowed not on the merits, but on account of the fact that the foundation of the said order, which was the order under section 263, had itself ceased to exist. Moreover, since the Id. CIT (Exemption) had subsequently decided not to proceed with the matter under section 263, those proceedings remained closed. But all these would not affect the appeal of the assessee against the original order under section under section 143(3), because no decision on merits had been taken with regard to the decision of the Id. AO, to bring anonymous donations to tax under the provisions of section 115BBC. It was that issue and that issue alone which was the subject matter of consideration before the Id. CIT(A) and it was submitted that the assessee had not furnished any evidence to controvert the findings of the Id. AO regarding the donations to it being anonymous. Accordingly, it was submitted that the Id. CIT(A) had recorded in his order that the entire submissions of the assessee had been on this technical issue which have been raised before the Tribunal also, and the Id. CIT(A) had dealt with this issue in great detail while finding it to be of no merit. But he had recorded that the assessee had not made any submission in respect of the grounds of appeal. Therefore, the assessee had not challenged the addition made in the assessment order by submitting any evidence or explanation. He presumed from the same, that the assessee was agreeable with the addition made by the Id. AO and he had rightly dismissed the appeals of the assessee. The Id. Sr. DR pointed out that even before the Tribunal, the assessee had not offered any submission on

merits but had merely stuck to technical issues and which were without merit and therefore, the addition made by the ld. AO was fit to be confirmed.

7. We have duly considered the facts and circumstances of the case and the arguments advanced by both parties. We do not find any merit whatsoever in the arguments advanced by the ld. AR that the orders of the ld. CIT(A) are bad in law because the assessment order under section 143(3) dated 30.03.2016 had ceased to exist, rendering the assessee's appeal against the same to be infructuous. We find that with the setting aside of the orders under section 263, the earlier orders under section 143(3) dated 30.03.2016, that had been set aside vide the Commissioner's order dated 28.02.2018, automatically stood revived and if anything, it was the subsequent order passed by the ld. AO under section 143(3) r.w.s. 263 on 28.12.2018 that was rendered *void ab initio*. The ld. CIT(A), in his order dated 10.01.2024 had rightly allowed the appeals of the assessee against the said order under section 143(3) r.w.s. 263, on account of the fact that since the order under section 263 had itself ceased to exist, there was no basis for the subsequent orders under section 143(3) r.w.s. 263. However, he had not pronounced any order on the merits of the additions made by the ld. AO in that assessment. Therefore, the arguments advanced by the assessee, that once the matter had been decided by a CIT(A) on 10.01.2024 in its favour, the same could not be decided against it by another CIT(A) on the facts of the case, are without merit. The ld. CIT(A) hearing the appeal against the original assessment had complete jurisdiction to hear the appeal on the merits of the issue. However, it appears that the assessee has not submitted any arguments on the merits before the ld. CIT(A). Therefore, there is no infirmity in the orders of the ld. CIT(A), where he states that the assessee has not furnished any evidence in support of the grounds of appeal. Accordingly, ground nos. 1 to 8 of the assessee's appeal are dismissed. In ground nos. 9 and 10, the assessee has submitted that the orders appealed against are contrary to the fact, law and against the principles of natural justice and against the binding precedence of various Hon'ble High Courts and Tribunals. It has also been prayed that the said order deserves to be set aside and the returned income disclosed by the assessee is

liable to be sustained. We have duly noted the statement of facts and grounds of appeal that have been filed before the Id. CIT(A) and we observe that even though the assessee had not furnished further submissions, in support of this statement of facts and grounds of appeal, the Id. CIT(A) was still obliged to decide these grounds of appeal after considering these submissions made by the assessee in the statement of facts and after calling for such evidences, as he felt necessary, to decide the issue as emerging from those statement of facts and grounds of appeal, instead of merely dismissing the appeal on account of the unacceptable legal arguments raised by the assessee. Therefore, in the interest of natural justice, we deem it appropriate to restore the matter back to the file of the Id. CIT(A) for consideration of the case on its merits, after considering arguments advanced by the assessee on such issues. Accordingly, ground nos. 9 and 10 of the grounds of appeal are allowed for statistical purposes. Ground no. 11 does not require any decision.

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

Order pronounced on 14.10.2025 in the open Court.

Sd/-
[SUBHASH MALGURIA]
JUDICIAL MEMBER

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

DATED: 14/10/2025

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Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT DR , ITAT,
4. CIT,
5. The ADDL JCIT(A)

By order
Sr. P.S.