

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A”BENCH: BANGALORE**

**BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1051/Bang/2024
Assessment Year : 2018-19

Buckeye Trust No.23, Nadathur Place 8 <sup>th</sup> Main Jayanagar 3 <sup>rd</sup> Block Bangalore Karnataka 560 011  <b>PAN NO : AADTB3305J</b>	<b>Vs.</b>	PCIT-2 Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Sri Sriram Seshadri, A.R.
<b>Respondent by</b>	:	Sri Shivanand Kalakeri, D.R.

<b>Date of Hearing</b>	:	18.11.2025
<b>Date of Pronouncement</b>	:	12.02.2026

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of Id. PCIT, Bengaluru-2 dated 29/03/2024 vide DIN & Order No. ITBA/REV/F/REV5/2023-24/1063614851(1) passed u/s. 263 of the Income Tax Act, 1961 (in short “the Act”) for the AY 2018-19.

**2.** The assessee has raised the following grounds of appeal:-

*The grounds mentioned herein by the Appellant are independent and without prejudice to one another:*

*Grounds of appeal*

*A. General Ground*

- 1. The Learned Principal Commissioner of Income Tax, Bengaluru - 2 ('Ld. PCIT') has erred in passing an order of revision under section 263 of the Income-tax Act, 1961 (the Act') which suffers from legal defects such as being passed in violation of the provisions of the Act and is devoid of merits and is contrary to the facts on record and applicable law and as such liable to be quashed.*
- 2. The Ld. PCIT has finalized the impugned order with improper conclusion without considering the information, arguments and evidence provided by the Appellant.*

*B. Validity of revisionary proceedings under section 263 of the Act*

- 1. The Impugned order passed by the Ld. PCIT is without jurisdiction as the twin conditions prescribed under section 263 of the Act i.e., the order of the Ld. AO shall be 'erroneous' and 'prejudicial to the interest of revenue', are not satisfied.*
- 2. The Ld. PCIT erred in concluding that the assessment order passed under section 143(3) r.w.s 143(3A) and 143(3B) of the Act for impugned AY is erroneous and prejudicial to the interest of revenue, without appreciating the material on record and submissions made by the Appellant.*
- 3. The Ld. PCIT erred in passing the impugned order, on the allegation that the Ld. AO has completed the assessment without making necessary enquiries or verifying the taxability of receipt of INR 669,27,63,437, without appreciating that the Ld. AO had duly conducted enquiries and verification on the issue.*

*C. Taxability of receipt of INR 669,27,63,437*

- 1. The Ld. PCIT has, in the facts and circumstances of the case and in law, erred in disregarding the fact that the receipts of INR 667,47,38,930 out of INR 669,27,63,437 is in form of interest in partnership firms and does not qualify as property as per section 56 of the Act.*
- 2. The Ld. PCIT has, in the facts and circumstances of the case and in law, erred in disregarding the fact that (a) the receipts of INR 669,27,63,437 is not without consideration (b) trust is not a person under section 2(31) of the Act and (c) receipt of money is from individual by a trust created or*

*established solely for the benefit of relative of individual, hence outside the purview of section 56(2)(x) of the Act.*

*That the Appellant craves leave to add to and/or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this Appeal.*

**3.** The brief facts of the case are that the assessee is a Private discretionary trust under the provisions of the Indian Trusts Act, 1882 created by virtue of a trust deed executed on **23.01.2018** between Mr. Anand Nadathur, being the Settlor, and Vervain Management Private Limited, being the Trustee. On **31.03.2018**, the settlor, out of natural love and affection for the beneficiaries, settled assets amounting to Rs.669,27,63,437/- into the assessee trust pursuant to a duly executed settlement deed. The assessee trust filed its return of income for the assessment year 2018-19 on **30.08.2018** declaring total income of Rs. NIL. Thereafter, the case of the assessee trust was selected for **complete scrutiny** through CASS on the following issues: -

- i) Investments/Advances/Loans
- ii) Expenses incurred for earning exempt income
- iii) Share Capital/Other Capital

Subsequently, the notices u/s 143(2) and 142(1) of the Act were issued calling upon to furnish the details/clarification in respect of the assessment proceedings. The AO after considering the written explanation/clarification along with the submission in support of the return of income, concluded the assessment proceedings u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act on **07.04.2021** without making any modification to the returned income.

**3.1** The ld. Principal Commissioner upon calling for the assessment records and verification, observed that the trust has received an amount of Rs.669,27,63,437/- in the form of interest in partnership firms/shares settled by the Settlor in favour of the

trust. The said interest in partnership firms/investment in unlisted shares is accounted under the head "Trust Fund" and under the head of Investment in the Financial statement. The beneficiaries of the Trust are mentioned in clause 1.6 of the operative provision of the trust deed. As per clause 1.6, beneficiaries means (a) the Settlor (b) the spouse of the Settlor (c) the children and remoter issue of the Settlor (d) such other objects or persons as are added under clause 6 and beneficiaries shall be construed accordingly. The assessee in its submission dated 8.2.2021 stated that the beneficiaries fall within the ambit of the provisions of section 56(2)(X) of the Act as per exclusion provided in 4<sup>th</sup> proviso to the section. The assessee's claim is not in order as the trust has not only been created or established solely for the benefit of the relative of the individual but also other persons can be added as per clause 6. However, such other class of persons covered in proviso XI which is applicable from assessment year 2020-21. Therefore, the assessee is not falling within the ambit of the provisions of section 56(2)(X) of the Act for the assessment year 2018-19 and the amount of Rs.669,27,63,437/- received in the form of interest has to be brought to tax under the head "Income from other sources" as provided in section 56(2)(X) of the Act. Since the AO has completed the assessment **without making necessary inquiries or verifying the issues** required as per law in the order u/s 143(3) of the Act for the assessment year 2018-19 dated 7.4.2021, the order is erroneous and prejudicial to the interest of revenue as per the provisions of section 263 of the Act and accordingly, a show cause notice for the hearing was issued on 13.3.2024 as to why the assessment order dated 7.4.2021 should not be set aside and reframed. The ld. A.R. of the assessee filed detailed reply on 18.3.2024 which is reproduced hereunder for the sake of convenience:

3. Legal submission on applicability of section 263 of the Act

(a) Revisionary proceedings under section 263-

- i. can be initiated only if the order passed by learned AO is both erroneous, and prejudicial to the interest of the revenue.
- ii. cannot be initiated on difference of opinion.
- iii. is not permissible if issue examined by the learned AO even if order is silent.
- iv. can be initiated only if the order passed by learned AO is both erroneous, and prejudicial to the interest of the revenue.

3.1. Relevant extract of section 263 of the Act-

"The Principal Chief Commissioner or Chief Commissioner or 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 or the Transfer Pricing Officer, as the case may be, 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..."

3.2. On careful reading of section 263 of the Act, it is clear that this power can be exercised, if the order passed by the learned AO is both, erroneous, as well as prejudicial, to the interests of the revenue. As your good self would also agree, in the present case, based on the factual matrix as provided in Section 1 of the submission the issue of receipt of INR 669,27,63,437 was examined.

3.3. In support of above, the Assessee draws your good selfs attention to the decision of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. v. CIT [2000] 243 TTR 83 (SC), wherein it was held that every loss of tax cannot be said to be prejudicial to the interests of the revenue and that both the preconditions ought to be satisfied for jurisdiction under section 263 of the Act. The relevant extracts are as follows:

"A bare reading of this provision makes it clear that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the

Revenue - recourse cannot be had to section 263(1) of the Act. There can be no doubt that the provision cannot be invoked to correct each, and every type of mistake or error committed by the Assessing Officer, it is only when an order is erroneous that the section will be attracted...

The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue."

3-4. Hon'ble Supreme Court in the case of Commissioner of Income-tax (Central), Ludhiana D. Max India Ltd. [2007] 295 ITR 282 (SC), had the occasion to examine both the terms, 'erroneous' and 'prejudicial to the interests of the revenue'.

The relevant extracts are as follows –

"2. At this stage we may clarify that under para 10 of the judgment in the case of Malabar Industrial Co. Ltd. (supra) this Court has taken the view that the phrase "prejudicial to the interest of the revenue" under section 263 has to be read in conjunction with the expression "erroneous" order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of the revenue. For example, when the Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue, unless the view taken by the Income-tax Officer is unsustainable in law."

3.5. Further, in the judgement of the Hon'ble High Court of Karnataka in the case of Commissioner of Income Tax, Bangalore v. Chemsworth (P.) Ltd. [2020] 119 taxmann.com 358 (Karnataka), it was held that to invoke the provisions of Section 263 of the Act, an order must be both erroneous and prejudicial to the interests of the

revenue:

"8. In the backdrop of aforesaid well settled legal principles, we may examine the facts of the case in hand. In CIT v. Sunbeam Auto Ltd. [2010] 189 Taxman 436/[2011] 332 ITR 167 (Delhi) it has been held by Delhi High Court that Assessing Officer in the order of assessment is not required to give detailed reasoning in respect of each and every item of deduction and therefore, the question whether there has been an application of mind before allowing expenditure has to be examined from the record of the case. The question of lack of enquiry/inadequate enquiry is also required to be kept in mind and mere inadequacy of the enquiry would not confer jurisdiction on the Commissioner of Income-tax under section 263 of the Act. In the instant case, the Commissioner of Income-tax has held that the enquiry conducted by the Assessing Officer is inadequate and has assumed the revisional jurisdiction. The assessee has filed all the details before the Assessing Officer and Assessing Officer has accepted the contention of the assessee that no expenditure is attributable to the exempt income during the relevant Assessment Year. Thus, while recording the aforesaid finding, the Assessing Officer has taken one of the plausible views in allowing the claim of the assessee and therefore, the Commissioner of Income-tax could not have set the Tribunal."

3.6. Further, in the decision of Hon'ble Jurisdictional High Court in the case of CIT v. Sarvana Developers [(2016) 387 ITR 239 (Karnataka)] the proceedings under section 263 of the Act was set aside on the ground that the assessing officer had applied his mind and hence, there was no "lack of enquiry". The relevant extract of the said ruling is provided below:

"19. In the light of the Judgments discussed above, we are of the firm view that the twin test propounded by the Hon'ble Courts for invoking the provisions of Section 263 of the Act, are not satisfied in the present case. As discussed above, the CIT proceeded to initiate proceedings under Section 263 of the Act only on the ground that the Assessing Officer has not assigned any reasons for accepting the valuation of the work-in-progress declared by the Company. As per the materials placed before the Tribunal in the records pertaining to the assessment year in question, a detailed examination is made by the Tribunal, Tribunal is of the view that the Assessing Officer has applied his mind before accepting the figure declared by the Company in the work-in-progress report. Such an order cannot be held to be erroneous and prejudicial to the interest of the revenue. It is not a case of lack of inquiry'. Further inquiry ordered by the CIT would amount to fishing/rowing inquiry in the matter already concluded."

(b) Revisionary proceedings under section 263-

i. cannot be initiated on difference of opinion.

3.7. In the present case, the view taken by the learned AO that the receipt of INR 669,27,63,437 by the Trust from the settlor is not taxable under section 56(2)(x) of the Act is not unsustainable in law, as it is supported by the fourth proviso to the said section, which exempts any sum of money received by a trust created or established solely for the benefit of relative of the individual.

3.8. The reason given by your goodself that fourth proviso is not applicable in a case where the beneficiary is other than relative, and as per trust deed, trustee can add any such beneficiary.

3.9. Your goodself reliance on clause 6.1 of the trust deed is misplaced. Trust deed is entered for the benefit of the family and Clause 6.1 was added with an intention to include any other beneficiary which is a family member thus would fall under the definition of relative under the Act.

3.10. Moreover, your goodself should also take into consideration the conduct of the assessee, till date the funds are used for the benefit of beneficiaries who qualify the definition of relative provided under section 56 of the Act. Clause 6.2 states that any declaration made under clause 6.1 shall be by deed, and the assessee submits that no deed had been executed to add any beneficiary which is not a relative under the Act.

3.11. Based on above, the assessee submits that revisionary proceedings cannot be initiated on difference of opinion as it fails the test of being erroneous order.

(c) Revisionary proceedings under section 263-

i. is not permissible is issue examined by the learned AO even if order is silent.

3.13. As your good self would also agree, in the present case, based on the factual matrix as provided in Section 1 of the submission the issue of receipt of INR 669,27,63,437 was examined.

3.14. The AO had duly issued a notice under section 143(2) of the Act and sought clarification on various issues, including the receipt of INR 669,27,63,437 by the Trust from the settlor.

3.15. The Trust had furnished the relevant details and documents to the learned AO, such as the trust deed, the settlement deed, the letter from the settlor, the ledger copies of capital account, bank statement, and the financial statements, partnership

deeds, financial statements of partnership firms, to explain the source, nature of the receipt, and taxability, refer section 1 of the submission.

3.16. Therefore, it cannot be said that order passed by the learned AO is erroneous and prejudicial to the interest of revenue, without making inquiries or verification or allowing any relief without inquiring into the claim. The order was based on a possible and permissible view taken by the AO in accordance with the law and facts of the case.

3.17 Based on above, it is very well evident that enquiries were conducted. Responses capturing facts and legal proposition were furnished and learned AO has taken a conscious decision of not making any addition. It is therefore humbly submitted that the very foundation of your notice to revise assessment is not supported by facts and evidence.

#### **4. Submission on merits**

All the contentions made by the Trust are on without prejudice to each other.

- (a). Receipt is not without consideration.
  - (b). Trust is not a person under section 2(31) of the Act.
  - (c). Receipt of money is from an individual by a trust created/solely established for the benefit of relative of the individual.
- (a) Receipt of INR 669,27,63,437 is not without consideration.

4.1. Section 56(2)(x) (c) states that where any person receives any property (except immovable property) whose aggregate fair market value exceeds INR 50,000 then the aggregate value is taxable as income from other source.

Relevant extract of the section reads as –

(x) where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017-

(c) any property, other than immovable property,

(A) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

4.2 The term 'consideration' has not been defined under the Act, the same has to be understood Indian Contract Act, 1872.

*Consideration as per Indian Contract Act 1872 is defined in Section 2(d) as follows:*

*"When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promisee."*

*4.3. The meaning is elucidated by the following judicial precedent:*

*CGT v. K. Nagammal [1997] 226 ITR 598 (Kerala)*

*"In this context, it would not be out of place to see and consider as to whether such consideration has necessarily to be a monetary consideration. The term "consideration" has not been defined under the Gift-tax Act and naturally being the inevitable essence of an agreement or contract is to be found in section 2(d) of the Indian Contract Act, 1872. In this connection, by the Full Bench, this court in CGT v. Nirmala (C.K. )(Smt.) [1995] 215 ITR 156, has ruled that the word "consideration" as found in the definition of the term "gift" in the Gift-tax Act would carry the meaning assigned to it in section 2(d) of the Indian Contract Act, 1872. This was following the decision of the Bombay High Court in Keshub Mahindra v. CGT [1968] 70 ITR 1.*

*It would be at once seen as a result of the above decision, by barely perusing the said definition in section 2(d) that the understanding of the term "consideration" cannot get confined to money alone. The term "consideration" is that which creates a contractual relationship between the promisor and promisee in regard to the performance of promise and in regard to which the parties to the agreement or contract get related to each other. It is more than elementary that the law in regard to consideration tells us that consideration may be relating to a party other than the promisor and promisee illustratively for the benefit of a minor."*

*4.4 . From the above, essential features of consideration are:*

- i. It must move from the promisee or any other person, which means it must be given or done by the person for whose benefit the promise is made, or by any third party at the request of the promisor, with the consent of the promisee.*
- ii. It must be at the desire of the promisor, which means it must be given or done voluntarily and not under coercion, undue influence, fraud, misrepresentation or mistake.*
- iii. It may be past, present or future, which means it may be given or done before, at the time of, or after the making of the promise, as long as it is not gratuitous or without any intention to create a legal obligation. It may be an act, abstinence or promise, which means it may be a positive or negative performance, or a commitment to perform or refrain from performing something, by the promisee or*

any other person.

4.5. Further, Indian Trust Act, 1882 defines Trust as-

" A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner."

4.6. The position that emerges by applying the above legal meaning to the facts of the case, is as under:

The Trust itself is an obligation, each receipt is with an obligation that the same will be used for the benefit of beneficiaries.

The settlor contributed INR 669,27,63,437 to the trust, which created a corresponding legal obligation for the trust to use the funds for the benefit of the beneficiaries. This obligation constitutes a promise by the trustee to the settlor that the contribution/ corpus / funds would be distributed as intended by the settlor; and the said promise fits in the phrase "promise to do something" and "at the desire of promisor" appearing in Section 2(d) of the Indian Contract Act, 1872. Hence, the promise given by the trust to the settlor is the consideration.

4.7. Therefore, the assessee contends that your observation that the transfer was without any consideration is not supported by the facts or the law.

4.8. Based on above, the assessee submits that section 56(2)(x) of the Act is not applicable in present case.

(b) Trust is not a person under section 2(31) of the Act

4.9. Without prejudice to above submission, the assessee submits that Trust is not a person as per section 2(31) read with section 160 read with section 161. Relevant extract of the sections are reproduced as under

"2. In this Act, unless the context otherwise requires-

(31) "person" includes

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not, (vi) a local authority, and

(vi) every artificial juridical person, not falling within any of the preceding sub clauses.

*Explanation-* For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

160. (1) For the purposes of this Act, "representative assessee" means

(iv) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise [ including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

"161. (1) Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially, and shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in this Chapter, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him."

4.10. Based on the reading of section 160 and 161, the trust does not have a separate identity distinct from its beneficiaries. Thus, the trust acting in a fiduciary capacity will not qualify as person, thereby the section 56(2)(x) is not applicable as the latter section applies to a 'person' who receives specified items without consideration.

4.11. Further, wherever intent of legislature was to treat the trust as a person the same has been done by way of artificially including it in the definition itself. For example, under Central Goods and Services Tax Act, 2017, person is defined as

2. Definitions. - In this Act, unless the context otherwise requires, -

(84)-person includes

(m) trust; and

4.12. In light of the above legal analysis, we submit that the receipt by trust is essentially receipt by the relatives being beneficiary and thus clearly immune from the applicability of section 56(2)(x) and some part of the contribution constitutes receipt by the settlor himself which cannot constitute income based on the basic fundamental principle that no one can earn income from himself.

(c) Receipt of money is from an individual by a trust created/solely established for the benefit of relative of the individual.

4.13. Without prejudice to above submission, the assessee submits that the transaction would be covered under the proviso to section 56(2)(x) which inter alia provides that the section is not applicable when any sum or money is received from an individual by a trust created / solely established for the benefit of the relative of the individual.

**3.2** Thus, in a nutshell, the main contentions of the assessee are that the revisionary proceedings u/s 263 of the Act :-

- i. Can be initiated only if the order passed by the AO is both erroneous and prejudicial to the interest of the revenue.
- ii. Cannot be initiated on difference of opinion
- iii. Is not permissible if issue examined by the AO even if the order is silent.
- iv. Can be initiated only if the order passed by the AO is both erroneous and prejudicial to the interest of the revenue.

Further, on merits, the contentions of the assessee trust are without prejudice to each other as follows:-

- i. Receipt is not without consideration
- ii. Trust is not a person u/s 2(31) of the Act.
- iii. Receipt of money is from an individual by a trust created/solely established for the benefit of the individual.

**3.3** The Id. PCIT however, was of the opinion that the assessment was concluded without making any modification to the return of income, however, it is seen from the trust deed that the trust has not only been created or established solely for the benefit of relative

of the individual but also other persons can be added as per clause 6. The relevant clauses of 1.6 and 6 are reproduced as under:

*“Clause 1.6, beneficiaries means.*

- a. The Settlor*
- b. The spouse of the settlor*
- c. The children and remoter issue of the settlor*
- d. Such other objects or persons as are added under clause 6 and beneficiaries shall be construed accordingly.*

*6. Power to add beneficiaries*

*6.1 The Trustee may, at any time during the Trust Period, declare that any person or class of persons (whether or not in existence or ascertained) or Charity shall be added to the class of Beneficiaries provided that no such person or class of persons or Charity may be or include any Excluded Person.*

*6.1 In view of the above clause, it is clear that other than relatives also can be included in the beneficiaries. Hence, trust is not created or established solely for the benefit of the relatives of the individual.*

*6.2 As per the IT Act, relatives means-*

*i In case of an individual-*

- A. Spouse of the individual;*
- B. Brother or sister of the individual;*
- C. Brother or sister of the spouse of the individual;*
- D. Brother or sister of either of the parents of the individual;*
- E. Any lineal ascendant or descendant of the individual;*
- F. Any lineal ascendant or descendant of the spouse of the individual;*
- G. Spouse of the person referred to in item (B) to (F).”*

Hence, **any person or class of persons (whether or not in existence or ascertained) or charity, mentioned in the clause 6.1 does not fall under the meaning of relatives.** The Id. PCIT observed that the assessee in its reply explained that the trust deed is entered for the benefit of the family and clause 6.1 was added with an intention to include any other beneficiary which is a family member thus would fall under the definition of relative under the Act. The Id. PCIT however was of the view that the clause 6.1 does

not represent the same intention. The clause empowers the trustee to add any person or class of persons (whether or not in existence or ascertained) or charity to the class of beneficiaries. Thus, the benefits are not restricted to the relatives only. As per section 56(2)(X)(a) of the Act, wherein any person receives in any previous year, from any person or persons on or after the 1<sup>st</sup> day of April, 2017 – any sum of money without consideration, the aggregate value of which exceeds the Rs.50,000/-, chargeable to income tax under the head of “Income from other sources” **provided that any sum of money received from an individual by a trust created or established solely for the benefit of relative of the individual** (X of proviso four of 56(2)(X)).

**3.4** Thus, the ld. PCIT was of the opinion that the Trust has not been created or established solely for the benefit of the relative of the individual and hence an amount of Rs.669,27,63,437/- received by the Trust should be brought to tax under the head “Income from other sources” as provided in section 56(2)(X)(a) of the Act.

**3.5** In view of the above discussion, the ld. PCIT concluded by observing that that the assessment order passed u/s 143(3) r.w.s. 143(3A) & 143(3B) of the Act dated 7.4.2021 is erroneous in so far as prejudicial to the interest of revenue in terms of section 263 of the Act and accordingly set aside the order of the AO and directed u/s 263 of the Act to make a fresh assessment in accordance with law after considering the above facts. The ld. PCIT also directed the AO to conduct necessary enquiries and verification in accordance with law and CBDT instructions on this subject.

**4.** Aggrieved by the order of ld. PCIT passed u/s 263 of the Act dated 29.3.2024 the assessee has filed the present appeal before this Tribunal. The assessee trust has also filed a paper book, case

law compendium, written submission along with an application requesting for admission of additional evidence.

**5.** Before us, the ld. A.R. of the assessee Sri Sriram Seshadri, FCAvehemently submitted that the order passed by the ld. PCIT is illegal and without jurisdiction as neither the order passed by the AO is erroneous either of the fact or of law nor prejudicial to the interest of revenue to the income tax administration as a whole. Further, ld. A.R. of the assessee vehemently submitted that ld. PCIT failed to appreciate that revisionary proceeding u/s 263 of the Act cannot be initiated on difference of opinion and if the issue is already examined by the AO even if the assessment order is silent, the ld. PCIT has no jurisdiction to invoke the provisions of section 263 of the Act. Further, on merit of the case, the ld. A.R. of the assessee submitted that trust is not a person u/s 2(31) of the Act and receipt of money is from an individual by a trust created/solely established for the benefit of relative of an individual and therefore, the provisions of section 56(2)(X) of the Act is not applicable to the assessee. Further, ld. A.R. of the assessee drew our attention on an application for admission of the additional evidence filed by the assessee and vehemently submitted that the intention of the assessee was never to include non-relatives into the deed of trust which is also evident from the fact that since the date of creation of the trust in 2018 till date, the power of the trustee to add beneficiary has not even been invoked to add any relative, much less a non-relative and therefore, to remove any ambiguity on the power of the trustee, the assessee trust has executed and registered a supplementary deed dated 13.5.2025 **to restrict the list of beneficiaries explicitly only to the relatives** of the settlor.

**6.** The ld. CIT(D.R.) Shri Shivanand Kalakeri on the other hand, heavily relied on the order of ld. PCIT Bengaluru-2 and vehemently

submitted that order of the AO is brief and cryptic and no opinion is given and therefore, the question of two opinions as argued by the assessee does not arise. Further, the ld. PCIT (DR) submitted that the assessee having realized their mistake which is also not examined by the AO during the course of the assessment proceedings has now amended the trust deed which is produced before this Bench with an application for acceptance of the additional evidence. Lastly, the ld. CIT(DR) vehemently submitted that it is not a case of lack of enquiry but in fact the aspect of taxability under the provisions of section 56(2)(X) of the Act was never been examined by the AO at all and hence the ld. PCIT, Bengaluru-2 had rightly held the order of the AO to be erroneous so far as prejudicial to the interest of the revenue as the twin conditions are satisfied.

**7.** Before us, the assessee has filed an application under Rule 29 of the Income-Tax (Appellate Tribunal) Rules, 1963 praying for admission of additional evidence by enclosing the copy of the supplementary deed dated 13.05.2025. The copy of the supplementary deed dated 13.5.2025 are reproduced below for ease of reference and convenience-

Dated 13<sup>th</sup> May 2025

BK IV 121  
2025-26

BNG(U)-JNR...121.....2025-26.....Page 12



VERVAIN MANAGEMENT PRIVATE LIMITED  
(Original Trustee)

SUPPLEMENTARY DEED OF BUCKEYE TRUST

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2  
BNG(U)-JNR...121.....2025-26.....Page 2-8

ಕರ್ನಾಟಕ ಸರ್ಕಾರ  
ನೋಂದಣಿ ಹಾಗೂ ಮುದ್ರಾಂಕ ಇಲಾಖೆ  
Department of Stamps and Registration  
ಪ್ರಮಾಣ ಪತ್ರ

1957 ರ ಕರ್ನಾಟಕ ಮುದ್ರಾಂಕ ಕಾಯ್ದೆಯ ಕಲಂ 10ಎ ಅಡಿಯಲ್ಲಿಯ ಪ್ರಮಾಣ ಪತ್ರ

Vervain Management Private Limited is Rep. by Mr.Nandan Laxman Sastry ಇವರು ₹2,000.00 ರೂಪಾಯಿಗಳನ್ನು ನಿಗದಿತ ಮುದ್ರಾಂಕ ಶುಲ್ಕವಾಗಿ ಪಾವತಿಸಿರುವುದನ್ನು ದೃಢೀಕರಿಸಲಾಗಿದೆ.

ಪ್ರಕಾರ	ಮೊತ್ತ (ರೂ.)	ಹಣದ ಪಾವತಿಯ ವಿವರ
E-Payment	2,000.00	Online Challan Reference Number RG0525000018251387 Dated:12/05/2025
Total:	2,000.00	

ಸ್ಥಳ : ಜಯನಗರ  
ದಿನಾಂಕ: 13/05/2025

*Handwritten signature*  
Senior Sub Registrar  
Jayanagar, Bangalore City

BNG(U)-JNR.....12<sup>3</sup>.....2025-26.....IN.....Page 3-8

**SUPPLEMENTARY DEED**

DATE: 13th day of May 2025

BY **Vervain Management Private Limited**, a company registered under the Companies Act, 1956, having its registered office at # 23, Nadathur Place, 8<sup>th</sup> Main Road, Jayanagar, Bangalore 560011, India (the "**Trustee**") represented by Nandan Laxman Sastry authorised signatory on behalf of Vervain Management Private Limited ( the "**Trustee**" )

**RECITALS:**

- (A) This Supplementary Deed ("**Deed**") is supplemental to a settlement made between Anand Nadathur (acting as settlor) and the Trustee Vervain Management Private Limited (acting as trustee) on the 23<sup>rd</sup> January 2018 ("**Trust Deed**") vide Reg No 1121/2017-18/BK IV stored in CD No JAYD324 , evidencing and recording a trust known as the "Buckeye Trust (the "**Trust**") and to all other deeds, documents and events supplemental thereto.
- (B) The Trustee is the present Trustee of the Trust.
- (C) Pursuant to recital B of the Trust Deed, a memorandum of wishes executed by the Settlor given by the Settlor to the Trustees on or around the creation of the Trust, the purposes of the Trust is to benefit the Settlor and the Settlor's Family Members (*as defined hereinbelow*).
- (D) The Trustee considers that exercise of any dispositive power under the Trust Deed to benefit any one or more persons that are not Family Members would be unreasonable and unjustifiable, mala fides and contrary to the express purposes of the Trust.
- (E) In consideration of the above and in order to avoid any risk of ambiguity or uncertainty in the administration of the Trust and for the avoidance of doubt the Trustee wishes, in the manner hereinafter appearing, to exercise their power of variation under clause 28 of the Trust Deed to formally align the scope of powers contained in the Trust Deed with the intent of the Settlor and express purposes of the Trust.
- (F) It is hereby clarified that this Deed does not involve the transfer of any immovable property directly or indirectly through such execution.

**OPERATIVE:**

**1. INTERPRETATIONS**

Where the context admits, the definitions and rules of construction contained in the Trust Deed shall apply.

**2. VARIATION**

The Trustee, in exercise of the power in that behalf conferred upon them by clause 28 of the Trust Deed and of all other relevant powers, **HEREBY DECLARES** that, the provisions of the Trust shall be **VARIED** by the following changes, additions and/or deletions (as the case may be):



*Nandan Laxman Sastry*



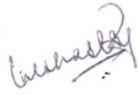
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ದಸ್ತಾವೇಜು ಸಂಖ್ಯೆ :- JAY-4-00121-2025-26

ಜಯನಗರ ಉಪ ನೋಂದಣಿ ಕಚೇರಿಯಲ್ಲಿ ದಿನಾಂಕ 13/05/2025 ರಂದು 10:51:32 ಗಂಟೆಗೆ ಈ ಕೆಳಗೆ ವಿವರಿಸಿದ ಶುಲ್ಕದೊಂದಿಗೆ




ಕ್ರಮ ಸಂಖ್ಯೆ	ವಿವರ	₹ ರ.ಅ.ಪೈ
1	ನೋಂದಣಿ ಶುಲ್ಕ	200.00
2	ಸೇವಾ ಶುಲ್ಕ	450.00
	ಒಟ್ಟು	650.00

Vervain Management Private Limited is Rep. by Mr.Nandan Laxman Sastry ಇವರಿಂದ ಹಾಜರು ಮಾಡಲ್ಪಟ್ಟಿದೆ.

ಕ್ರಮ ಸಂಖ್ಯೆ	ಹೆಸರು	ಫೋಟೋ	ಹೆಚ್ಚೆಟ್ಟಿನ ಗುರುತು	ಸಹಿ
1	<b>Vervain Management Private Limited is Rep. by Mr.Nandan Laxman Sastry ,</b> 0, Resident of: # 23, Nadathur Place, 8th Main Road, Jayanagar, Bangalore , Bengaluru South, BENGALURU URBAN, KARNATAKA - 560011 (Presenter)		 Left Thumb	

Senior Sub Registrar  
Jayanagar, Bangalore City

ದಸ್ತಾವೇಜು ಬರೆದುಕೊಟ್ಟಿರುವುದುಂಟೆಂದು ಒಪ್ಪಿಕೊಂಡಿರುತ್ತಾರೆ

ಕ್ರಮ ಸಂಖ್ಯೆ	ಹೆಸರು	ಫೋಟೋ	ಹೆಚ್ಚೆಟ್ಟಿನ ಗುರುತು	ಸಹಿ
1	<b>Vervain Management Private Limited is Rep. by Mr.Nandan Laxman Sastry ,</b> 0, Resident of: # 23, Nadathur Place, 8th Main Road, Jayanagar, Bangalore , Bengaluru South, BENGALURU URBAN, KARNATAKA - 560011 (Executant)		 Left Thumb	

Senior Sub Registrar  
Jayanagar, Bangalore City

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- 2.1 Clause 1.6 (*Beneficiaries*) of the Trust Deed shall be deemed deleted and the following substituted in its place:
- 1.6 “**Beneficiaries**” means the beneficiaries of this Trust, which constitutes:
- (a) the Settlor;
  - (b) the Spouse of the Settlor; and
  - (c) the children and Descendants of the Settlor.
- 2.2 A new clause 1.6A shall be deemed inserted immediately following clause 1.6 of the Trust Deed in the following terms:
- 1.6A “**Descendants**” means legitimate and biological (including conceived through in vitro fertilisation and surrogacy) or adopted, lineal descendants born in wedlock, including any children, grandchildren, and their issues (as the case may be), but shall not include illegitimate child and his / her / their descendants or any step-child and his / her / their descendants.
- 2.3 Clause 1.7 (*Charity*) of the Trust Deed shall be deemed deleted and the following substituted in its place:
- 1.7 “**Charity**” means any trust, foundation or other organisation, established exclusively for the purposes regarded as charitable under the laws of India, and, if the Proper Law of the Trust has been changed, also under the Proper Law of the Trust, provided that such Charity is registered as a charitable institution under Section 12AA or Section 12AB of the Indian Income Tax Act, 1961, or any corresponding provisions thereof, as amended from time to time.
- 2.4 Clause 1.15 of the Trust Deed shall be deemed deleted and the following substituted in its place:
- 1.15 “**Family Members**” means the Settlor’s spouse, and Settlor’s Descendants, and “Family Member” and “Family” shall be construed accordingly.
- 2.5 Clause 2.4 of the Trust Deed shall be deemed deleted and the following substituted in its place:
- 2.4 References to descendant shall be construed to exclude references to illegitimate descendant (whether illegitimate themselves or descended through those who are illegitimate) and to include references to persons who have been legally adopted by those who have so adopted them.
- 2.6 Clause 6 (*Power to add Beneficiaries*) of the Trust Deed shall be deemed deleted.
- 2.7 Clause 7.2 (*Power of Exclusion*) of the Trust Deed shall be deemed deleted and the following substituted in its place:





*[Handwritten signature]*

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BNG(U)-JNR.....121.....2025-26.....Page 6-8

ಗುರುತಿಸುವವರು

SR.No	Identifier Name	Address	ಸಹಿ
1	Siddalingesh T B S/o Basavaraj Gowda (Identifier)	No.94,BTS Layout, Dr Rajkumar Road, , Bengaluru South, BENGALURU URBAN, KARNATAKA - 560076	
2	M B Abhi Chandran S/o H S Madana Kesari (Identifier)	No.23,Model House 4th Street, Basavanagudi , , Bengaluru South, BENGALURU URBAN, KARNATAKA - 560004	

Senior Sub-Registrar  
ಜಯನಗರ  
Jayanagar, Bangalore City

  
4 ನೇ ಪುಸ್ತಕದ ದಸ್ತಾವೇಜು  
ನಂಬರ್ JAY-4-00121-2025-26 ಆಗಿ  
ದಿನಾಂಕ 13/05/2025 ರಂದು ನೋಂದಾಯಿಸಿ ವಿದ್ಯು  
ಮಾದರಿಯಲ್ಲಿ  
ಕೇಂದ್ರಿತ ದತ್ತಾಂಶ ಕೋಶದಲ್ಲಿ ಶೇಖರಿಸಿ  
Senior Sub-Registrar  
ಜಯನಗರ (ಜಯನಗರ)  
Jayanagar, Bangalore City



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- 7.2 The Trustee may declare that any person or class of persons shall if included in the class of Beneficiaries, cease to be so included.
- 2.8 Clause 10.2 of the Trust Deed shall be deemed deleted.
- 2.9 Clause 10.3 of the Trust Deed shall be deemed deleted.
- 2.10 Clause 11 (*Default Trusts*) of the Trust Deed shall be deemed deleted and the following substituted in its place:
- 11 In the event of the failure or determination of the above trusts, and subject to any appointment made under Clause 8.1, the Trustee shall hold the capital and income of the Trust Fund upon trust absolutely for such of the Settlor's Descendants as shall then be living and, if more than one, in equal shares per stripes, so that no person shall take if any of his ascendants is alive and so capable of taking.
- 2.11 Clause 26.4 (*Payment to Charities*) of the Trust Deed shall be deemed deleted and the following substituted in its place:
- 26.4 The Trustee may pay or transfer any assets comprised in, or any income of, the Trust Fund to the person who purports to be the treasurer or other appropriate officer of any Family Charity only in the event of an ultimate default, when no other provisions of this Trust can be fulfilled. Such payment or transfer shall be made solely in accordance with the provisions governing Clause 12, and the receipt of such person shall be a full discharge to the Trustee.
- 2.12 Clause 28 (*Power to vary*) of the Trust Deed shall be deleted in its entirety and substituted with the following:
- 28 **Power to vary**
- 28.1 Subject to clause 28.2, the Trustee may at any time or times during the Trust Period, by deed, vary, add to, alter or amend any or all of the provisions contained in this Deed (excluding this clause 28), provided that no such variation, addition or deletion (as the case may be) shall cause the trusts, powers and provisions declared and contained in this Deed to cease to satisfy the conditions referred to in the Trustee Act.
- 28.2 The Trustee is prohibited from exercising the power contained in clause 28.1 to vary, add, alter or amend any dispositive provision of the Trust so as to benefit whether directly or indirectly a person that is not the Settlor, the Settlor's spouse, children and/or Descendants.

### 3. GOVERNING LAW

This Deed shall be governed by and be construed in accordance with the laws of India, without regard to the principles of conflicts of laws.

### 4. COUNTERPARTS

This Deed may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same deed.



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5. SEVERABILITY

If any provision of this Deed is or becomes invalid, unenforceable or prohibited by applicable law, this Deed shall be considered divisible as to such provision and such provision shall be inoperative and the remainder of this Deed shall be valid, binding and take effect as though such provision was not included herein.

IN WITNESS WHEREOF the Trustee has caused this Deed to be executed on the day and year first hereinabove written.

THE SEAL of Vervain Management Private )  
Limited is hereby affixed, and )

For VERVAIN MANAGEMENT PRIVATE LIMITED

Authorised Signatory

SIGNED AND DELIVERED by Nandan )  
Laxman Sastry being the Authorised Signatory )  
withinnamed )

in the presence of )

M.B. Abhi

- M.B. Abhi Chaudhari, 23, Model house  
4th Street, Basavangudi  
Bangalore-560006

- SIDDALINGESH. T.S #94

BTS Layout, Bangalore - 560076



Drafted by Self  
Laxman Sastry

7.1 According to Rule 29 of the I.T. Rules, 1963, generally the parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal but if the Tribunal requires any document to be produced to enable it to pass orders or for any other substantial cause, or, if the income tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal for reasons to be recorded, may allow such document to be produced or may allow such evidence to be adduced. In the present case, the supplementary deed was executed by the assessee only on 13.5.2025 which obviously could not be produced before the lower authorities. Before us, the Id. A.R. of the assessee vehemently submitted that this additional evidence is crucial for deciding the

issue on merits i.e. whether the trust is created or established solely for the benefit of the relative of the settlor or not? This being so, we find good and sufficient reason in not submitting the additional evidence before the lower authorities. Accordingly, we admit these additional evidences as in our opinion these are essential for adjudication of the issue in the present appeal.


**8.** We have heard the rival submission, perused material available on record. We are of the considered opinion that in an appeal against an assessment order, the Tribunal exercises regular appellate jurisdiction over the assessment, examining the correctness of additions, disallowances, and other determinations made by the AO on facts and Law, however, for an appeal against a revision order u/s 263 of the Act, the Tribunal is essentially confine itself to examine (1) Whether the very assumption of 263 jurisdiction is valid (2) whether the PCIT's conclusion on "erroneous and prejudicial" are sustainable in law and (3) Whether due process (opportunity of hearing, inquiry) was followed or not. While doing so equal importance must also be given to the AO's recorded enquiries and reasoning, the PCIT's satisfaction & reasons keeping in mind that section 263 of the Act is a revision, not the Appellate power. Further, when the PCIT has chosen to set aside the order of the AO, the Tribunal is not entitled to go beyond and sustain the Order of PCIT **on grounds different from that relied by the ld. PCIT.**

**8.1** The division Bench of the Hon'ble High Court of Kerala in the case of **Commissioner of Income Tax v. Chandrika Educational Trust** reported in (1994) 207 ITR 108 had held as under:-

*“In entertaining an appeal from the Commissioner's order what the Tribunal does is to examine whether the said order is sustainable in law and whether it is within the powers conferred by section 263. Therefore, when the Commissioner has chosen to set aside the order of the Income-tax Officer only on a particular ground, the Tribunal is not entitled to go beyond and sustain the order of the Commissioner on grounds different from that relied on by the Commissioner himself.”*

**8.2** The Hon'ble High Court of Kerala at Ernakulam in the case of **Save a Family Plan (India) v. The Deputy Commissioner of Income Tax (Exemptions)** in ITA No.81 of 2025 dated 05/11/2025 had again reiterated the same.

**8.3** In view of the above, it is pertinent here to first go through the show cause notice for hearing dated 13/03/2024 issued by the Id. PCIT stating the reasons for invoking the Revision Proceedings u/s 263 of the Act which are reproduced below for ease of reference & convenience-

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX  
PCIT, Bengaluru-2**

To: BUCKEYE TRUST PLOT NO 23 NADATHUR PLACE, 3RD FLOOR, 8TH MAIN JAYANAGAR 3RD BLOCK BANGALORE 560011, Karnataka India	
--	--

PAN/TAN: AADTB3305J	AY: 2018-19	DIN & Notice No : ITBA/REV/F/REV1/2023- 24/1062548669(1)	Dated: 13/03/2024
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**NOTICE FOR THE HEARING**

**Ms/Mr/Ms**

**Subject:** Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961** – Assessment Year **2018-19**.

In this regard, a hearing in the matter is fixed on **18/03/2024** at **12:30 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: [incometaxindiaefiling.gov.in](http://incometaxindiaefiling.gov.in)

It is seen from the records that the assessee had filed the return of income for A.Y. 2018-19 on 30-08-2018 declaring income as Nil. The assessment u/s 143(3) r.w.s 143(3A) & 143(3B) of the Income-tax Act, 1961 for A.Y. 2018-19 was completed on 07-04-2021 without making any modification to the returned income.

While reviewing the assessment order, it is found that the order is erroneous insofar as it is prejudicial to the interest of revenue for the reasons enumerated below:


The assessment of the assessee was concluded u/s 143(3) r.w.s 143(3A) & 143(3B) of the Income-tax Act for A.Y. 2018-19 on 07-04-2021 without making any modification to the returned income.

On verification of records, it is seen that the Trust has received an amount of Rs.669,27,63,437/- in the form of interest in partnership firms/shares settled by the settlor in favor of the Trust. The said interest in partnership firms/investment in unlisted shares are accounted under the head 'Trust Fund' and under the head of investment in the financial statement. The beneficiaries of the Trust are mentioned in clause 1.6 of the operative provision of the Trust deed. As per clause 1.6, beneficiaries means (a) The settlor (b) The spouse of the settlor (c) The children and remoter issue of

Note: If digitally signed, the date of digital signature may be taken as date of document.  
UNITED BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095  
Email: BANGALORE.PCIT2@INCOMETAX.GOV.IN.

The website address of the e-filing portal has been changed from [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) to [www.incometax.gov.in](http://www.incometax.gov.in)  
Document identification No.

**Certified True Copy**



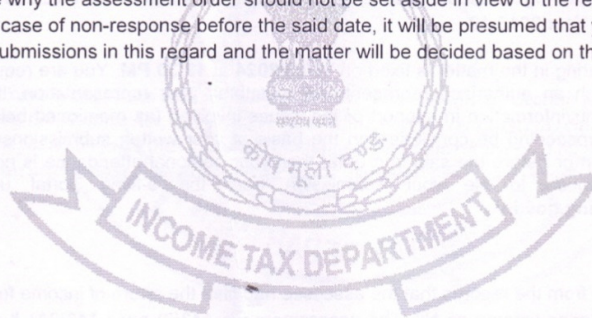
the settlor (d) Such other objects or persons as are added under clause 6 and beneficiaries shall be construed accordingly.

The assessee in its submission dated 08-02-2021 stating that the beneficiaries fall within the ambit of the provisions of Sec.56(2)(X) of the Act as per exclusion provided in fourth proviso to the section. The assessee's claim is not in order as the Trust has not only been created or established solely for the benefit of the relative of the individual but also other persons can be added as per clause 6. However, such other class of persons covered in Proviso XI which is applicable from AY: 2020-21.

Therefore, the assessee is not falling within the ambit of the provisions of Section 56(2)(X) of the Act for A.Y. 2018-19 and the amount of Rs.669,27,63,437/- received in the form of interest has to be brought to tax under the head "Income from other sources" as provided in Sec.56(2)(X) of the Act.

In the circumstances, it is proposed to set aside the assessment order dated 07-04-2021 for being reframed accordingly by virtue of the powers conferred upon the undersigned under the provisions of Section 263 of the Income-tax Act, 1961.

Hence, you are given an opportunity to appear before the undersigned, either in person or through an authorized representative with relevant details on 18.03.2024 at 12:30 PM at Room No.516, 5<sup>th</sup> Floor, BMTC Building, 80 feet Road, Koramangala, 6<sup>th</sup> Block, Bengaluru – 560095 and show cause why the assessment order should not be set aside in view of the reasons mentioned above. In case of non-response before the said date, it will be presumed that you do not wish to make any submissions in this regard and the matter will be decided based on the material available on record.



PRISCILLA SINGSIT  
PCIT, Bengaluru-2

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)



Certified True Copy

**8.4** On going through the above show cause notice for hearing in respect of revision proceedings u/s. 263 of the Act, the reasons cited by the Id. PCIT primarily is that the assessee trust has received an amount of Rs.669,27,63,437/- in the form of interest in partnership firms/shares settled by the Settlor in favour of the trust. The said interest in partnership firms/investment in unlisted shares is accounted under the head “Trust Fund” and under the head of Investment in the Financial statement. The beneficiaries of the Trust are mentioned in clause 1.6 of the operative provision of the trust deed. As per clause 1.6, beneficiaries means (a) the Settlor (b) the spouse of the Settlor (c) the children and remoter issue of the Settlor (d) such other objects or persons as are added under clause 6 and beneficiaries shall be construed accordingly. The assessee in its submission dated 8.2.2021 stated that the beneficiaries fall within the ambit of the provisions of section 56(2)(X) of the Act as per exclusion provided in 4<sup>th</sup> proviso to the section. The assessee’s claim is not in order as the trust has not only been created or established solely for the benefit of the relative of the individual but also other persons can be added as per clause 6. However, such other class of persons covered in proviso XI which is applicable from assessment year 2020-21. Therefore, the assessee is not falling within the ambit of the provisions of section 56(2)(X) of the Act for the assessment year 2018-19 and the amount of Rs.669,27,63,437/- received in the form of interest has to be brought to tax under the head “Income from other sources” as provided in section 56(2)(X) of the Act. In the circumstances, it is proposed to set aside the assessment order dated 07.04.2021 for being reframed accordingly by virtue of the power conferred upon under the provisions of section 263 of the Act.

**8.5** Now before proceedings further, it is apposite here to mention the relevant provision of Income Tax Act which is reproduced below:-

**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 proceedings under this Act, and if he considers that any order passed therein by the [Assessing] Officer [or the Transfer Pricing Officer, as the case may be,] 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,  
(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or  
(ii) an order modifying the order under section 92CA; or  
(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section].

[[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 1<sup>st</sup> day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] 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 [or the Transfer Pricing Officer, as the case may be,] 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 authorized by the Board in this behalf under section 120;

[(iii) an order under section 92CA by the Transfer Pricing Officer;]

- (b) "record" [shall include and shall be deemed always to have included] all records relating to any preceding under this Act available at the time of examination by the [Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or] Commissioner;
- (c) Where any order referred to in this sub-section and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] had been the subject matter of any appeal [filed on or before or after the 1<sup>st</sup> 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 [or the Transfer Pricing Officer, as the case may be,] 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 [Chief Commissioner or Chief Commissioner or 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.

[Explanation 3.—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to in the *Explanation* to section 92CA.]

[(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, 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.

**8.6** On plain reading of the aforesaid provisions of the Act, it is very apparent that the Id. PCIT may call for and examine the record of any proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, the Id. PCIT 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 an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. This provision was the subject matter of interpretation by the Apex Court in the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] [243 ITR 83/109 Taxman 66](#) (SC), where the Supreme Court has held as under:-

*"A bare reading of this provision makes it clear that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue recourse cannot be had to section 263(1) of the Act.*

*The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the act. Understood in its*

*ordinary meaning it is of wide import and is not confined to loss of tax".."*

*"..The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.*

*The phrase "prejudicial to the interest of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income Tax Officer adopted **one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the Income Tax Officer is unsustainable in law.** It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue."*

**8.7** In the case of *Dawjee Dadabhoy & Co. v. S.P. Jain* [1957] [31 ITR 872](#) (Cal.) explaining the meaning of the words prejudicial to the interest of the revenue it was held as under:

*"The words, "prejudicial to the interests of the revenue", have not been defined, but it must mean that the orders or assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. It can mean nothing else."*

**8.8** Thus, we are of the considered opinion that the Id. Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the Revenue. Therefore, it is clear that the Id. PCIT cannot exercise the power of revision solely on the ground that the order passed is erroneous. The Id. PCIT gets jurisdiction only if

such erroneous order is prejudicial to the interest of the Revenue. Prejudicial to the Revenue means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the Assessing Authority if the lawful revenue to the Government has not been realized or cannot be realized, as the said order is prejudicial to the interest, of the Revenue and also erroneous, the Id. PCIT gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of Assessing Officer sought to be revised is erroneous and (b) it is prejudicial to the interest of the Revenue. If one of them is absent, i.e., if the order of the Income tax officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is *sine qua non* for the Commissioner to exercise his jurisdiction under section 263.

**8.9** Further, the term 'erroneous' has not been defined under the Act. The Apex Court in the above case also held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. Further, the phrase 'prejudicial to the interests of the revenue' is not an expression of art and is also not defined in the Act. The various High Courts have treated loss of tax as prejudicial to the interests of the revenue. If due to an erroneous order of the AO, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue. There must be some grievous error in the

Order passed by the AO, which might set a bad trend or pattern for similar assessments, which on abroad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration. Further, what is erroneous and prejudicial to the interest of the revenue is judicially tested by plethora of decisions however, the scope was further extended by introduction of explanation 2 to section 263 which is inserted by the Finance Act, 2015 with effect from 01/06/2015. This explanation empowers the PCIT from 01.06.2015 to invoke the provision of section 263 to the assessment order to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal CIT,-

- (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 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.”*

**8.10** The Hon'ble High Court of Delhi in the case of **Commissioner of Income-tax-XIII v. Ashish Rajpal** reported in (Del-HC) (2010) 320 ITR 674 had remarkably extracted the parameters and principles laid down by the Courts which govern the exercise of power by the Commissioner under the provisions of section 263 of the Act:-

(i)	The power is supervisory in nature, whereby the Commissioner can call for and examine the assessment records.
(ii)	The Commissioner can revise the assessment order if the twin conditions provided in the Act are fulfilled, that is, that the assessment order is not only erroneous but is also prejudicial to the interest of the revenue. The fulfilment of both the conditions is an essential prerequisite. [See Malabar Industrial Co. Ltd. v. CIT [2000] <a href="#">243 ITR 83</a> (SC)].
(iii)	An order is erroneous when it is contrary to law or proceeds on an incorrect assumption of facts or is in breach of principles of natural justice or is passed without application of mind, that is, is stereo-typed, inasmuch as, the Assessing Officer, accepts what is stated in the return of the assessee without making any enquiry called for in the circumstances of the case, that is, proceeds with 'undue haste'. [See Gee Vee Enterprises v. Addl. CIT [1975] <a href="#">99 ITR 375</a> (Delhi)].
(iv)	The expression "prejudicial to the interest of the revenue" while not to be confused with the loss of tax will certainly include an erroneous order which results in a person not paying tax which is lawfully payable to the revenue. [See Malabar Industrial Co. Ltd.'s case (supra)].
(v)	Every loss of tax to the revenue cannot be treated as being "prejudicial to the interest of the revenue". For example, when the Assessing Officer takes recourse to one of the two courses possible in law or where there are two views possible and the Commissioner does not agree with the view taken by the Assessing Officer which has resulted in a loss. [See CIT v. Max India Ltd. [2007] <a href="#">295 ITR 282</a> (SC)].
(vi)	There is no requirement of issuance of a notice before commencing proceedings under section 263 of the Act. What is required is adherence to the principles of natural justice by granting to the assessee an opportunity of being heard before passing an order under section 263. [See Electro House's case (supra)].
(vii)	If the Assessing Officer acts in accordance with law his order cannot be termed as erroneous by the Commissioner, simply because according to him, the order should have been written 'more elaborately'. Recourse cannot be taken to section 263 to substitute the view of the Assessing Officer with that of the Commissioner. [See CITv. Gabriel India Ltd. [1993] <a href="#">203 ITR 108</a> (Bom.)].
(viii)	The exercise of statutory power under section 263 of the Act is dependent on existence of objective facts ascertained from prima faciematerial on record. The evaluation of such material should show that tax which was lawfully exigible was not imposed. [See Gabriel India Ltd.'s case (supra)].

**8.11** Now, in the light of the above principles laid down by the Hon'ble Apex Court & Hon'ble Delhi High Court, it is apposite here to first examine whether the AO passed an assessment order without making necessary enquiries or verifying the issues required as per law as alleged by the ld. PCIT in the revision Order. It is apposite here to reproduce the assessment order passed by the AO-



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
National e-Assessment Centre  
Delhi



1.	PAN	AADTB3305J
2.	Name of the assessee	BUCKEYE TRUST
3.	Address of the assessee	NO 23 NADATHUR PLACE, 8TH MAIN JAYANAGAR, 3RD BLOCK, BANGALORE 560011, Karnataka, India
4.	Assessment Year	2018-19
5.	Status	TRUST
6.	Residential Status	Resident
7.	Date of filing of Return of Income	30/08/2018
8.	Acknowledgement Number of Return of Income	232228131300818
9.	Date of processing u/s 143(1)(a) of the Income-tax Act.	01/02/2019
10.	Date of service of Notice under section 143(2) of the Income-tax Act	23/09/2019
11.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	25/11/2020
12.	Order passed under section	143(3) read with sections 143(3A) & 143(3B) of the Income-tax Act
13.	Returned Income	Rs. 0
14.	Date of Order	07/04/2021
15.	DIN	ITBA/AST/S/143(3)/2021-22/1032263467(1)

**ASSESSMENT ORDER**

1. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues:-

- | S. No. | Issues                                      |
|--------|---|
| i.     | Investments/Advances/Loans                  |
| ii.    | Expenses Incurred for Earning Exempt Income |
| iii.   | Share Capital/Other Capital                 |

The assessee filed its return of income for the assessment year 2018-19 on 30.08.2018 showing total income of Rs.0/-. The case was selected for scrutiny through Computer Aided Scrutiny Selection (CASS) and subsequently notices u/s.143(2) and u/s.142(1) of the IT Act were issued and served upon the assessee asking to submit details/clarification in respect of the assessment proceedings. In response to Notice u/s.143(2) and Notices u/s.142(1) the assessee furnished written explanation/clarification along with submission in support of the return of income.

After taking into account all relevant material available on record, an assessment is hereby made without making any modification to the returned income and the sum payable

For BUCKEYE TRUST  
*[Signature]*  
Authorised Signatory

**Certified True Copy**

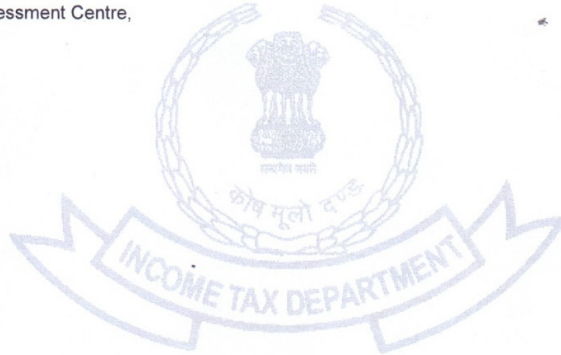
(18)

AADTB3305J- BUCKEYE TRUST  
A.Y. 2018-19  
ITBA/AST/S/143(3)/2021-22/1032263467(1)

or refund of any amount due on the basis of the assessment is determined as per the notice of demand.

Yours faithfully,  
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/  
Income-tax Officer,  
National e-Assessment Centre,  
Delhi

Copy to:  
Assessee



Yours faithfully,  
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/  
Income-tax Officer,  
National e-Assessment Centre,  
Delhi

For BUCKEYE TRUST

Authorised Signatory

**Certified True Copy**

On going through the above one paragraph assessment order dated 07.04.2021, undoubtedly the order passed by the AO is cryptic,

unreasoned and in fact as rightly contended by the ld. DR, without forming any opinion by the AO except by asserting that “after taking into account all relevant materials available on record, an assessment is hereby made without making any modification to the returned income. We are of the considered opinion that reasoning is the heart of an order, without which the Order is lifeless. Therefore, it is very much relevant here for us to go through the notices issued during the course of the assessment proceedings in order to find out whether the AO had actually made necessary enquiries or verified the issues required as per law as alleged by the ld. PCIT. Undisputedly, one of the reason for the selection of the complete scrutiny was Share capital/other capital & investments. On going through the notices issued during the course of the assessment proceedings, we find that the AO had never enquired & examine these issues as rightly alleged by the ld. PCIT. The contention of the ld. PCIT is that the trust had received an amount of Rs.669,27,63,437/- in the form of interest in partnership firms/shares settled by the Settlor in favour of the trust. The said interest in partnership firms/investment in unlisted shares is accounted under the head “Trust Fund” and under the head of Investment in the financial statement. The beneficiaries of the Trust are mentioned in clause 1.6 of the operative provision of the trust deed. As per clause 1.6, “Beneficiaries” means (a) the Settlor (b) the spouse of the Settlor (c) the children and remoter issue of the Settlor (d) **such other objects or persons as are added under clause 6 and beneficiary shall be construed accordingly.** Further, as the trust has not only been created or established solely for the benefit of the relative of the individual but also other persons can also be added as per clause 6 and therefore, the assessee is not falling within the ambit of the provisions of section 56(2)(X) of the Act for the assessment year 2018-19 and the amount of Rs.669,27,63,437/- received in the form of interest has to be

brought to tax under the head "Income from other sources" as provided in section 56(2)(X) of the Act. We are of the considered opinion that the AO had not even whispered a single word relating to the above issues during the assessment proceedings & therefore the Id. PCIT had rightly held the order of the AO to be erroneous and prejudicial to the interest of the revenue as the AO had completed the assessment without making necessary inquiries or verifying the issues.

**8.12** Before us, the Id. AR of the assessee vehemently submitted that the intention of the assessee was never to include non-relatives into the deed of trust and therefore, to remove any ambiguity on the power of the trustee, the assessee has already executed and registered a supplementary deed dated 13.05.2025 to restrict the list of beneficiaries explicitly only to the relatives of the settlor. This action of the assessee in executing the supplement deed on 13.05.2025 post revision order of the Id. PCIT clearly shows the importance of the issues not enquired by the AO during the course of assessment proceedings. Even if the assessee have executed the supplement deed on 13.05.2025 & produced the same before us as an additional evidence, the moot question remain the same i.e. whether the AO had made necessary enquiries or verification which should have been made during the course of assessment proceedings or not. The answer is No.

**8.13** On going through the trust deed dated 23.01.2018, we also observed that the trust has not only been created or established solely for the benefit of relative of the individual but also other objects or persons can be added under clause 6 of the deed. The relevant clauses of 1.6 and 6 are reproduced as under:

*"1.6 "Beneficiaries" means the beneficiaries of this Trust, which constitutes:*

- (a) *The Settlor;*
- (b) *The spouse of the settlor;*
- (c) *The children and remoter issue of the settlor; and*
- (d) *such other objects or persons as are added under clause 6*  
*and "Beneficiary" shall be construed accordingly.*

**6. Power to add beneficiaries**

***6.1 The Trustee may, at any time during the Trust Period, declare that any person or class of persons (whether or not in existence or ascertained) or Charity shall be added to the class of Beneficiaries provided that no such person or class of persons or Charity may be or include any Excluded Person.***

Section 56(2)(x) of the Act states that when any sum of money or property (whether movable or immovable) is received by any person from any person on or after 01/04/2017 without consideration, or for inadequate consideration, if the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads as specified in section 14 of the Act. The provision is widely applicable to gifts, property transfers, and other transactions aimed at avoiding legitimate taxation. Further, there is an exclusion clause under section 56(2)(x) vide proviso 5 (X) that this clause shall not apply to "any sum of money or property received from an individual by a trust created or established **solely for the benefit of relative of the individual**".

Further as per explanation (a) to section 56(2)(x) r/w explanation (e) to section 56(2)(vii) of the Act –

[(e) "relative" means-

(i) In case of an individual-

- (A) Spouse of the individual;
- (B) Brother or sister of the individual;
- (C) Brother or sister of the spouse of the individual;
- (D) Brother or sister of either of the parents of the individual;
- (E) Any lineal ascendant or descendant of the individual;
- (F) Any lineal ascendant or descendant of the spouse of the individual;
- (G) Spouse of the person referred to in item (B) to (F).; and

(ii) In case of a Hindu undivided family, any member thereof;]

Therefore, we are also of the considered opinion that the trust was not created or established **solely for the benefit of relative of the individual** in view of the fact that as per clause 1.6 of the deed the beneficiaries means such other persons as are added under clause 6 and clause 6 states that the Trustee may, at any time during the Trust Period, declare that any person or class of persons (whether or not in existence or ascertained) or Charity shall be added to the class of Beneficiaries. Therefore, the Id. PCIT is of the view that any person or class of persons (whether or not in existence or ascertained) or charity, mentioned in the clause 6.1 does not fall under the meaning of relatives. The clause empowers the trustee to add any person or class of persons (whether or not in existence or ascertained) or charity to the class of beneficiaries. Thus, the benefits are not restricted to the relatives only. In the aforesaid circumstances, the Principal Commissioner of Income-tax held the view that the matter was not enquired or verified by the Assessing Officer. We are also of the considered opinion that these crucial aspects were neither enquired by the AO nor examined in accordance with law which renders the order of the AO to be erroneous & prejudicial to the income tax administration as a whole.

**8.14** We are also of the considered opinion that the Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return when the circumstances of the case are such as to provoke inquiry. The assessment order sought to be revised under Section 263 would be erroneous and fall in the aforesaid category of "errors" if it is, inter alia, based on an incorrect assumption of facts or an incorrect application of law or non-application of mind to something which was obvious and required application of mind or based on no or insufficient materials so as to affect the merits of the case and thereby cause prejudice to the interest of the revenue. The Commissioner may consider an order of the Assessing Officer to be erroneous not only when it contains some apparent error of reasoning or of law or of fact on the face of it but also when it is a stereo-typed order which simply accepts what the assessee has stated in his return and fails to make enquiries or examine the genuineness of the claim which are called for in the circumstances of the case. In taking the aforesaid view, we are supported by the decisions of the Hon'ble Supreme Court in Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84, Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC).

**8.15** Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner will be well within his powers to regard an order as erroneous on the

ground that in the circumstances of the case, the Assessing Officer should have made further inquiries before accepting the claim made by the assessee in his return. The reason is obvious. Unlike the Civil Court which is neutral in giving a decision on the basis of evidence produced before it, the role of an Assessing Officer under the Income-tax Act is not only that of an adjudicator but also of an investigator. He cannot remain passive in the face of a claim, which is apparently in order but calls for further enquiry. He must discharge both the roles effectively.

**9.** We are also of the considered opinion that as rightly contended by the ld. CIT DR, there is no express view/opinion of the Assessing Officer, surely it also cannot be said that the same is a plausible view. Thus under the facts & circumstances discussed above, it was a reasonably fit case for exercising revisionary jurisdiction under section 263 of the Act. After all, the Principal Commissioner of Income-tax gave another chance to the assessee to furnish the necessary supportive evidence of its claim and explain why the proposed addition should not be made to income.

**10.** Before parting, we make it clear that we have not made any comments on the merits of the case and the assessee trust is at liberty to explain the same during the assessment proceedings.

**11. In the result the appeal filed by the assessee trust is dismissed.**

Order pronounced in the open court on 12<sup>th</sup> Feb, 2026

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 12<sup>th</sup> Feb,2026.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**