

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR
श्री संदीप गोसाईं, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 273/JP/2020

Assessment Year: 2010-11

Swami Keshwanand Sikshan Sansthan, N.H.11, Bhadhadhar, Sikar-332315 (Raj)	बनाम Vs.	C.I.T. (Exemption), Jaipur (Rajasthan).
PAN No.: AAFTS 2816 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shafi Mohammed Chouhan (Adv)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 21/10/2020
उदघोषणा की तारीख / Date of Pronouncement : 18/01/2021

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(Exemption), Jaipur dated 16/03/2020 passed U/s 263 of the Income Tax Act, 1961 (in short, the Act) for the A.Y. 2010-11, wherein the assessee has raised following grounds of appeal:

- "1. That the order of Ld. Commissioner of Income Tax (Exemption), Jaipur is illegal and against the law because the Ld. Assessing officer has examined and considered the matter involved in this order.*
- 2. That the donation so received was received for a specific purpose and use, hence it was Corpus Donation. The corpus donation cannot be treated as part of Income and Expenditure account.*

3. *That order of Ld. Commissioner of Income Tax (Exemption) is otherwise unjustified because the assessee submitted the sufficient and proper explanation during the course of assessment proceedings and accepted by the Ld. Assessing officer."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the A.O. noticed that during the year under consideration, the assessee society had deposited a sum of Rs. 83,95,000/- in its bank account maintained with Axis bank Ltd., Sikar. The assessee society has not filed its return of income for the year under consideration. Notice U/s 148 of the Act was issued to the assessee. In compliance of the notices issued, the assessee filed its return of income on 28/09/2017 declaring NIL income. After detailed enquiry and verification, the A.O. stated that during the course of hearing, cash book and cash flow statement of the assessee examined carefully and source of cash deposits gotten verified. After verification of same, source of cash deposits in the bank account seems to be justified/verifiable. Hence, no adverse inference has been drawn on this issue. The Id. CIT(E) in his order has observed that the assessee has no details of donors and whenever this detail is sought, it comes up with a story to avoid it. The Id. CIT(E) further observed that in the ordersheet, the A.O. has noted that corpus donations have been examined, he has not made any of

requisite inquiries regarding identity and address of the claimed donors, particularly when all these donations were received in cash, therefore, the Id. CIT(A) has held that the order passed by the A.O. is deemed to be erroneous in so far as it is prejudicial to the interest of revenue within the meaning of Explanation 2(a) r.w. Section 263 of the Act. Against the order of the Id. CIT(E), the assessee is in further appeal before the ITAT.

4. Grounds No. 1 to 3 of the appeal raised by the assessee are interrelated and interlinked to challenging the order of the Id. CIT(E), Jaipur passed U/s 263 of the Act. In this regard, the Id. AR of the assessee has reiterated the same arguments as were raised before the Id. CIT(E) and it was submitted that the Id. CIT(E) had passed the order U/s 263 of the Act which is illegal and against the law because the A.O. had examined and considered the matter involved in this order. It was also submitted that the donation so received was for a specific purpose and use, hence it was "Corpus Donation". Since the "Corpus Donation" cannot be treated as part of income and expenditure, therefore, the same was directly taken to balance sheet. The Id AR also relied upon the written submissions filed before us and the contents of the same are reproduced below:

- 1. The assessment order passed by the assessing officer is not erroneous and prejudicial to the interest of revenue :-**

First of all I would like to bring kind attention of the Hon'ble Bench towards the provisions of section 263 of the Income Tax Act, 1961. Section 263 granting the revisionary powers to the Pr. Commissioner / Commissioner for revision of the assessment completed by the assessing officer, in case the assessment is erroneous in so far as it is prejudicial to the interest of revenue. **The order is erroneous as well as the prejudicial to the interest of the revenue is prime conditions for invoking of the provisions of section 263.**

Now the meaning of the words "Prejudicial to the Interest of the revenue" is also to be understood. This has been defined in the explanation 2 of the Sub-Section 2 of section 263. For ready reference the same is being reproduced hereunder :-

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

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

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

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

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered

by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]

The above mentioned explanation has clearly put the conditions in which the order is to be treated as erroneous and prejudicial to the interest of revenue. Now I would like to submit on the conditions mentioned above that :-

- (a) The order is passed without making inquiries or verification which should have been made. But here in this case the action u/s 148 taken only on reason of large cash deposits in bank accounts. As stated in facts of the case mentioned earlier that the assessing officer raised queries and also examined the records to justify the cash deposits and he is satisfied with evidence submitted by the assessee. During the course of assessment proceedings he also raised query with respect to the Corpus Donation and satisfied with the submission and records of the assessee. This fact is very well evident from the certified copy of the order sheet attached herewith. Therefore, this cannot be proved that the order passed without making inquiry or verification which should have been made. Hence, this first condition is not applicable in this case.
- (b) The order is passed allowing any relief without inquiring into the claim, this condition also cannot be applied on the assessee as there is no such claim made by the assessee and allowed by the assessing officer.
- (c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119, here in this case there is no any direction or instruction issued

by the Board in the case of the assessee. Hence this condition is also not applicable on the case of the assessee.

- (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. As such there is no any decision as mentioned in this condition is passed in the case of assessee. Therefore, this condition is also not applicable on the assessee.

The assessment order under consideration does not fall in any of the category mentioned in the explanation 2 of the Section 263(2) of the Act, therefore the assessment is proper and cannot be said as erroneous and prejudicial to the interest of the revenue.

2. **The assessment completed after considering the submission and evidences :-**

That Ld. Assessing Officer completed the assessment after due consideration and examination of all the issues specifically related to the corpus donation and he was satisfied with the evidences and submissions of the assessee as well as the manner in which it was shown in the accounts of the assessee. He mentioned his satisfaction in the office note attached with the assessment order, which is the part of the assessment order. The copy of the certified copy of office note is attached herewith for ready reference at Page No. 12 of Paper book. The relevant portion of the office note is reproduced here under :-

"(ii) Issue of Corpus donation has been examined carefully and satisfying with evidence produced by the assessee during the course of hearing, no adverse inference has been drawn on this issue."

It is also worthwhile to submit that originally the notice u/s 148 was issued on the limited ground which is large cash deposits into the bank account. This means the assessing officer has to see this issue onlput here in this case the assessing officer spread his area of investigation from the limited issue to details issues and raised the queries in detail. The assessee replied the queries raised by the assessing officer during the course of assessment proceedings. After examination of the records and submissions found him satisfied and complete the assessment. Therefore, it could not be said the assessing officer has not examined the issue raised in the show cause notice under consideration. It is also reveals from the certified copies of the order sheet that the issue which is limited issue related to the cash deposited into bank, in spite of that he went beyond mandate and examined the entire issues, which is also without getting permission of the Commissioner. Hence it cannot be said that the assessment was without any enquiry or investigation.

3. **It amounts to change of opinion :-**

That it is also pertinent to mention here that the show cause notice under consideration is issued on this issue is amounts to change of opinion. The assessee specifically requested vide application dated 02.01.2020 for the certified copy of the reasons / satisfactions on the basis of which this show cause notice is issued. In reply of this it is stated by Ld. CIT(E), Jaipur that the reasons / satisfaction are mentioned in the show cause notice itself, no certified copy is provided. This clearly means that there is no reasons except mentioned in the show cause notice.

That the issue was already examined, discussed and considered by the then Assessing officer and issue of show cause notice on the very same issue is amounts to change of opinion. The matter was before

the then assessing officer and he was satisfied with the evidences submitted by the assessee during the course of assessment proceedings. Therefore the assessment order passed by the then assessing officer is neither erroneous nor prejudicial to the interest of revenue.

4. The notice issued on the basis of proposal of subsequent ITO, the act does not provide such power to the ITO u/s 263 :-

That as per the provisions of section 263 the Pr. Commissioner / Commissioner may call for and examine the records of any proceedings under this act, if he considers that any order passed therein by the assessing officer is erroneous in so far as it is prejudicial to the interest of the revenue.

It is also worthwhile to submit before the Hon'ble Bench that the inspection of file was conducted by the undersigned on 11.12.2019 and it was found during the inspection that there is proposal from the present Income Tax Officer (Exemption), Ward-2, Jaipur and only on the basis of that proposal this show cause notice dated 03.10.2019 is issued. This amounts to change of opinion of the subsequent Assessing Officer, which is not permitted in the eye of law. There might be difference of opinions of the officers and only because of this the proceedings cannot be questioned.

As per the wordings of the Section 263 the Commissioner/Pr Commissioner may call for and examine the record of any proceedings under this act. But here in this case no records were called for the Commissioner. The notice issued only on the basis of the proposal of the subsequent assessing officer. This fact is very well evident from the words of the Note Sheet dated 26.08.2019 in which it is clearly mentioned that the proposal for

263 was received from the ITO(E), Ward-2, Jaipur. The copy of the same provided by the office of the Ld. CIT(E), Jaipur through letter **dated 13.01.2020. The copies of the note sheet as well as the letter dated 13.01.2020 are attached herewith at page No. 10 and 11 of paper book.**

This shows that the proposal was sent by the subsequent assessing officer to the CIT(E) on the basis of the which the show cause notice was issued, which is against the provisions of the Act. The CIT(E), Jaipur was not call for the records as provided in the provisions of the act. The Law does not provide any power to the assessing officer to send the proposal to the CIT(E) for action u/s 263 of the Income Tax Act, 1961. Looking to the provisions of section 263 of the Income Tax Act the act, i.e. sending proposal for action u/s 263, of Assessing officer is not in accordance with the law. Therefore, the show cause notice issued on the basis of the very same proposal is also not in accordance with law, hence liable to be declared as illegal.

5. Treatment of Donation for specific purpose is correct :-

As per this show cause notice what we understand that, this notice speaks the corpus donation is to be treated as normal donation and to be shown in Income and Expenditure account not in balance sheet.

That the assessee has shown this donation in the balance sheet because the amount so received is a capital receipts or should say the capital of the assessee until said funds is utilized for the directed purpose. The Id AR also relied upon the following decisions:

The Ld. A.R. has also relied upon the following judicial pronouncements:

1. DIT V/s Ramakrishna Sewa Trust reported in 205 Taxman 26
 2. Kantilal Manilal Charitable Trust (2014) 63 SOT 142 (Ahmedabad)
5. On the other hand, the Id CIT-DR has relied on the orders of the authorities below and submitted that the order passed by the Id. CIT(E) is legal and speaking order and fulfills all the ingredients of Section 263 of the Act. The Id. CIT-DR has also relied on the following judicial pronouncements:

1. Daniel Merchant Pvt. Ltd. & Anr Vs ITO, Special Leave to Appeal No. 23976/2017 dated 29/11/2017.
2. Virbhadra Singh (HUF) Vs. Pr.CIT (2017) 86 taxmann.com 113 (HP)
3. CIT, Nagpur Vs. Ballarpur Industries Ltd. (2017) 85 taxmann.com 10 (Bombay)
4. CIT Vs Bhawal Synthetics (India), Udaipur (2017) 81 taxmann.com 478 (Rajasthan)
5. Malabar Industrial Company Ltd. Vs CIT (2000) 109 taxman 66 (SC)
6. Kirtidevi s Tejwani Vs Pr.CIT-22, Mumbai (2020) 116 taxmann.com 965 (Mum-Trib)
7. Add.CIT Vs Mukur Corporation (1978) 111 ITR 312, Gujrat
8. CIT Vs Assam Tea House (2012) 25 taxmann.com 93 (P&H)

9. Nagal Garment Industries Pvt. Ltd. Vs CIT (2020) 113 taxmann.com 4 (MP)
10. Pr.CIT, Ludhiana Vs Venus Woolen Mills, Ludhiana (2019) 105 taxmann.com 287 (P&H)
11. Apollo Tyers Ltd. Vs ACIT (1998) 65 ITD 263 (Delhi)
12. Stewarts and Lloyds of India Ltd. Vs CIT

6. We have heard the Id. Counsels of both the parties and have perused the material placed on record. We have also deliberated upon the decisions cited in the orders passed by the authorities below as well as cited before us and we have also gone through the orders passed by the revenue authorities. As per facts of the present case, the Id. CIT(E) noticed that "contribution with specific direction for use in land & building" was received by the assessee which was terms as "Corpus Donation" and the same was not routed through income and expenditure account but was taken to balance sheet, accordingly, the Id. CIT(E) held that the said receipt was not "Corpus Donation". Therefore, proceedings U/s 263 of the Act were initiated and order was passed against the assessee.

7. From the record, we noticed that the matter in the present case was initially reopened for limited issue on account of large cash deposit in the bank account. The said assessment was completed U/s 143(3) r.w.s

147 of the Act on 22/12/2017. On perusal of the record of the assessment proceedings, we noticed that the A.O. during the assessment proceedings had issued queries related to assessment and directed to sought documents and details from the assessee which was accordingly submitted by the assessee to the A.O. during the course of assessment. Certified copies of the notesheet of the assessment proceedings have already been placed on record at page Nos. 26 to 28 of the paper book. We have also noticed that the A.O. had also raised specific query about the details of corpus fund vide ordersheet entry dated 15/12/2007. The assessee submitted the required details and this fact found mentioned in the ordersheet entry dated 21/12/2007. Since the order passed by the A.O. has been termed as erroneous and prejudicial to the interest of revenue. Therefore, it has become all more important for us to first of all evaluate the provisions of Section 263 of the Act, which are reproduced below:

“Revision of orders prejudicial to revenue.

263. (1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

Explanation 1.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

- (a) an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—

- (i) an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;
- (ii) an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;
- (b) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal^{2a}[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 had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

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

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

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

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding

under this section is stayed by an order or injunction of any court shall be excluded.”

8. After perusal of the provisions of Section 263 of the Act, we found that prime condition for invoking provisions U/s 263 of the Act is that the order of assessment should be erroneous as well as prejudicial to the interest of revenue.

9. Now the meaning of the words "Prejudicial to the Interest of the revenue" is also to be understood. This has been defined in the explanation 2 of the Sub-Section 2 of section 263 of the Act. For ready reference the same is being reproduced hereunder: -

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

- (a) the order is passed without making inquiries or verification which should have been made*
- (b) the order is passed allowing any relief without inquiring into the claim;*
- (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or*
- (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered*

by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]

10. We observe that the above mentioned explanation has clearly put the conditions in which the order is to be treated as erroneous and prejudicial to the interest of revenue. Now we would like to submit on the conditions mentioned above that :-

- (a) The order is passed without making inquiries or verification which should have been made. But here in this case the action u/s 148 taken only on reason of large cash deposits in bank accounts. As stated in facts of the case mentioned earlier that the assessing officer raised queries and also examined the records to justify the cash deposits and he is satisfied with evidence submitted by the assessee. During the course of assessment proceedings he also raised query with respect to the Corpus Donation and satisfied with the submission and records of the assessee. This fact is very well evident from the certified copy of the order sheet attached herewith. Therefore, this cannot be proved that the order passed without making inquiry or verification which should have been made. Hence, this first condition is not applicable in this case.
- (b) The order is passed allowing any relief without inquiring into the claim, this condition also cannot be applied on the assessee as there is no such claim made by the assessee and allowed by the assessing officer.

- (c) The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119, here in this case there is no any direction or instruction issued by the Board in the case of the assessee. Hence this condition is also not applicable on the case of the assessee.
- (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. As such there is no any decision as mentioned in this condition is passed in the case of assessee. Therefore, this condition is also not applicable on the assessee.

The assessment order under consideration does not fall in any of the category mentioned in the explanation 2 of the Section 263(2) of the Act, therefore the assessment is proper and cannot be said as erroneous and prejudicial to the interest of the revenue.

11. The Id AR had also submitted that the assessment in the present case was completed after considering the submissions and evidences produced by the assessee during the course of assessment. On this aspect also, we have noticed that the A.O. had completed the assessment after due consideration and examination of all the issues specifically related to the corpus donation and he was satisfied with the evidences and submissions of the assessee as well as the manner in which it was shown in the accounts of the assessee. He mentioned his

satisfaction in the office note attached with the assessment order, which is the part of the assessment order. The copy of the certified copy of office note is attached herewith for ready reference at Page No. 12 of Paper book. The relevant portion of the office note is reproduced here under :-

"(ii) Issue of Corpus donation has been examined carefully and satisfying with evidence produced by the assessee during the course of hearing, no adverse inference has been drawn on this issue."

We observe that originally the proceedings for reopening of the assessment were also initiated on account of large cash deposits in the bank account and during the said assessment proceedings also, the A.O. had raised queries in detail and the said queries were satisfactorily replied by the assessee and after examining of the records and submissions, the A.O. found himself satisfied and completed the assessment U/s 143(3)/147 of the Act dated 22/12/2017. In the reopening proceedings itself, no adverse findings were recorded by the A.O. and even the Id. CIT(E) while passing the order U/s 263 of the Act had not found any error or defect in the findings recorded by the A.O. while passing the order U/s 143(3) r.w.s. 147 of the Act. Hence it cannot be said that the assessment was without any enquiry or investigation. Even during the survey U/s 133A of the Act which was conducted on the assessee on

20/02/2019, during the said survey, the assessee nowhere accepted in clear and unambiguous terms that the said donations received by them are not corpus donations rather a specific reply was given by the assessee that these donations are corpus donations but at that moment of time, the assessee could not produce the said details as those, according to assessee were with account section but this act of the assessee cannot be taken to be an admission that the donations received by the assessee were not corpus donations. Never the less, it is not a case of the Revenue that the amount received by the assessee was not the donation and even the Id. CIT(E) has failed to point out as to what prejudice has been caused to the Revenue.

12. Apart from the above, we have also noticed that the show cause notice issued under consideration which is at page No. 15 to 17 of the paper book carries all the reasons for initiating proceedings U/s 263 of the Act and except those reasons, no other reason has been raised by the Id. CIT(E). However, the reasons mentioned in the show cause notice had already been examined, discussed and considered by the then A.O. and issuance of show cause notice on the very same issue again amount to change of opinion. As the same matter was before the then A.O. and he was satisfied with the evidences submitted by the assessee during the course of assessment proceedings, therefore, the assessment order

passed by the A.O. could not be termed as erroneous or prejudicial to the interest of revenue. Even otherwise, the show cause notice issued U/s 263 of the Act speaks that "corpus donations" in the case of the assessee is to be treated as normal donations and thus was to be shown in the income and expenditure account and not in the balance sheet. On the contrary, the assessee has shown these donations in the balance sheet by mentioning the reasons that the amounts so received is a capital receipt or should say the capital of the assessee until said funds are utilized for the directed purpose. This act of the assessee is found support by the decision of the Hon'ble Karnataka High Court in the case of **DIT Vs Ramakrishna Sewa Trust 205 Taxman 26 (Kar)** wherein it was held under:

"13. The word 'Corpus' is used in the context of Income Tax Act. We have to understand the same in the context of a capital, opposed to an expenditure. It is a capital of an assessee; a capital of an estate; capital of a trust; a capital of an institution. Therefore, if any voluntary contribution is made with a specific direction, then it shall be treated as the capital of the trust for carrying on its charitable or religious activities. Then such an income falls under Section 11(d) of the I.T. Act and is not liable to tax. Therefore, it is not necessary that a voluntary contribution should be made with a specific direction to treat it as 'corpus, If the intention of the donor is to give that money to a trust which they will keep it in trust account in deposit and the income from the same is utilized for carrying on

a particular activity, it satisfies the definition part, of the corpus. The assessee would be entitled to the benefit of exemptions from payment of tax levied."

The Coordinate Bench of Ahmedabad Tribunal in case of **Kantilal Manilal Charitable Trust (2014) reported in 63 SOT 142 (Ahmedabad)** had relied on the meaning discussed by the Karnataka High Court in case reported in 205 Taxman 26 (Supra), the relevant portion of the order is reproduced hereunder :-

"6. *The meaning of "corpus" has been defined by H'ble Karnataka High Court in the case of .SIT v. Ramakrishna Seva Ashram [2012/ 205 Taxman 26/18 taxmann.com 37 as "the capital of an assessee,, a capital of an estate; capital of a trust; a capital of an institution. Therefore, if voluntary contribution is made with a specific direction, then it shall be treated as capital of the trust for carrying on its charitable or religious activities." Seen in the light of the aforesaid definition, it means that the corpus fund is a permanent fund which has been given with a specific direction and therefore it cannot be used in any manner contrary to the directions of the donor."*

13. We observe that in both the above cases the word corpus is defined as "the capital of an assessee, a capital of a society, a capital of a trust, a capital of institution. Therefore, if voluntary contribution is made with a specific direction that it is forming part of corpus, then it shall be treated as capital of the trust for carrying on its charitable or religious activities. There is no dispute on this aspect that the fund so received to

the assessee is a corpus fund. The only issue is the manner of presentation of the corpus fund in the final accounts of the assessee. As far as the accounting principles/methods are concerned the Capital has to be shown in the balance sheet of the assessee. The capital shall not be treated as part of the income and expenditure account. Therefore, act of the assessee is correct and also got force from the above mentioned judgments (supra). Hence, this fund is a nature of Capital Receipts and is required to be shown in the balance sheet not in the income and expenditure account. Therefore, the assessee has correctly shown the same in the books of accounts and final accounts of the assessee.

14. Since the assessee received certain amounts for the specific use i.e. for construction of building and this fact has been mentioned on the donation receipts also, copies of the some of the receipts are reproduced by the Ld. CIT(E) in his order itself, wherein it is categorically mentioned the purpose of donation. This fact has been duly examined by the then assessing officer and mentioned that he is satisfied with the submission and evidences. Even otherwise the directions of the doner a mutual trust has been created between the doner and donee and because of this the donee is bound to use that specific fund into the specifically directed activities for which it was donated. The same has to be kept as liability of the assessee till the utilization of the entire fund into the specified activities. Hence the

same is required to be shown in the balance sheet not in the Income and expenditure account.

15. We also observe that the fund in question is a capital fund/corpus fund therefore, it is out of preview of the provisions of section 11(2) of the Act. Section 11 of the Act deals with the utilization of income of a trust. This section is not having any provision about the utilization of corpus donation / fund like general fund or other receipts. The amount so received to the assessee is a Corpus fund / donation, therefore is out of preview of the provisions of section 11(2) of the Act. Therefore, we are of the view that any amount received as donation with specific direction shall be treated as Corpus of the assessee and because of specific directions this is not taxable as per the provisions of section 11(1)(d) of the Act. In this connection the reliance placed on the Judgment of Hon'ble Kerala High Court in case of **Commissioner of Income-tax (Exemption) v/s Mata Amrithanandamayi Math reported in (2017) 85 Taxmann.com 261 (Kerala)** and Hon'ble Supreme Court dismissed the SLP filed by the Department reported in **94 Taxmann.com 82 (SC)**. The Hon'ble Rajasthan High Court in the case of **Pr.CIT Vs Om Rudra Priya Holiday Resort (P) Ltd. 109 Taxman.com 63 (Raj)** has held as under:

"Income Tax: Where Assessing Officer had taken a broad view by accepting cost of fixed assets as recorded in books of account which were also supported by valuation report, then order of Assessing Officer could not be held to be erroneous on ground of lack of enquiry.

In our view this interpretation is too narrow to merit acceptance. 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.

*10. 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. (See Rampyari **Devi Saraogi v. CIT [1968] 67 ITR 84 (SC)** and in **Tara Devi Aggarwal v. CIT [1973] 3 SCC 482**)".*

In view of the above discussion, it must be held that every loss of the revenue as a consequence of the order of the assessing officer cannot be treated prejudicial to the interest of the revenue. Where two views

are possible and the assessing officer has taken one view with which the Principal Commission did not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the assessing officer was not at all possible in law."

16. In view of the above facts and circumstances, we are of the view that where the A.O. has taken a broad view by accepting the issue of corpus donation by carefully examining and satisfying himself with evidences produced by the assessee during the course of hearing, then order of the A.O. cannot be held to be erroneous on the ground of lack of inquiry.

17. The Id AR of the assessee apart from the other grounds as discussed by us in detail, has also submitted before us that the notice issued by the Id. CIT(E) was on the basis of proposal of subsequent ITO, therefore, this act does not provide such powers to the ITO U/s 263 of the Act. The Id AR also submitted that as per provisions of Section 263 of the Act, the Pr.CIT/CIT may call for and examine the proceedings under this Act if he considers that any order passed therein by the A.O. is erroneous in so far as it is prejudicial to the interest of the revenue but in the present case, the proposal was sent by the subsequent A.O. to the CIT(E) on the basis of which a show cause notice was issued which is against the provisions of the Act. However, on this proposition, our view is not in favour of the Id AR as we are convinced with the arguments of the

Id. CIT-DR who had submitted that there is no prohibition U/s 263 of the Act for the Commissioner to act on the basis of proposal by the A.O. if other conditions under the said Section are satisfied. In this regard, the Id. CIT-DR has relied on the decision in the case of Apollo Tyres Ltd. Vs ACIT (1998) 65 ITD 263 (Delhi) and Stewarts and Lloyds of India Ltd. Vs CIT (2016) 67 taxmann.com 41, therefore, we reject this contention raised by the assessee. Since, keeping in view our above discussion and reasoning mentioned in detail, we are of the view that the order passed by the A.O. was not erroneous and prejudicial to the interest of the revenue and thus we allow this ground raised by the assessee and set aside the order passed by the Id. CIT(E).

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

Order pronounced in the open court on 18th January, 2021

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 18/01/2021
*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Swami Keshwanand Sikshan Sansthan, Sikar.
2. प्रत्यर्थी / The Respondent- The C.I.T. (Exemption), Jaipur.
3. आयकर आयुक्त / CIT

4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 273/JP/2020)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar