

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Income Tax Appeal No. 1/2021

Commissioner Of Income Tax, Exemption, Jaipur.

----Appellant

Versus

Manna Trust, B-6, Pinkcity Apartment, Akar Marg, Jaipur
(Rajasthan).

----Respondent

For Appellant(s) : Mr. K.K. Bissa through V.C.

For Respondent(s) : Mr. Sidharth Ranka through V.C.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MS. JUSTICE REKHA BORANA**

Order

12/01/2022

This appeal has been filed by the revenue to challenge the judgment of the Income-Tax Appellate Tribunal raising following questions for our consideration:

1. "Whether on the facts and circumstances of the case and law, the Hon'ble Tribunal is justified in stating that neither Explanation 2(a) nor explanation 2(b) to Section 263 is applicable in this case and thus, holding the action u/s 263 wrong without appreciating the fact that no verification or enquiry was made by the AO even on reasons for scrutiny selection and exemption was allowed without verification of charitable nature of activities of trust?"

2(a) "Whether on the facts and circumstances of the case and law, the Hon'ble Tribunal is justified in stating that the AO had examined the aspects relating to payments made to persons specified u/s 13(3) as well as capital expenditure incurred during the year, by conducting necessary inquiries, when the AO has failed to conduct necessary inquiries?"

2(b) "Whether on the facts and circumstances of the case and law, the Hon'ble Tribunal is justified in holding that the CIT(E) should have conducted necessary inquiries on above issues during the proceedings u/s 263

and should not have set-aside the assessment to the AO for conducting necessary inquiries, ignoring the provisions of Explanation 2(a) to section 263 which require the AO to conduct necessary inquiries and if the AO has failed to do so in assessment proceedings, the CIT is empowered to set aside the assessment for the conduct of necessary inquiries by the AO?"

3. "Whether on the facts and circumstances of the case and law, the Hon'ble Tribunal is justified by holding that the proviso to Section 2(15) is not applicable in the case of the assessee ignoring the fact that the assessee, being engaged in the advancement of objects of general public utility and having more than 20% of its receipt through contract which falls under the ambit of commercial activity in view of the provisions of the Income Tax Act, 1961?"

4. "Whether on the facts and circumstances of the case and law, the Hon'ble Tribunal is justified by holding that the order of Hon'ble Kerala High Court in case of Annadan Trust (citation) is not applicable in the case of the assessee inspite of the similar facts that both are running mid day meal programme for which the directly or indirectly receive consideration from government under a contract and this is the main source of income of these trusts?"

The revenue has challenged the decision of the Income-Tax Appellate Tribunal by which the Tribunal has set aside the revisional order passed by the Commissioner of Income-Tax in exercise of powers under Section 263 of the Income-Tax Act, 1961 (for short, 'the Act') denying the benefit of exemption in favour of respondent-assessee Trust on its income being charitable Trust.

The respondent Trust is a registered charitable trust. The assessing officer for the assessment year 2016-17 accepted the return filed by the trust and granted exemption as applicable under law. The Commissioner, Income-Tax took the said order in revision under Section 263 of the Act and held that the activities of the trust were not charitable in nature but were commercial activities and therefore denied the exemption. This order was carried in appeal and Tribunal by the impugned judgment reversed the judgment of the Commissioner primarily on the ground that

the registration of the Trust under Section 12AA of the Act still continues. Meaning thereby, that the revenue does not dispute the nature of the charitable activities. Secondly, that the commercial activities are not primary activities of the trust and predominant activity of the trust is charitable. The generation of reasonable surplus would not indicate that the trust is not engaged in charitable activities. The Tribunal was also of the opinion that the assessing officer having made proper inquiry and having taken plausible view, the Commissioner in exercise of revisional powers could not have reversed the assessment order.

We are broadly in agreement with the view of the Tribunal. It is well settled through a series of judgments that power under Section 263 of the Act can be exercised only when twin conditions of the order of assessing officer being erroneous and prejudicial to the interest of revenue are satisfied. The Jurisdiction of the Commissioner under Section 263 of the Act is restricted and cannot be equated with the appellate jurisdiction. The Commissioner does not sit in appeal. The Tribunal also correctly noticed that the registration of the Trust under Section 12 AA of the Act has not been disturbed. We also notice that in the earlier order when the assessing officer had denied the benefit of exemption to the trust, the Commissioner (Appeals) had reversed the order of the assessment.

In these circumstances, no question of law arises.

The appeal is dismissed accordingly.

(REKHA BORANA),J

(AKIL KURESHI),CJ