IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.4982/Del./2019
Assessment Year 2014-2015

M/s. Shugan Chandra Kothari Trust, M-227, Greater Kailash-II, New Delhi – 110 048. PAN AAETS7019R	vs.	The Commissioner of Income Tax (Exemption), 26th Floor, E-2, Pratyaksh Kar Bhawan, JLN Marg, Minto Road, New Delhi PIN – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri R.S. Singhvi, And Shri Satyajit Goel, Advocates
For Revenue :	Shri Sanjay Goel, CIT-D.R.

Date of Hearing :	06.02.2020
Date of Pronouncement :	14.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of Ld. CIT(E), Dated 18th/26th March, 2018 under section 263 of Income Tax Act 1961, for the assessment year 2014-2015.

2. Briefly, the facts of the case are that assessee filed return of income declaring 'NIL' income on 27th September, 2014. The return was processed under section. 143(1) of the Income Tax Act, 1961. The case was selected for scrutiny. In response to the notice, the Counsel for Assessee attended the hearing from time to time and filed the requisite details which were examined and placed on record. The books of accounts, were also produced and same were examined on test-check basis. The Assessee-Trust is registered under section 12A of the Income Tax Act, 1961, vide Order dated 7th April, 1998. The Assessee-Trust is running a school namely "Delhi Public School, Jodhpur, Rajasthan State." The activities of the Assessee-Trust are apparently charitable in nature and within the meaning of Section 2(15) of the Income-Tax Act, 1961. The A.O. noted in the assessment order that income from various sources, expenditure and surplus which was to the extent of 15%. The net taxable income was assessed at NIL vide Order Dated 10th October, 2016 under section 143(3) of the Income Tax Act, 1961.

3. The Ld. CIT(E) on examination of the assessment record found the assessment order to be erroneous insofar as prejudicial to the interests of revenue for the purpose of Section 263 of the Income Tax Act, 1961. Show Cause Notice was issued to the assessee under section 263 of the Income Tax Act, 1961, which is re-produced in the impugned order in which the Ld. CIT(E) noted that copy of the ITS details of the assessee are not available on record and have not been verified. Further cash deposit of Rs.6,05,33,047/- on 31st March, 2014 in Jodhpur Branch of Axis Bank Limited, which have not been verified and details are not on record. Further as per the AIR information two entries of Rs.1.55 crores have also not been verified by the A.O. The assessee has received interest income of Rs.2.18 crores which have not been verified by the A.O. In the show cause notice, assessee was also directed to explain why the cost of acquisition of the assets to the tune of Rs.1,25,03,287/- should not be disallowed and not considered as income of the assessee.

3.1. The assessee filed reply before Ld. CIT(E) which is reproduced in the impugned order in which the assessee briefly explained that cash of Rs.6.05 crores have not been deposited on 31st March, 2014. It was submitted that students have to pay their fees in three installments i.e., in April, July and November for each academic year. The fees have been deposited during the financial year by many students in cash. The fees are accepted both in cash and in cheque. Though the payment through cheque is encouraged by the School, still approximately 30% to 40% of students pay pay fees in cash. The assessee has details of the total fees received during financial year reported in the audited financial statements which are as under :

Particulars	*Amount*	*Reference*
Academic Fees	*15,96,53,682*	*Refer Schedule-8 of Audited Financial Statements.*
Building Development Fund	*28,54,000*	*Refer Schedule-1A of Audited Financial Statements.*
Other Development Fund	*41,39,699*	*Refer Schedule-1B of Audited Financial Statements.*
Total	*16,66,47,381*	

3.2. The details were submitted before the Pr.CIT along with Annexure-B which includes fees deposited in cash directly into Bank by the parents and fees collected by the School. The cash deposited in the Axis Bank was Rs.6,04,92,415/-, whereas, as per notice, the cash deposited was Rs.6,05,33,047/- and there is a minor difference. The A.O. discussed this issue in detail at original assessment stage and assessed the fees received by the assessee from the students.

3.3. As regards verification of deposit of Rs.1.55 crore, it was submitted that an amount of Rs.1,57,61,450/- was received by assessee on sale of land, which was deposited in the Bank account. The details of the same is produced in the impugned order. The sale of land and surplus amounting to Rs.1,26,85,500/- has been disclosed in the audited financial statement and computation of income.

3.4. The assessee further explained that in assessment year under appeal, the assessee has received interest income of Rs.64,28,241/- on fixed deposit with the

Bank, details of which are filed and is appearing in 26AS also. Assessee, therefore, explained that the A.O. passed the assessment order after discussing each and every matter, therefore, it is not a case of invoking Section 263 against the assessee.

4. The Ld. CIT(E), however, did not accept the contention of assessee and noted that A.O. has not verified all these items, therefore, Explanation-2 to Section 263 of the I.T. Act, 1961, is attracted. The assessment order was found erroneous and prejudicial to the interests of the revenue. Therefore, the assessment order was cancelled and A.O. was directed to pass the assessment order refresh, in the light of observations made in the impugned order.

5. We have heard the Learned Representative of both the parties and perused the material available on record.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that the cash deposit of Rs.6.05 crores as fees is

part of total receipts of Rs.16.66 crores, therefore, it is not an unexplained income of assessee, the details of which are filed on record. The Learned Counsel for the Assessee, during the course of hearing produced the complete details of the fees received on record and sample counter-foil of the receipts are also produced during the course of hearing. He has submitted that A.O. has considered the receipt of fees from the students in the impugned order, which is same as have been explained before him at page-3 of the paper book. The assessee produced complete details before A.O. in this regard. As regards the entries of Rs.1.55 crores, he has submitted that these were Bank deposits through cheque on sale of land, which is accounted for in the books of account. The assessee did not receive interest of Rs.2.18 crores. The assessee received interest on FDRs at Rs.64,28,241/- which is also appearing in Form-26AS of assessment year under appeal. He has submitted that cost of acquisition of asset is also considered by the A.O. in the assessment order. He has referred to PB-2 detailed reply filed before A.O. to the query of the A.O, in which on all the items, details have been submitted, which is supported by list of the cash deposited in the Bank Account. Copy of details of Interest and TDS is filed that Page-14 of the paper book. Copy of 26AS is filed at page-15 onwards. PB-22 is complete details of income, expenditure and surplus is filed. PB-25 is income and expenditure account. PB-34 is query raised by the A.O. on all the issues at original assessment stage. PB-36 to 38 are the replies filed before A.O, in which complete details were filed before A.O. at original assessment stage, which have been supported by documentary evidenced and accepted by the A.O. He has submitted that A.O. in the set aside proceedings vide Order Dated 31st December, 2019 did not make any addition on account of interest. He has submitted sale of land has already been added by the A.O. in the assessment order. He has submitted that the Ld. CIT(E) has not examined any issue in detail and has not pointed-out as to how the assessment order was erroneous and prejudicial to the interests of revenue. He has submitted that since A.O. has taken one of the possible views in the matter, therefore, invoking proceedings under section 263 of the I.T.

Act, 1961 is invalid and relied upon Judgment of the Hon'ble Supreme Court in the case of Malabar Industrial Company Limited vs., CIT 243 ITR 83 (SC). He has further submitted that it is well settled Law where revisional authority opined that further enquiry was required, such enquiry should have been conducted by revisional authority himself to record findings that assessment order passed by the A.O. was erroneous and prejudicial to the interests of revenue. In support of the contention, he has relied upon Judgments of the Hon'ble Delhi High Court in the case of DIT vs., Jyoti Foundation 357 ITR 388 (Del.) and Pr. CIT vs. Delhi Airport Metro Express Private Limited 398 ITR 8 (Del.)

7. On the other hand, Ld. D.R. relied upon the impugned order and submitted that assessee failed to explain source of the cash deposit in the Bank Account and filed comments of the A.O, in which it is highlighted that no enquiry have been made on these issues. The Ld. D.R. filed queries raised by the A.O. and copy of the Order Sheet on record. The Ld. D.R. relied upon Judgment of the Hon'ble Supreme Court in the case of Daniel Merchants Pvt., Ltd.,

vs., ITO Dated 29.11.2017, Judgment of Calcutta High Court in the case of Rajmandir Estates Pvt., Ltd., vs., PCIT 287 CTR 512 (Cal.) which is confirmed by the Hon'ble Supreme Court reported in 245 Taxman 127 (SC). The Ld. D.R. also produced the assessment record for inspection and submitted details submitted by assessee on record which are part of the assessment record. However, the Ld. D.R. submitted that A.O. has not examined the issues.

8. We have considered the rival submissions. As regards the cash deposit of Rs.6.05 crores in the Bank Account of assessee, the assessee produced complete details before A.O. to explain that total receipts of assessee under different heads i.e., academic fees, building development fund and other development funds comes to Rs.16.66 crores. The same reply was filed before A.O. as well as before Ld.CIT(E). Rs.6.05 crores is the part of total receipts of assessee of Rs.16.66 crores. The assessee received academic fees of Rs.15.96 crores which includes the impugned amount. The assessee produced the complete list of the students who have made deposit directly with the

Bank and the fees received by the School. Therefore, when the amount in question is included in total receipt of the assessee and have been assessed by the A.O, as such at original assessment stage after examining the same, there is no question of holding that it is an unaccounted income of the assessee or that A.O. failed to make enquiry on the same. The A.O. has verified all the facts after issuing query letter and considered the reply of the assessee and examination of details and books of accounts. Since the total receipts have been disclosed in the income and expenditure account being the receipt on account of fees received from the students and it is disclosed in the income and expenditure account, it could not be considered as unaccounted income in the hands of the assessee. We rely upon the Judgment of the Hon'ble Delhi High Court in the case of DIT(E) vs. Keshav Social and Charitable Foundation [2005] 278 ITR 152 (Del.) in which it was held as under :

> *"The assessee was a charitable trust providing medical advice for needy in various parts and remote villages of Uttar Pradesh. It was registered*

under section 12A of the Income-tax Act, 1961. For the assessment year 1991-92, the assessee claimed benefit under section 11 of the Act for the donations it received during the relevant previous year. The assessee had furnished the list of donors. The Assessing Officer disallowed the claim stating that the assessee could not furnish details regarding the donors and that it was just a way of introducing unaccounted money into the books of the assessee trust and thus treated the amount as cash credit under section 68 of the *Act. The Tribunal held that since more than 75 per cent, of the donations received by the assessee was spent for charitable purposes, the addition* was *not justified. On appeal to the High Court :*

Held, dismissing the appeal, that to obtain benefit of the exemption under section 11 of the Act, the assessee was required to show that the donation was *voluntary. In the present case, the assessee had not only disclosed its* dona*tions, but had also* *submitted a list of donors. The fact that the complete list of donors had not been filed or that the donors had not been produced did not necessarily lead to the inference that the assessee had tried to introduce unaccounted money by way of donation receipts. This was shown in the facts of the case, where admittedly 75% of the donations were applied for charitable purposes. Section 68 of the Act had no application to the facts of the case because the assessee had in fact disclosed the donations of Rs.18,24,200 as its income and it could not be disputed that all receipts, other than corpus donations would be income in the hands of the assessee. There was thus full disclosure of income by the assessee and also application of the donations for charitable purposes. It was not in dispute that the objects and activities of the assessee were charitable in nature since it was duly registered under the provisions of section 12A."*

8.1. Further, the A.O. has considered the total income as per income and expenditure account as per the reply filed at original assessment stage, therefore, it could not be termed as that A.O. did not verify the fact of receipt of amount from the students and thereafter deposit in Bank Account.

8.2. The second issue is with regard to amount of two entries Rs.1.5 crores, which assessee has explained that Rs.1.56 crores was the amount received on sale of land through cheque, therefore, it could not be an undisclosed income of the assessee. Further, interest have been received of Rs.64,28,241/- which is also appearing in Form-26AS and disclosed to the Revenue Department as well. Therefore, figure of Rs.2.18 crores noticed by the Ld. CIT(E) in the show cause notice under section 263 of the Income-Tax Act, 1961 is incorrect. The A.O. has considered the sale proceeds and expenditure incurred by the assessee including building fund etc., in the original assessment proceedings. The Ld. CIT(E) also considered the issue of cost of acquisition, but, the A.O. in the subsequent Order in pursuance of Order under section 263 of Income Tax Act, 1961, did not make any addition against the assessee on account of interest as well as cost of acquisition because the same was also considered and added in the original assessment. These facts, therefore, made it very clear that Ld. CIT(E) in the show cause notice has mentioned some incorrect facts which are not part of the record and all the issues have been examined by the A.O. and has specifically mentioned in assessment order. Therefore, if Ld. CIT(E) wanted to take a different view, then he should have made a detailed enquiry at revision stage and should have come to the finding as to how the assessment order was erroneous and prejudicial to the interests of Revenue. The Ld. CIT(E) merely mentioned that since these issues have not been enquired into by the A.O, therefore, Explanation-2 to Section 263 of Income Tax Act, 1961, would apply against the assessee. Further, assessee has explained all the issues at original assessment stage as well as before Ld. CIT(E) in proceeding under section 263 of the Income Tax Act, 1961. Therefore, it is not fit case of invocation of jurisdiction under section 263 of the Income Tax Act, 1961 against the assessee. Considering the totality of the facts and circumstances of the case, we are of the view that Order under section 263 of Income Tax Act, 1961 is wholly unjustified and is liable to be set aside. We, accordingly, set aside the impugned order under section 263 of Income Tax Act, 1961 and quash the same. Resultantly, the original assessment order is restored. Appeal of the Assessee is allowed.

9. In the result Appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated February, 2020
VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.