

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

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2249/Bang/2018
Assessment year : 2013-14

M/s Mymul Raitha Kalyana Trust, Malai Mahadeswara Road, Mysore Diary, Siddartha Nagar, Mysuru-570 011. PAN – AACTM 1497 P	Vs.	The Commissioner of Income-tax (Exemption), Bengaluru.
APPELLANT		RESPONDENT

Revenue by	:	Shri Suresh Muthukrishnan, C.A
Assessee by	:	Shri Mulaffar Hussain, CIT (DR)

Date of hearing	:	03.03.2020
Date of Pronouncement	:	04.03.2020

ORDER

Per B.R Baskaran, Accountant Member :

The assessee has filed this appeal challenging the revision order passed by Id CIT(E) u/s 263 of the Act for asst. year 2013-14.

2. The assessee is a trust formed for the welfare of Milk Federation Employees. It filed return of income for the asst. year 2013-14 declaring income at Nil after availing exemption u/s 11 of the Act. It is pertinent to note that the assessee trust is registered u/s 12A of the Income-tax Act. The AO completed the asst. u/s 143(3) of the Act on 29/2/2016.

3. The ld CIT, upon examination of asst. record, noticed that the assessee has declared surplus of Rs.19,25,677/- during the year under consideration and the same is liable to be taxed. He further noticed that the assessee has also not sought accumulation of income as per the provisions of sec. 11(2) of the Act. Accordingly he noticed that the AO has not examined this aspect and did not bring to tax the surplus declared by the assessee. Accordingly he held that the asst. order is erroneous and prejudicial to the interest of the Revenue. Accordingly he set aside the asst. order and directed the AO to pass fresh order. The assessee is aggrieved.

4. The ld AR submitted that the assessee did not get enough opportunity before ld CIT to present its case. The ld AR submitted that the direction given by the ld CIT to the AO to pass the asst. order is not justified. By placing reliance on the decision rendered by the coordinate bench in the case of Bagalkot Town Development Authority Vs. CIT (2014) Taxmann.com 582 (in ITA No.1151/Bang/2012 dated 22/1/2014), the ld AR submitted that the ld CIT should have directed the AO to afford an opportunity to the assessee to accumulate the income u/s 11(2) of the Act by filing Form No.10 before him before completing the asst. Accordingly he prayed that the direction issued by the ld CIT be modified.

5. On the contrary the ld DR submitted that the ld CIT has noticed that the assessee has declared surplus of Rs.19,25,677/- and the AO has not assessed the same as income of the assessee, even though the same is liable to be taxed. The assessee has to take a call as to whether to exercise option to accumulate its unutilized income in terms of sec. 11(2) of to the Act, which the assessee did not exercise before the AO during the course of assessment proceedings. Hence there was no requirement for the Ld CIT to give any such direction as prayed by Ld. A.R. He submitted that the AO has not brought to tax the surplus declared by the assessee. Accordingly the ld DR submitted that there is total absence of application of mind on the part of the AO and hence the ld CIT has rightly revised the asst. order.

6. We heard the rival contentions and perused the record. We have gone through the order passed by the AO u/s 143(3) of the Act. We have noticed that the said order is cryptic order without any discussion. It was also not shown to us by the assessee that the AO did examine the taxability or otherwise of the surplus shown by the assessee in its income expenditure account. Since the AO has not examined the issue at all in the asst. order, the impugned asst. order shall be rendered erroneous and prejudicial to the interest of revenue as per the decision rendered by the Hon'ble Supreme Court in the case of Malabar Industrial Company (243 ITR 83)(SC). Accordingly we did not find any infirmity in the order passed by ld CIT u/s 263 of the Act.

4. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 4th **March, 2020.**

Sd/-
(Beena Pillai)
Judicial Member
Bangalore,
Dated, 4th March, 2020.
/ vms /

Sd/-
(B.R Baskaran)
Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation
2. Date on which the typed draft is placed
before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
.....
4. Date on which the fair order is placed
before the dictating Member
5. Date on which the fair order comes back to the Sr.
P.S.
6. Date of uploading the order on
website.....
7. If not uploaded, furnish the reason for doing so
.....
8. Date on which the file goes to the Bench Clerk
.....
Dictation note enclosed
9. Date on which order goes for Xerox &
endorsement.....
10. Date on which the file goes to the Head Clerk
.....
11. The date on which the file goes to the Assistant
Registrar for signature on the order
.....
12. The date on which the file goes to dispatch section for
dispatch of the Tribunal Order
13. Date of Despatch of Order.
.....
14. Dictation note enclosed
.....