

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, “A”, CHANDIGARH**

**BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRIR.L NEGI, JUDICIAL MEMBER**

आयकरअपीलसं./ITA No.624 /CHD/2016

निर्धारणवर्ष / Assessment Years :2011-12

M/s KarmaeGarchen Trust, GyutoRomoche Tantric University, Sidhbari, Dharmasala, Distt. Kangra (HP)	बनाम	The JCIT, Palampur Range, Palampur (HP)
PAN NO: AABTK2394L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

Hearing through video Conferencing

निर्धारितकीओरसे/Assessee by : Sh. Ashwani Kumar, CA
Sh. Bhavesh Jindal, CA
राजस्वकीओरसे/ Revenue by : Smt. C. Chandrakanta, CIT

सुनवाईकीतारीख/Date of Hearing : 12.08.2021
उद्घोषणाकीतारीख/Date of Pronouncement : 02.11.2021

आदेश/Order

Per R.L. Negi, Judicial Member:

The assessee has filed the present appeal against the order dated 31.03.2016 passed by Commissioner of Income Tax (Exemptions), Chandigarh [for short ‘the CIT(E)’], whereby the Ld. CIT(E) has set aside the assessment order passed by the Jt. Commissioner of Income Tax, Palampur Range. u/s 143(3)/147 of the Income Tax Act, 1961 [for short ‘the Act’]for the assessment year 2011-12, exercising jurisdiction u/s 263 of the Act..

2. Brief facts of the case are that the assessee trust registered u/s 12AA(1)(b) of the Act, filed its return of income for the assessment year

under consideration declaring nil income. The return was processed u/s 143(1) of the Act. Thereafter the case was reopened for conducting enquiry regarding Indian and Foreign currency seized in January 2011 by Una Police. Accordingly, notice u/s 148 of the Act was issued to the assessee by the ITO Dharamshala. There after case was transferred to the office of Asstt. Commissioner Income Tax Circle Palampur. Finally, the Joint Commissioner Income Tax completed the assessment and accepted the nil return filed by the assessee trust. Subsequently, the CIT(E) exercising the jurisdiction u/s 263 of the Act, set aside the assessment order and directed the AO to pass assessment order afresh after taking into consideration all the issues pointed out in the order u/s 263 of the Act.

3. The assessee challenged the impugned order passed by the Ld CIT(E) on the following grounds:-

1. *That the order passed u/s 263 of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Exemptions) Chandigarh is against law and facts on the file in as much as he was not justified to hold that order dated passed by the Jt. Commissioner of Income Tax, Palampur Range, Palampur was erroneous in as much as prejudicial to the interest of Revenue.*
2. *That the Ld. Commissioner of Income Tax was not justified to hold that the assessment order had been passed without due application of mind and proper enquiry.*
3. *That the Ld. CIT(A) was not justified to arbitrarily restore the matter back to the file of the Ld. Assessing officer without appreciating the import of detailed submissions made during the course of hearing.*

4. The Ld. counsel for the assessee submitted before us that the impugned order passed by the Ld. CIT(A) is against the facts and law as there is no justification in holding the assessment order passed u/s 143(3)/147 erroneous and prejudicial to the interest of the revenue. The Ld. counsel further contended that the Ld. CIT(E) has wrongly held that the AO has passed the assessment order without proper enquiry and due application of mind. The Ld. counsel further pointed out that the Ld. CIT(E) has not given any finding as to how the order is erroneous and prejudicial to the interest of the revenue. The Ld. submitted that the case of the assessee was reopened for conducting enquiry regarding Indian and foreign currency seized by the police on 27.01.2011. During assessment proceedings, the assessee demonstrated that the currency belonged to Tsurphu Labrang , a trust registered in Delhi and does not pertain to the assessee trust. Further the trust had been granted registration u/s 12 A of the Act by the CIT Shimla vide Certificate dated 21.04.2009. The Ld. Joint Commissioner accepted the return filed by the assessee trust holding that the trust utilized the income earned during the year relevant for the purpose of achieving aims and objects of the Trust. In order to demonstrate that the Ld. JC has passed the assessment order after making enquiry and due application of mind, the Ld. counsel invited our attention to para 2 of the order passed by the Ld. JC, wherein it has been mentioned that the assessee filed its return of

income in response to the notice dated 04.03.2013 u/s 148 of the Act. Thereafter notice u/s 143(2) was issued to the assessee. Subsequently, notice u/s 143(2) and 142(1) were issued and in response thereof the authorized representative appeared before the concerned authority and filed reply. Thereafter the case was transferred to the Id. JC, who once again issued notices u/s 143(2) /142(1) of the Act. In compliance to the said notices the authorized representative attended the proceedings from time to time and filed written submissions. The Id. counsel further invited our attention to the copy of reply dated 03.06.2013 filed by the assessee before the Additional Commissioner Palampur. So far as the enquiry regarding foreign currency seized is concerned, the Ld. counsel pointed out that the competent authority has held that the assessee trust had no role in acquiring the foreign currency in question. The Ld. counsel further contended that the action of the Ld. CIT(E) is contrary to the law laid down by the Hon'ble Delhi High Court in the case of *DIT(Exemptions) vs. Maharaja Agarsen Technical Education society* (2011) 196 Taxman 528 (Delhi). The Ld. counsel further contended that in the present case the Ld. CIT(A) has issued notice u/s 263 of the Act, beyond the period of limitation , which is contrary to the ratio laid down by the Hon'ble Supreme Court in the case of *CIT vs. Alagendran Finance Ltd.* 293 ITR 1 and the Hon'ble High Court in the case of *CIT vs. ICICI Bank Ltd.* 343 ITR 74 (Bom). The Ld. counsel further relied upon the judgment of the Hon'ble Supreme Court in the case of *Malabar*

Industries Co Ltd.vs CIT 243 ITR 83 (SC), Hon'ble Delhi High Court in the case of *CIT vs. Software consultants 341 ITR 240 (Del)* and the decision of the coordinate Bench in the case of *Crystal Pharmaceuticals vs. CIT ITA No 439/Chd/2013* to substantiate his contentions.

5. On the other hand, the Ld. departmental representative supporting the order passed by the Ld CIT(E) submitted that since the Ld. JC had passed the assessment order without making proper enquiry on the issues raised in order u/s 263 of the Act, the Ld. CIT(E) has rightly set aside the assessment order and directed the AO to pass assessment order afresh taking into consideration all the issues pointed out in the order. The Ld DR further contended that since there is no merit in the appeal filed by the assessee, the same is liable to be dismissed.

6. We have heard the rival submissions of the parties. As pointed out by the Ld counsel, the Ld CIT(E) has revised the assessment order holding that the AO has decided the matter in favour of the assessee without going deep into the issue regarding seized foreign currency and excess income of Rs.2.30 crores over total expenditure. In response to the notice u/s 263 of the Act the assessee submitted that the competent adjudicating authority has given clean chit to the assessee trust by dropping the charges under FEMA, 1999 against the assessee trust. Regarding expenses of 38 lacs against the total receipt of Rs. 2.54 crore, the assessee submitted that an amount of Rs. 2.50 crore was paid as advance for purchase of land and as per the judgment of the Hon'ble

Delhi High Court in the case of *DIT (Exemptions) vs. Maharaja Agarsen Technical Education society (supra)*, advance for purchase land is to be treated as application of funds. The Ld. counsel further invited our attention to the copy of agreement dated 10.09.2010 to purchase land from Sh. Kul Prakash, Dr. Swtantra Kumar and Sh. Sher Singh for a total consideration of Rs. 2,50,00,000/- and the vendors received Rs. 25,00,000/- vide three cheques drawn on State Bank of India Melodganj, to establish the genuineness of the transaction. The Ld. counsel further pointed out that the vendors have submitted affidavits and affirmed the said transaction, copies of the said affidavits are available on record. As mentioned by the Ld. CIT(E), the assessee has submitted copy of aforesaid agreement, cash books maintained by the assessee for the date of advance given to the seller and the ledger Account of (land advance). We further notice that the Ld. CIT(E) has not rebutted the contention of the assessee and only observed that there is no evidence of having been examined these aspects by the AO. Further, the Ld. CIT(E) has not pointed out as to how the assessment order is erroneous. The Ld. CIT(E) has not pointed out any evidence or cogent reason to hold that the assessee trust has received anonymous donation. In the case of *Malabar Industries Co Ltd.vs CIT* (supra), the Hon'ble Supreme Court has held that CIT has to be satisfied of twin conditions namely, that the order sought to be revised is erroneous and that the order is prejudicial to the interest of the revenue. The Hon'ble Court further held that power u/s

263 cannot be invoked to correct each and every type of mistake committed by the AO. The Hon'ble Court further held that the phrase prejudicial to the interest of the revenue has to be read in conjunction with an erroneous order passed by the AO. Hence, every loss of revenue as a consequence of an order cannot be termed as prejudicial to the interest of the revenue. In the case of *ITO vs. DG Housing Projects* (supra) the Hon'ble Delhi High Court has held that revisional power u/s 263 of the Act is normally exercised in the case of no enquiry and not in the case of inadequate enquiry. AO has passed the assessment order after making enquiries, the Ld. CIT(E) has wrongly observed that the AO has passed the order without making any inquiry on the issues discussed in the revisional order. The documents referred by the Ld. counsel do not suggest that the AO has passed the assessment order without conducting any enquiry. Hence, in our considered view this was not the case where the AO has passed the assessment without making enquiry for holding the same as erroneous.

7. Further, as pointed out by the Ld. counsel the case of the assessee was opened on the formation of belief that income to the tune of 20,32,130/-and foreign currency seized have escaped assessment, whereas the Ld. CIT(A) has revised the assessment order on the grounds other than the ground of reopening of the assessment u/s 147 of the Act. In the case of *CIT vs. Alagendran Finance Ltd.*(supra) the Hon'ble Supreme Court has held that where jurisdiction u/s 263 is sought to be

exercised with reference to an issue which does not form the subject matter of re assessment, the period of limitation period of two years commences from the date of the original assessment and not from the reassessment. In the present case, assessment order was passed in the year 2013 and the Ld. CIT(E) issued notice u/s 263 of the Act on 11.03.2016. Hence, the action of the Ld. CIT(E) is bad in law. Similarly, in the case of *CIT vs. ICICI Bank Ltd.* (supra), the Hon'ble Bombay High Court has held that where the commissioner exercises jurisdiction u/s 263 of the Act, with reference to an issue which is covered by original order of assessment under section 143(3) of the Act and does not form the subject matter of reassessment limitation must necessarily begin to run from the order under section 143(3) of the Act. In the case of *Crystal Pharmaceuticals vs. CIT* (supra), the coordinate Bench of the Tribunal has decided the identical issue in favour of the assessee and set aside the revisional order passed by the Ld. Commissioner holding that the impugned order under section 263 having been passed is beyond the limitation period. Further, in the case of *CIT vs. Software consultants* (supra), the Hon'ble Delhi High Court has held that where no addition is made on the grounds mentioned in the reasons recorded for reopening of the assessment, the assessment order cannot be said to be erroneous under section 263 of the Act. In the present case the AO has not made any addition on the ground mentioned in the reasons recorded. Hence,

the findings of the Ld. CIT(E) are not in consonance with the ratio laid down in the aforesaid case.

8. In view of the discussion in the foregoing paras, we are of the considered view that the impugned order passed by Ld. CIT(E) is contrary to the evidence on record and also not in accordance with the ratio laid down by the Hon'ble Supreme Court and the Hon'ble High Courts discussed above. Hence, we find merit in the appeal of the assessee. Accordingly, we allow appeal of the assessee and set aside the impugned order passed by the Ld. CIT(E) under section 263 of the Act.

In the result, the appeal of the assessee is allowed

Order pronounced on 2nd Nov., 2021.

Sd/-
(N.K. SAINI)

उपाध्यक्ष /Vice President

Dated : 02.11.2021

“आर.के.”

Sd/-
(R.L.NEGI)

न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar