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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 02.05.2023

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ITA 248/2023 & CM Nos.22086-87/2023

COMMISSIONER OF INCOME TAX
(EXEMPTIONS) DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh, Jr
Standing Counsel.

versus

EAST POINT EDUCATION SOCIETY

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2012-13.
2. The appeal is directed against the order dated 06.09.2019 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
- 2.1 The Tribunal *via* the impugned order has set aside the order passed by the Commissioner of Income Tax (Exemptions) [in short, "CIT(E)"] dated 20.03.2017 in exercise of its powers under Section 263 of the Income Tax Act, 1961 [in short, "Act"].
3. Briefly, the central issue in the case is : whether the amount, which, to begin with, was given by one of the trustees, i.e., Mr Mohinder Singh, in the



form of unsecured loans, and which was later on converted to contribution, should have formed the basis for exercising revisional powers?

4. What is not in dispute is that the respondent/assessee obtained registration under Section 12A of the Act on 10.09.1985.

4.1 It is also not in dispute that the respondent/assessee obtained registration under Section 80(G)(5)(vi) of the Act, as far back as on 23.11.2009. These registrations were obtained for AYs 2010-11 to 2012-13.

5. In the period in issue, the respondent/assessee had filed its return of income on 27.09.2012, wherein it declared its income as “nil”.

5.1 Along with the return, the respondent/assessee had also filed a report as required under Section 12A(b) in the prescribed form i.e., Form 10B.

5.2 This form was accompanied by a balance sheet, income and expenditure account and the relevant schedules.

6. It is after considering the material on record that the Assessing Officer (AO) framed an order dated 12.11.2014 under Section 143(3) of the Act. In sum, the AO accepted the return filed by the respondent/assessee, whereby it had declared its income as “nil”.

7. As noted hereinabove, the CIT(E) exercised powers under Section 263 of the Act.

7.1 Concededly, a show cause notice dated 07.01.2005 was issued to the respondent/assessee by the CIT(E).

8. The burden of the CIT(E)’s order is that the AO had framed an assessment in “hurried and casual” manner without due application of mind and in disregard of the consistent stand of the revenue.



9. The Tribunal, having considered the issue at some length, recorded the following observations; which, being apposite, are extracted hereafter:

“9. We have considered the arguments made by both the sides and perused the material available on record. **We find the Ld. CIT (E) assumed jurisdiction u/s 263 of the IT Act on the ground that the Assessing Officer framed the assessment in a hurried and casual manner without any application of mind and in utter disregard to the consistent stand of the Department.** It is the submission of the ld. counsel for the assessee that the Assessing Officer, after due application of mind and on the basis of the reply of the assessee to the various issues raised by him, has passed the order. It is also the submission of the ld. counsel for the assessee that the Tribunal in assessee's own case for assessment year 2006-07 has allowed the exemption u/s 11 of the Act which was denied by the Assessing Officer and the CIT(A). Further, it is also the submission of the ld. counsel for the assessee that following the order of the Tribunal for assessment year 2006-07, the Tribunal in assessee's own case for assessment year 2007-08, 2009-10, 2010-11 and 2011-12, has allowed the appeal filed by the assessee on the issue of denial of exemption u/s 11 due to violation of the provisions of section 13(1)(c) read with section 13(3) of the IT Act. **It is also the submission of the ld. Counsel for the assessee that when the Assessing Officer has taken a possible view, merely because the ld. CIT(E) does not agree with the view taken by the Assessing Officer, the same cannot be a ground for invoking the jurisdiction u/s 263.**

10. We find merit in the above argument of the ld. counsel. A perusal of the order of the Tribunal for assessment year 2006-07, copy of which is placed at pages 1 to 16 of the paper book, shows that the Tribunal has threadbare discussed the issue of violation of provisions of section 13(1)(c) r.w. section 13(3) of the Act and, thereafter, has allowed the exemption u/s 11 of the IT Act. We find, following the order of the Tribunal in assessee's own case for assessment year 2006-07, the Tribunal in assessee's own case for assessment years 2007-08, 2009-10, 2010-11 and 2011-12, copies of which are placed at pages 17 to 35 of the paper book, has allowed the exemption u/s 11 of the Act which was denied by the Assessing Officer and upheld by the CIT(A) for violation of the provisions of section 13(1)(c) read with section 13(3) of the IT Act. Merely because the Revenue has not filed any appeal against the order of the Tribunal on account of low tax effect the same in our opinion cannot be held as an adverse view against the assessee. **We find the Hon'ble Gujarat High Court in the case of CIT vs. Arvind Jewellers (supra) has held that where the Assessing Officer has considered material on**



record and framed assessment, revision of order is not justified. It was held where the assessee had produced relevant material and offered explanation in pursuance of notices issued u/s 142(1) as well as U/S 143(2) of the Act and after considering the material and explanations, the ITO had given a definite conclusion, merely because a different view can be taken should not be the basis for action U/S 263 of the IT Act. Accordingly, the revision order passed by the CIT was held to be not justified.

[Emphasis is ours]

10. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that since there has been a flip-flop in the previous years as to the nature of the amount provided by Mr Mohinder Singh, this was a fit case for exercise of powers under Section 263 of the Act.

11. The Tribunal, as is evident from the extract set forth hereinabove concerning the impugned order, quite correctly, recorded that the AO had considered the response of the respondent/assessee and then taken a view in the matter.

12. For exercise of powers under Section 263 of the Act, it is well established that, not only the order passed by the AO would have to be categorised as erroneous, but it also has to be prejudicial to the interests of the revenue.

13. As noted above, CIT(E) simply took recourse to the provisions of Section 263 of the Act because the AO had acted in a hurried and hasty manner.

14. It is not in dispute that in the previous AYs, i.e., 2006-07, 2007-08, 2009-10, 2010-11 and 2011-12, the Tribunal has allowed the appeal of the respondent/assessee pertaining to the issue concerning denial of exemption



under Section 11 of the Act on account of purported violation of provisions of Section 13(1)(c), read with Section 13(3) of the Act.

15. Although Mr Maratha says that the appeal was not preferred to this court against the order of the Tribunal because of low tax effect, it was not stated why was the revenue not alert, as it claims now, in exercising powers under Section 263 of the Act.

16. According to us, no substantial question of law arises for consideration in the present appeal.

17. The appeal is, accordingly, closed.

18. Consequently, the pending applications, both for condonation of delay in filing and re-filing, shall also stand closed.

19. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

MAY 2, 2023

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