



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

Date of decision : 24.09.2024

**1. ITA No. 41 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent

**2. ITA No. 47 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent

**3. ITA No. 57 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent

**4. ITA No. 58 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent

**5. ITA No. 60 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent

**6. ITA No. 71 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent



**7. ITA No. 90 of 2021 (O&M)**

Principal Commissioner of Income-Tax (Circle),  
Gurugram

... Appellant

versus

M/s Maharishi Markandeshwar University Trust

... Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA  
HON'BLE MR. JUSTICE SANJAY VASHISHT**

Present: Ms. Urvashi Dhugga, Senior Standing Counsel,  
for the appellant.

Ms. Radhika Suri, Senior Advocate assisted by  
Mr. Abhinav Narang, Advocate, and  
Ms. Parnika Singla, Advocate, for the respondent.

**SANJEEV PRAKASH SHARMA, J.**

These are seven appeals which have been taken up together for adjudication. However, the facts have been taken from ITA No. 41 of 2021.

2. The Principal Commissioner of Income Tax (Central), Gurugram has preferred these appeals against the order dated 19.08.2019 passed by the Income Tax Appellate Tribunal, Delhi Bench 'G', New Delhi, whereby it has set aside the order of the Principal Commissioner of Income Tax (Central) (hereinafter to be referred as 'the PCIT') passed under Section 263 of the Income Tax Act, 1961 (for short, 'the Act') holding the order passed by the Assessing Officer to be erroneous and prejudicial to the interest of the Revenue and issuing directions to the Assessing officer to pass order accordingly, for the Assessment Year 2009-2010.

3. Brief facts which need to be noticed for adjudication are that the Deputy Commissioner, Central Circle, Karnal vide order dated 30.12.2016 passed an assessment order relating to the respondent – M/s Maharishi Markandeshwar University Trust Group of Cases, Mullana, District Ambala (for short 'MMU Trust'), whereby it assessed the income by

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I attest to the accuracy and  
authenticity of this  
order/judgment



rejecting the contention of the assessee claiming exemption of accumulation of 15% of the gross receipts and computed the same as under:-

“Income from other sources

Income from other sources

*Net surplus as per income & expenditure account* : 19,58,26,770.17

*Add: Development fund receipts as discussed*

*in para 4.* : 7.22.96.300.00  
26,81,23,070.17

*Less: 15% set apart or accumulated*

*u/s 11(1)(a)* : 4.02.18.461.00

*Income required to be applied as per* 22,79,04,609.17

*Section 11(1)(a)*

*Less: Fixed assets considered as applied*

*towards income from properties held for*

*charitable purposes during the year*

*during the year* 65.73.64.136.73 22,79,04,609.17

*Total Taxable Income*

*Nil*

*Unapplied fixed assets expenditure*

*during the year* : 42,94,59,527.56”

3. The PCIT invoking its powers under Section 263 of the Act revised the assessment order on the premise as under:-

“On perusal of records as well as per the enquiries/ investigations conducted by the Investigation Directorate of the Department during the search and post-search enquiries, many discrepancies and violations of provisions of Sections 11, 12 & 13 of the Act by the Assessee trust were found. Accordingly, a show cause notice dated 23.08.2018 was issued asking the assessee



*as to why proceedings u/s 263 of the Act should not be initiated in its case.*

4. In his order passed under Section 263 of the Act, the PCIT nowhere mentioned any error committed by the Assessing Officer and relies on the investigation report which was considered at length by the assessing officer. Various points highlighted by him in the order passed are (a) Siphoning of money from the trust by booking bogus expenditure; (b) the PCIT notices the investigation report and observed that from the report of the Inspector, genuineness and existence of the persons mentioned was doubtful. The transactions were not genuine and the payments made by MMU Trust are bogus and needs to be disallowed. Huge salary being paid to the trustees by MMU Trust is not genuine. Interest paid to MMU Trust has been held by the PCIT as diverting of income. Rent paid to individuals by MMU Trust has been held to be not genuine. Admitting the Indian students in NRI quota without NRI status of any families held to be wrongful and the PCIT proceeded to hold MMU Trust violating the provisions of Medical Council of India. Salary paid to the teachers has been held as not genuine. The order was passed for various Assessment Years by the PCIT ranging from 2009-2010 to 2015-2016. The entire order is based on the report of the Investigating Team which was challenged before the Income Tax Appellate Tribunal. The appeals were heard together and the ITAT has passed order dated 19.08.2019 setting aside the order passed by the PCIT holding that the Assessing Officer has well appreciated the evidence on record properly and PCIT has not brought anything on record to prove siphoning of money from the trust by booking bogus expenditure in the form of mess charges and payments to contractors and allowed the appeals of the assessee.



5. Learned counsel for the Revenue has challenged the order of the ITAT stating that the order passed by the PCIT under Section 263 of the Act did not warrant any interference by the ITAT as the PCIT has relied on the investigation report of the Inspector which was not considered by the Assessing Officer. She has further submitted that as per the report of the Inspector, the contractors had been paid amount which were not existing and, therefore, there was no occasion for deduction of TDS in the payments and the entire accounts were fraudulent.

6. Learned counsel for the Revenue further submitted that the mess charges were actually not paid and the amount has been siphoned to constitute as mess expenses. It is her submission that the ITAT did not even bother to produce the investigation report prepared by the Inspector for the purpose of adjudicating the appeals. She has relied on judgments of Supreme Court reported as *The Commissioner of Income Tax 7 vs M/s Paville Projects Private Limited* 2023 AIR (SC) 1950; *H.E.H. Nizam's Religious Endowment Trust, Hyderabad vs Commissioner of Income Tax, Andhra Pradesh, Hyderabad* 1966 (2) SCR 384; *Rampyari Devi Saraogi vs Commissioner of Income Tax, West Bengal and others* 1968 (67) ITR 84; *Smt. Tara Devi Aggarwal vs Commissioner of Income Tax, West Bengal, Calcutta* 1973 (3) SCC 482; and Division Bench judgment of this Court in *Commissioner of Income Tax vs Assam Tea House* 2012 (344) ITR 507, in support of her contentions.

7. Learned Senior counsel for the respondent-assessee has, however, refuted the submissions of learned counsel for the Revenue. It has been stated that the learned ITAT has perused the investigation report and



also noticed that the so called contractors alleged to be non-existent, had actually been found during investigation, who have submitted income tax returns and the only aspect mentioned by the Inspector was with regard to their addresses not being found as originally mentioned in the registers of the MMU Trust. It is, therefore, not a case where there was any siphoning of the funds. It was also submitted that the ITAT had noticed that same queries with regard to the various points, as noted above, were raised by the Assessing Officer, who has passed a very detailed order after considering the replies and the statements recorded during investigation. The Assessing Officer after noticing all the aspects has reached to the conclusion, as drawn by him for various years.

8. Learned Senior counsel for the assessee also submitted that the powers under Section 263 of the Act can be invoked only where the PCIT holds the order passed by the Assessing Officer to be erroneous of such nature which causes prejudice to the interest of the Revenue. It is submitted that on both counts, the PCIT has not given any findings nor it states that the Assessing Officer has not conducted enquiries.

9. It is also submitted by learned Senior counsel for the assessee that while passing the order under Section 263 of the Act, the PCIT directed to the Assessing Officer to make more enquiries, however, he does not mention as to what enquiries are required to be further done by him. She also submitted that the order passed by the PCIT was rightly held to be vitiated in law and the ITAT order does not warrant any interference. No substantial question of law arises from the order passed by the ITAT as the law stands already settled and followed by this Court.



10. Learned Senior counsel for the respondent has relied on judgments of Delhi High Court in **Commissioner of Income Tax vs Hindustan Marketing and Advertising Company Limited** (2012) 341 ITR 180; **Commissioner of Income Tax vs Anil Kumar Sharma** (2011) 335 ITR 83; **Commissioner of Income Tax vs Sunbeam Auto Limited** (2011) 332 ITR 167; **Commissioner of Income Tax vs Nagesh Knitwears (P) Limited** (2012) 345 ITR 135; ITA No. 116 of 2021- **Principal Commissioner of Income Tax-01, New Delhi vs M/s Brahma Centre Development Private Limited** decided on 05.07.2021; judgments of this Court in **Commissioner of Income Tax vs Deepak Mittal** (2010) 324 ITR 411; and ITA No. 205 of 2019 - **The Pr. Commissioner of Income Tax (Central) Ludhiana vs M/s Kanin (India)** decided on 21.04.2022, in support of her submissions.

11. We have carefully considered the submissions and also the law, as noticed above.

12. The *sine qua non* for interference with the order passed under Section 263 of the Act are two folds (a) that the Assessing Officer has passed an erroneous order; and (b) that the Assessing Officer's order which is erroneous has resulted in causing prejudice to the interest of the Revenue. Thus, if it is noticed that an enquiry, which was already conducted, had not been noticed at all by the Assessing Officer, one can reach to a proper conclusion that the order is erroneous. However, if the Assessing Officer has noticed the complete investigation conducted by the Inspector after search and seizure were initiated under Section 138 of the Act; he also issues questionnaire to the assessee and after considering the reply, the relevant documents, he reaches to a conclusion, such an order cannot be said in any



manner to be erroneous. Merely because the PCIT may hold a different opinion on the same set of evidence and the same set of circumstances, it would not mean that the order can be revised. The power of revision is only limited to the extent where the order has been passed erroneously and not like an appeal where a different opinion may be taken by the appellate authority. It is now a settled law that merely on change of opinion the order of the Assessing Officer would not be set aside.

13. We have also noticed the order passed by the ITAT which takes into consideration each and every aspect, as noticed above. Before the Tribunal, the Department of Revenue also produced the investigation report prepared by the Inspector after the search and seizure. The report of the Inspector was perused by the Tribunal and it has reached to the conclusion that the findings of the PCIT, which are relied on the Inspector's report and gave a finding of the contractors being not genuine and non-existent, are found to be wrongful. It concurred with the Assessing Officer's order wherein he noticed the income tax return having been filed by the concerned contractors which has not been challenged. Thus, having noticed all the aspects, we do not find any substantial question of law on which we would entertain the present appeals.

14. The findings of the ITAT are wholly and factually based on the record where it noticed that payments have been made to the mess contractors and the same were reflected in their returns too.



15. In a recent judgment delivered by us in **Pr. Commissioner of Income Tax-1, Chandigarh vs The Ropar District Coop. Milk Producers Union Limited** decided on 18.09.2024, we have held as under:-

*“5. We have carefully considered the submissions and found that apart from considering the order earlier passed by it, the ITAT also examined the order of the PCIT and found that merely on account of change of opinion entertained by the PCIT, the order of the Assessing Officer could not have been interfered with under Section 263 of the Act. The provision of Section 263 of the Act can be invoked by the PCIT only when it finds that the order passed by the Assessing Officer is erroneous and that it is prejudicial to the interest of the revenue.*

*To find that the order is erroneous, it has to give a finding that no inquiry was conducted before the Assessing Officer and that even non application of mind. However, we find that the PCIT in its order dated 27.03.2023, has made the following observations:-*

*“..... It is amply and expressly clear that the investigation/inquiry carried out by the Assessing Officer is unsatisfactory, superficial and incomplete along several of these matters/dimensions including the due and necessary and complete examination of the documentary particulars/details mandated.”*

*Thus, it reflects that there was an investigation and inquiry carried out by the Assessing Officer before passing of the assessment order. Thus, it cannot be said that the order passed is erroneous.”*

16. A Co-ordinate Bench of this Court in **M/s Kanin (India)** (supra) has held as under:-



*“10. Trite it is that in order to attract Section 263 of the Act, twin conditions are to be satisfied namely :-*

- (i) The order of the Assessing Officer sought to be revised is erroneous, and*
- (ii) It is prejudicial to the interest of the Revenue.*

*11. The contention of Ld. Senior Standing Counsel that the order passed by the Assessing Officer will fall within the ambit of Explanation 2 (a) appended to Section 263 of the Act, cannot be accepted till it is pointed out as to which inquiry or verification was not made by the Assessing Officer before passing the order.*

*12. Ld. Counsel for the appellant is not in a position to point out as to what are those inquiries or verification which should have been made but have not been made by the Assessing Officer in the present case so as to make the present case fall within Explanation 2 attached to Section 263 of the Act.”*

17. The Apex Court in **M/s Malabar Industrial Co. Ltd. vs. Commissioner of Income-tax, Kerala**, 2000 (2) SCC 718, has held that –

*“The phrase prejudicial to the interests of the revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the Income-tax Officer is unsustainable in law.”*



18. In the judgments cited by learned counsel for the Revenue, we find that the order of the PCIT passed under Section 263 of the Act was directly challenged before the High Court and the Supreme Court, therefore, held that the power was available with the Commissioner and he exercised the jurisdiction, which was vested in it.

19. In the present cases, however, we are examining the scope of powers under Section 263 of the Act and keeping in view the judgment in *M/s Malabar Industrial Co. Ltd.* (supra), we are satisfied that merely because the PCIT does not agree with the view taken by the Assessing Officer, who had also issued the same queries to the assessee, it cannot be said that the order is erroneous or that the Assessing Officer passed orders without application of mind. A different view expressed by the PCIT is beyond the scope of Section 263 and the ITAT has, therefore, rightly set aside the order of the PCIT upholding the order of the Assessing Officer. We, therefore, do not find any reason to entertain these appeals.

20. The appeals are, accordingly, dismissed.

21. All pending applications stand disposed of accordingly.

22. No costs.

(SANJEEV PRAKASH SHARMA)  
JUDGE

24.09.2024  
vs

(SANJAY VASHISHT)  
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No