

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, "ए" अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।
BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.138/Ahd/2022
निर्धारण वर्ष /Assessment Year : 2017-18

Shri Shamlaji Aarogya Seva Trust Kanelav Road Dhahod Road Godhra - 389 001	बनाम/ v/s.	The Pr.CIT (Central) Surat at Vadodara
स्थायी लेखा सं./PAN:		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Tushar Hemani, Sr.Advocate & Shri Parimalsinh B. Parmar, AR	
Revenue by :	Shri H. Phani Raju, CIT-DR	

सुनवाई की तारीख/Date of Hearing : 29/08/2024
घोषणा की तारीख /Date of Pronouncement: 04 /09/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal has been preferred by the Assessee against the order passed by the Ld.Principal Commissioner of Income Tax (Central), Surat [hereinafter referred to as "PCIT"] under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"], for the Assessment Year (AY) 2017-18, wherein the PCIT held that the assessment order passed by the Assessing Officer (hereinafter referred to as "AO") under Section 143(3) of the Act, dated 16.11.2019, was erroneous and prejudicial to the interests of

the Revenue. The Ld.PCIT, therefore, directed the AO to revise the assessment order after verifying the issues raised in the survey proceedings.

Facts of the case:

2. The assessee, a trust registered under the Bombay Public Trust Act, 1950, and also registered under Section 12A of the Income Tax Act, 1961, filed its Return of Income (ROI) on 30-09-2017. The return declared a total income of Rs.NIL claiming exemption under Sections 11 and 12 of the Income Tax Act. The assessee-trust is engaged in the education activities by way of Homeopathic Colleges at Vadodara and Godhara and Physiotherapy College at Godhra and Homeopathic Hospital and providing the Accommodation facility to the needy students. The survey u/s.133A of the Act was carried out in the office premises and colleges run by the assessee on 23-12-2016 by Dy. Director of Income Tax (Inv.), Godhra (hereinafter referred to as "DDIT") and a survey report dated 28-03-2017 incorporating findings on the basis of discrepancies found during the course of survey was prepared.

2.1. Later on, the case of the assessee was selected for the scrutiny and notices under sections 143(2) and 142(1) of the Act were issued. The AO issued notice u/s.142(1) of the Act on 23-09-2019 and required the assessee to furnish the details as specified below:

"1. In your case, a survey action u/s 133A of the Act, was carried out by the Assistant Director of Income Tax (investigation) Godhra n dated 23.12.2016 and 24,12.2016. Various discrepancies were pointed out during such survey action. Please state as to whether necessary entries in the books of accounts have been taken consequent to survey action.

2. Please furnish reasonableness and justification of the payments made to the specified persons u/s 13(3) of the Act, having regard to fair market value of such goods & services available in the open market."

2.2. In the response to the said notice, the assessee submitted a letter of reply, the details of the same are reproduced here for the sake of clarity:

"In continuation of the particulars and details furnished vide letter dated 01.04.2019 and in response to notice dated 23.09.2019, the assessee is pleased to furnish as under:

1. During the course of survey, various records were found. On the basis of analysis thereof, it was found that the documents / records pertained to the individual activities of the Trustees Shri Vishal Soni and Shri Keval Soni. It was clarified that none of the records pertained to the activities of the Trust.

Consequent to the above, Shri Vishal Soni has filed his return of income for the A.Y. 2017-18 disclosing an income as per the particulars below:

1. Income disclosed in the course of survey	Rs. 1,20,00,000/-
2. Income disclosed under PMGKY	<u>Rs. 1,65.21.000/-</u>
Total	<u>Rs. 2.85.21,000/-</u>

The copy of the return of income along with the computation of income evidencing the above is enclosed herewith.

Shri Keval Soni, another Trustee, has also filed his return of income for the A.Y. 2017-18 disclosing an income as per the particulars below:

1. Income disclosed in the course of survey	Rs. 2,03,69,300/-
2. Income disclosed under PMGKY	<u>Rs. 25,00,000/-</u>
Total	<u>Rs. 2,28.69.300/-</u>

The copy of the return of income along with the computation of income evidencing the above is enclosed herewith.

Thus, the total disclosure of income made as a consequence of survey is Rs. 5,13,90,300/-.

It is clarified that no income pertains to the assessee."

2. *The assessee has not made any payment to the Specified Persons u/s. 13(3) of the Act.*

Should any further clarification is required, we shall be pleased to do so."

2.3. The AO completed the scrutiny by accepting the returned income.

3. Thereafter, the Ld. PCIT initiated revisionary proceedings under Section 263 of the Act, by issuing notice on 22-02-2022. The Ld.PCIT issued a show-cause notice to the assessee, offering them an opportunity to explain why the assessment should not be revised. The notice clearly outlined the discrepancies, the amount of unaccounted income and the bogus salary that were not accounted for by the AO during the assessment process. The Ld.PCIT passed the order u/s.263 of the Act and determined that the AO's order under Section 143(3) of the Act was erroneous and prejudicial to the interests of the Revenue because the AO did not consider the materials and findings from the survey during the scrutiny assessment and the discrepancies and unaccounted income were ignored while accepting the return at NIL income. The Ld.PCIT also concluded that the AO failed to add unaccounted receipts and donations as income under Section 69A of the Act, thereby leading to revenue loss. The Ld.PCIT further concluded that

the AO did not disallow the claim for exemptions despite evidence that the trustees had misused the trust's funds for personal gains. The Ld.PCIT further concluded that the AO's failure to consider the findings from the survey, which uncovered unaccounted income and misuse of funds by the trustees, led to an erroneous and prejudicial order.

4. Aggrieved by the order of the Ld.PCIT, the assessee is in appeal before us with following grounds of appeal:

- "1. The Ld. Pr. CIT (Central), Surat has erred in law and in facts in holding that the assessment order passed by the Ld. A.O. u/s. 143(3) dated 16.11.2019 is erroneous and prejudicial to the interest of the revenue so as to justify the invocation of powers u/s. 263 and directing to revise the assessment order to verify and consider the taxation of income, based on the findings of the survey proceedings, allegedly utilized for the benefit of the Trustees [persons referred in Sec. 13(3)] and thereby holding that the benefit of Sec. 11 is not available to the Appellant Trust. The order of the Pr. CIT being erroneous in law and in facts is prayed to be cancelled / revoked.*
- 2. The Ld. Pr. CIT has further erred in law and in facts in holding that the order passed by the Ld. A.O. u/s. 143(3) dated 16.11.2019 is erroneous and prejudicial to the interest of the revenue and directing to revise the assessment order on the ground that the Ld. A.O. failed to verify the contents of documents impounded in the course of survey proceedings. This is in disregard of the fact that such documents were duly verified and considered by the Ld. A.O. in the course of the assessment made. The order of the Pr. CIT being erroneous in law and in facts is prayed to be cancelled / revoked.*
- 3. The Ld. Pr.CIT (Central), Surat has further erred in law and in facts in directing the conduct of enquiry and verification of the facts and material already verified and hence the order of the Ld. Pr.CIT u/s. 263 being erroneous in law and in facts is prayed to be cancelled/ revoked.*
- 4. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground of appeal hereinabove contained.*

5. Before us, the Ld. Sr.Advocate for the assessee, stated that the trustees of the trust have admitted such unaccounted income and disclosed under Pradhan Mantri Garib Kalyan Yojana (PMGKY) and the Ld.PCIT himself noted in the impugned order passed u/s.263 of the Act, that the unaccounted income in question was pocketed by trustees and used for their own benefits. The Ld.Authorised Representative (Ld.AR) for the assessee further stated that since the trustees have made sufficient disclosure in relation to income emanating from records and discrepancies found during survey and declared the same in returns of income for AY 2017-18, no prejudice has been caused to the Revenue. The Ld.AR also contended that while passing the assessment order, the AO took note of the discrepancies found during survey carried out by the department in the case of the assessee and disclosures made by trustees in their individual return of income for AY 2017-18. The Ld.AR further argued that since the AO found that the unaccounted income has been correctly offered for tax by trustees, he took a conscious call not to draw any adverse inference in the hands of the assessee on account of discrepancies found during survey while framing assessment and therefore the view taken by AO was one of the possible views and hence, it is clearly evident that assessment order is neither erroneous nor prejudicial to the interests of the Revenue. The Ld.AR also stated that presuming that there is some error in quantification of income emanating from record found during survey, the same cannot be the ground for invoking revisionary jurisdiction u/s.263 of the Act. The Ld.AR placed reliance on the **decision of Jodhpur Tribunal in case of Anil Kumar Tantia Vs. ITO - [2013] 40 taxmann.com 333**, where it was decided that the exemption u/s.11 of the Act could not be denied to the trust, when executive trustee surrendered undisclosed financial transactions of the trust

in his individual hands. The Ld.AR also placed reliance on decision of Co-ordinate Bench in case of **Jai Rashmikant Patel Vs. PCIT, Vadodara (ITA No.47/Ahd/2020)**, where it was held that the observations made by the Ld.PCIT, and order passed by him is merely a change of opinion and does not sustain.

6. The Ld.Departmental Representative (DR) for the Revenue stated that the AO has not referred to any documents investigated and impounded during the course of survey and has not considered the findings of the DDIT and, therefore, the Ld.PCIT has rightly invoked his power of revision u/s 263 of the Act. The Ld.DR also stated that the present case is of inadequate enquiry by the AO and, therefore, the order is prejudicial to the interests of the Revenue. The Ld.DR placed reliance on some judicial precedents including the **decision of the Rajkot bench of the Tribunal in case of Prakashbhai Ishwarbhai Changela Vs. PCIT, Rajkot (ITA Nos. 46 and 47/Ahd/2022)**, where the ITAT upheld the Ld.PCIT's decision, noting that the AO had not sufficiently investigated the contradictory explanations provided by the assessee. The Ld.DR further argued that the undisclosed income as identified during the course of survey is of the assessee trust and therefore AO accepting that the undisclosed income admitted and disclosed in the hands of trustee has caused prejudice to the revenue by not taking the only possible view. The Ld.DR stated that the trustees have misappropriated the money of trust and therefore the income of trust cannot be taxed in the hands of trustee. Rebutting the argument of the Ld.DR, the Ld.AR stated that the Ld.PCIT should have initiated the proceedings u/s. 264 of the Act to avoid double taxation.

7. We have heard the rival contentions and perused the material available on records. Section 263 of the Act empowers the Ld.PCIT to revise any assessment order if it is erroneous and prejudicial to the interests of the Revenue. Explanation 2(a) clarifies that an order shall be deemed erroneous if it is passed without making inquiries or verification that should have been made. In this case, substantial material was available from the survey conducted under Section 133A of the Act, indicating unaccounted income, misappropriation of trust funds by trustees, and fraudulent activities such as the debiting of bogus salary expenses. The AO, however, did not conduct adequate inquiries into these findings and accepted the assessee's submissions without proper verification. The survey revealed multiple instances where the trustees, namely Shri Vishal Soni and Shri Keval Soni, allegedly diverted and misappropriated funds of the trust for personal benefit. Key findings include:

- Significant amounts collected as donations, fees, and other charges from students were not recorded in the trust's books of accounts.
- Salaries were debited in the trust's books in the name of employees, but the corresponding amounts were withdrawn from the employees' bank accounts and misappropriated by the trustees. This act constitutes fraud and a clear violation of Bombay Public Trust Act, 1950, as the funds were misused for the trustees' personal gain.
- Funds intended for charitable purposes were utilized directly by the trustees, indicating a violation of Section 13(1)(c) of the Act.

7.1. Despite the gravity of the survey findings, the AO did not scrutinize or apply the provisions of Section 13 of the Act appropriately. The AO did

not investigate the extent and nature of unaccounted income, the fraudulent salary debits, or their utilization, nor did he verify whether such funds were diverted for personal benefits of the trustees. The AO accepted the assessee's assertion that the unaccounted incomes and the amounts fraudulently debited as salaries pertained to the trustees in their individual capacities without cross-examining the impounded documents or assessing the implications under Section 13 of the Act.

7.2. By not examining the applicability of Section 13 of the Act, especially in light of the bogus salary debits and their misappropriation, the AO erroneously granted exemption under Sections 11 and 12 of the Act, despite clear indications of misuse of funds and benefit to specified persons.

7.3. There are many judicial precedents which held that if any part of the income or property of the trust is used or applied for the benefit of specified persons, the entire income becomes ineligible for exemption under Section 11 of the Act. It is also held that diversion or misapplication of funds for non-charitable purposes or for the benefit of specified persons disentitles the trust from claiming exemption. However, we restrict the scope of this appeal, without going into merits of eligibility of exemption u/s.11 of the Act, to Ld.PCIT's invocation of section 263 of the Act.

7.4. The diversion of funds collected in the name of the trust and from debit of bogus salaries cannot be treated as individual income of the trustees. Such misappropriation necessitates taxability in the hands of the trust after due verification. The act of debiting bogus salaries in the trust's books and withdrawing the corresponding amounts for personal use by the

trustees certainly amount to prejudicial to the interest of the Revenue which needs further verification.

7.5. The Ld.AR placed heavy reliance on the **decision of the Jodhpur Bench of the Tribunal in *Anil Kumar Tantia vs. ITO (supra)***, where it was held that the exemption under Section 11 of the Act could not be denied to a trust merely because the executive trustee had surrendered undisclosed financial transactions in his individual hands. However, the AO in the *Anil Kumar Tantia* case did not invoke Section 13 of the Act, because there was no evidence that the trust's income or property was used for the benefit of specified persons. The Tribunal stressed that the exemption under Section 11 of the Act could not be denied without a clear violation of Section 13 of the Act. In the present case, the Ld.PCIT has clearly outlined violations under Section 13 of the Act, as the trustees were found to have misused the trust's funds, which were debited as salaries but withdrawn from employees' accounts for the trustees' personal use. The surrender of income by the trustees does not negate the fact that the trust's income was applied for the benefit of specified persons. This fraudulent activity constitutes a direct benefit to specified persons, as defined under Section 13(3) of the Act. The AO's failure to consider these facts and apply Section 13 of the Act makes the assessment order erroneous and prejudicial to the interests of the Revenue, justifying the invocation of Section 263 of the Act by the Ld.PCIT. The decision in *Anil Kumar Tantia* is based on facts and circumstances that differ significantly from the present case. The Trust cannot function independent of its trustees who act on behalf of the trust. Therefore, the key distinction lies in the direct involvement of the trustees in fraudulent activities in the present case, which triggers the application of Section 13 of

the Act and justifies the Ld.PCIT's invocation of Section 263 of the Act. The Jodhpur Tribunal's decision, therefore, does not apply to the current scenario where the trust itself is implicated in the misuse of its funds by booking bogus salary expenses.

7.6. The argument regarding Section 264 of the Act is misplaced. Section 263 and Section 264 of the Act serve different purposes. While Section 263 is aimed at revising erroneous and prejudicial orders, Section 264 provides for revision on the application of the assessee for relief. In this case, Section 263 was correctly invoked by the PCIT to protect the interests of the Revenue by correcting an erroneous order. The potential for double taxation, if any, can be addressed during reassessment and does not preclude the application of Section 263 where an order is found to be erroneous.

7.7. The AO's failure to conduct necessary inquiries and apply relevant legal provisions, particularly in light of the fraudulent activities, cannot be considered as taking a plausible or permissible view. It amounts to abdication of duty, warranting revision under Section 263 of the Act. The AO's perfunctory approach and disregard for incriminating documents, including the fraudulent salary debits, necessitate corrective action through revisionary proceedings.

7.8. The Ld.PCIT has rightly invoked the revisionary jurisdiction under Section 263 of the Act, complying with all procedural requirements and providing adequate opportunities to the assessee to present their case. The direction by the Ld.PCIT to the AO to conduct a de novo assessment after thorough examination of all relevant materials, including the impounded

documents from the survey and doubtful activities related to the salary debits, is justified and necessary to ensure proper assessment and safeguarding of Revenue's interest. The contentions raised by the assessee lack merit in light of the substantial evidence of misappropriation, doubtful activities, and misuse of trust funds, and the failure of the AO to address these issues appropriately.

7.9. The order passed by the Ld.PCIT under Section 263 of the Act is upheld. Any concerns regarding potential double taxation arising from this process should be appropriately addressed during the reassessment proceedings. In view of the foregoing discussions and findings, the appeal filed by the assessee is dismissed.

8. In the result, the appeal of the Assessee is dismissed.

Order pronounced in the Open Court on 4th September, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 04/09/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)/ The Pr.CIT (Central), Surat at Vadodara
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad