आयकर अपीलीय अधिकरण
मुंबई पीठ "सी"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आअसं. 675/मुं/2021 (नि. व. 2015-16)
ITA NO.675/MUM/2021 (A.Y.2015-16)
आअसं. 676/मुं/2021 (नि. व. 2016-17)
ITA NO.676/MUM/2021(A.Y.2016-17)

Centre for Study of Social Change,
F-Block, Plot No.6, T.P.S.Road,
12, Opp. Government Colony,
Building No.326, Bandra(E)
Mumbai -400 051
PAN: AAATC-2555L ...... अपीलार्थी /Appellant

बनाम Vs.

The Commissioner of Income Tax(Exemptions),
617, 6th Floor, Piramal Chamber, Lal Baug,
Parel, Mumbai 400 012. ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by	:	Shri Anil Sathe
प्रतिवादी द्वारा/Respondent by	:	Ms. Jacinta
सुनवाई की तिथि/ Date of hearing	:	25/01/2022
घोषणा की तिथि/ Date of pronouncement	:	22/04/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals have been filed by the assessee against the order of Commissioner of Income Tax (Exemption), Mumbai [in short 'the CIT(E)'] passed u/s.263 of the Income Tax Act, 1961 (in short 'the Act') for the assessment years 2015-16 and 2016-17, respectively. Both impugned orders are of even date i.e. 26/02/2021.

2. Shri Anil Sathe appearing on behalf of the assessee submitted at the outset that the appeal of the assessee in ITA No.676/Mum/2021 for assessment year 2016-17 may be taken as lead case, although the facts in both impugned assessment years are identical. Ms. Jacinta representing the Department raised no objection to the assessee's proposal of taking appeal of the assessee for assessment year 2016-17 as lead case. The ld. Departmental Representative endorsed that facts in both assessment years are identical. On the request of both sides, the appeal of assessee in ITA NO.676/MUM/2021 is taken as lead case and the facts are narrated from the said appeal.

ITA NO.676/MUM/2021-A.Y.2016-17:

3. The ld. Authorised Representative for the assessee narrating the facts of the case submitted that the assessee was incorporated in 1978 as a Charitable Trust and is registered u/s.12A of the Act. The assessee was allotted land by Government of Maharashtra at a concessional rate in the year 1974. The assessee constructed building thereon in the year 1994. The said building has three wings i.e. Wing 'A', 'B' & 'C'. The assessee started its charitable activities in Wing-B and continues to operate there from even today. The assessee entered into Memorandum of Understanding (MOU) with All India Institute of Local Self Government (in short 'AIILSG'). AIILSG is a Charitable Trust registered u/s 12A/12AA of the Act. Both, the assessee and AIILSG have similar objectives, hence, the activities carried out by the assessee and AIILSG complement each other. In terms of the MOU entered into by both institutions accredit to work together in the areas of training, research and

capacity building and work in collaboration for organizing seminars, workshops, specialized training courses, etc. Since both the institutions have commonality of interest and purpose, the assessee agreed to allot 26000 sq. ft. of built-up area in Wing - A&B of the building owned by the assessee. The aforesaid area was given to AIILSG for an initial period of 25 years extendable by mutual consent at a nominal contribution of Rs.1/- per sq. ft. per month. Subsequently, upon need basis additional built area of 24000 sq. ft. was agreed to be given to AIILSG for its use to carry out charitable activities. AIILSG agreed to carry out necessary improvements like furnishing and development of the area allotted at its own expenses including payment of taxes, maintenance and other charges. The assessee allotted excess area available with it to AIILSG a charitable organization having similar objectives. The ld. Authorised Representative for the assessee submitted that when the land was allotted to the assessee by State Government of Maharashtra in the year 1974 there was a pre-condition that the land and the building thereon at no point of time shall be used for the purpose of earning profits. Hence, the assessee cannot exploit the land and the building thereon for commercial gains.

3.1. The ld. Authorised Representative for the assessee further submitted that the other reason for invoking revisional power by CIT(E) is that AIILSG has made donation of Rs.18.75 lacs to the assessee. AIILSG falls under the category of persons specified in Section 13(3)(b) of the Act therefore the transaction is hit by the provisions of Sec.13(2)(b) of the Act. In reply to the notice the assessee explained the reason for transfer of the aforesaid amount. The ld. Authorised Representative referred to letter dated 15/01/2016 from AIILSG at page – 51 of the paper book. Referring to para-12 of the said communication from AIILSG to the assessee the ld. AR submitted that transfer of Rs.18.75 lacs was on account of cancellation of MOU by the Donar with AIILSG and on instructions of the donor AIILSG transferred the donation amount Rs.18.75 lacs to the assessee. The donor had entered into MOU with the assessee for carrying out certain activities which it had earlier proposed to carry out with AIILSG. Now the assessee had stepped into the shoes of AIILSG.

3.2. The CIT(E) in the impugned assessment year invoked provisions of section 263 of the Act for the reason that the assessee has allowed AIILSG to use 35000 sq. ft. area without charging adequate rent and purportedly the Assessing officer failed to examine the issue of AIILSG using 35000 sq. ft. area in the building of assessee without charging adequate rent.

3.3. The ld. Authorised Representative for the assessee made three fold submissions assailing the findings of CIT (E) for invoking revisional jurisdiction u/s. 263 of the Act. The first argument made by the ld. AR for the assessee is that during assessment proceedings the Assessing Officer made enquiries with regard to rent received by the assessee from AIILSG and **Life Support Institute of Health Service** (in short 'LIHS'). The ld. AR referred to the notice dated 28/11/2018 at page 68 of the paper book. The ld. AR submitted that LIHS is accredited institute for health care sector and a charitable organisation registered under section 12A/12AA of the Act. The Government of Maharashtra has appointed LIHS as First Aid Training Institute. Thus, LIHS and AIILSG both are charitable institutions. Many charitable projects are undertaken by the assessee along with the aforesaid two institutions. No personal benefit is given to any individual including the Director of AIILSG or LIHS. The assessee has no substantial interest or any peculiar interest in AIILSG or LIHS. During the course of assessment proceedings the Assessing Officer made detailed enquiries regarding the activities carried on by AIILSG and LIHS and in particular questions were asked by the Assessing Officer with regard to the rent charged by the assessee from LIHS and AIILSG. The assessee furnished detailed reply to the query raised by the Assessing Officer and categorically stated that AIILSG does not fall within the ambit of section 13 of the Act. In assessment order the Assessing Officer made addition of the notional rent Rs.18,61,409/- in respect of LIHS only. In so far as AIILSG no addition was made by the Assessing Officer. Thus, it was conscious and well thought decision of the Assessing Officer after examining the documents on record and considering submissions of assessee to not make any addition with respect to rent from AIILSG made The ld. AR for the assessee submitted that AIILSG is occupying the premises since 2005 and no addition was made in respect of rent from AIILSG till assessment year 2015-16. Similarly, LIHS occupied the premises in 2013 and till assessment year 2015-16 no addition in respect of notional rent was made by the Assessing Officer in the hands of the assessee. Assessment year 2015-16 is the first assessment year when the CIT (E) in revisional proceedings has disturbed the accepted position. The CIT(E) in the impugned order invoked Explanation 2 to Sec. 263 of the Act without specifying the enquiries that the AO has failed to make. The explanation has been invoked in a casual manner.

3.4. The second argument made by ld. Authorized Representative for the assessee is that the assessee is registered under section 12A of the Act. Being a Charitable Trust it is governed by the provisions of Section 11 and 13 of the Act. The provisions of section 11 or 13 of the Act does not permit addition on notional income.

3.5. The third argument advanced by the ld. Authorized Representative for the assessee is that in scrutiny assessment proceedings for assessment year 2018-19, again no addition has been made by Assessing Officer in respect of rental income from AIILSG. The ld. Representative for the assessee referred to the assessment order dated 16/03/2021 for assessment year 2018-19 at page 80 of the paper book.

The ld. Authorized Representative for the assessee in support of his contention placed reliance on the decision rendered in the case of Chandralekha Somani Charitable Trust vs. ITO reported as 38 ITD 17(Bom).

4. Per contra the ld.Departmental Representative vehemently defended the impugned order and prayed for dismissing the appeal of the assessee. The ld.Departmental Representative heavily placed reliance on the findings of the CIT(E) in para-3 of the impugned order. The ld.Departmental Representative submitted that during the course of assessment proceedings the Assessing Officer has failed to conduct proper enquiry. Hence, the CIT(E) has rightly invoked revisional jurisdiction u/s. 263 of the Act.

5. We have heard the submissions made by rival sides and have examined the impugned order and the documents on record. The CIT(E) has invoked revisional jurisdiction u/s. 263 of the Act primarily for the reason that the Assessing Officer while framing assessment has not examined the facts relating to letting out of building premises to AIILSG and the fair market value of rent has not been determined, which should have been received by the assessee from AIILSG.

8. The assessee is a Charitable Trust with the objects of establishing educational, cultural and research institutions. The assessee is registered under section 12A/12AA of the Act. The assessee was allotted land by

Government of Maharashtra in the year 1974. On the said land the assessee had constructed a building with three wings i.e. Wing 'A', 'B'& 'C'. The office of the assessee is housed in Wing –'B'. In the year 2005 the assessee entered into MOU with AIILSG and allowed AIILSG to use 26000 sq. ft. built up area of Wing 'A'& 'B' for an initial period of 25 years at a nominal contribution of Rs.1/- per sq.ft. per month. The said agreement was extendable by mutual consent and on need basis additional built up area of 24000 sq. ft. was agreed to be given to AIILSG for its charitable activities. It is not in dispute that AIILSG is also a Charitable Trust registered under section. 12A/12AA of the Act. It is an accepted position that part of the building was given to AIILSG for its use in the year 2005 at a nominal contribution of Rs.1/- per sq.ft. per month and till assessment year 2015-16 no addition was made by the Assessing Officer in respect of the building being used by AIILSG. Thus, the Revenue accepted the transaction between two charitable organisations till 2015-16.

9. The assessee has placed on record copy of order dated 21/09/1974 from the Additional Collector, Bombay whereby four acres of land was allotted to the assessee. A perusal of the said order reveals that one of condition in the said order is that the assessee shall not exploit the land and the building thereon for profit. The extract of the condition set out in the order granting land to the assessee is reproduced herein below:

> *"(viii) that neither the said land nor any building erected thereupon shall at any time without the expression consent of the State Government be diverted either temporarily or (sic) to any other than the purpose for which it was granted and that no change or modifications shall be made to such purpose or purposes and that neither the said land nor any building erected thereon shall be so used as to yield a profit to the grantee."*

From the reading of above condition in the order granting land to the assessee it is evident that the assessee can neither use the land for the purpose other than for the activities for which it was granted nor the land and the building thereon can be used for profiteering. The assessee has allowed AIILSG to use part of the building to be used for carrying out its charitable activities at nominal rate of Rs.1/- per sq. ft. per month vide MOU dated 15/05/2005. The said MOU is at page 62 to 67 of the Paper Book and the assessee is still charging the same nominal rent from AIILSG. The assessee and AIILSG are jointly carrying out activities for furtherance of their objectives from the very same building. A perusal of the notice dated 28/11/2018 (at page 68 of paper book) shows that the Assessing Officer had raised specific query with regard to building given on rent to LIHS and AIILSG. However, the Assessing Officer made the addition only in respect of LIHS by estimating notional rent and no addition was made in respect of AIILSG. This shows that the Assessing Officer after having examined the facts and documents on record was satisfied that no addition is warranted in respect of building being given for use to AIILSG by the assessee. Undisputedly, in the assessment order the Assessing Officer has not in so many words given reasons for not making addition in respect of rent from AIILSG. However, that would not mean that the AO has not applied his mind on the reply and documents furnished by the assessee during assessment proceedings. The fact that the assessee has been receiving nominal rent from AIILSG since 2005 has not been disputed by the Revenue. It is not the case of Revenue that the assessee has entered into agreement/MOU in the relevant previous year. The Revenue has accepted the transaction up till assessment year 2015-16. The issue was rattled by the Revenue for the first in AY 2015-16 in proceedings under section 263 of the Act. In the impugned assessment year there has been no change in the facts. In the impugned assessment year the assessee had received nominal rent for the use of building by AIILSG as per the conditions set out in the aforesaid MOU. The ld. Authorized Representative for the assessee has also brought our attention to the assessment order for AY 2018-19 at page 80 to 87 of the Paper Book, wherein the AO has considered this issue and after examining the same has made no addition.

10. The other reason for invoking extra ordinary powers u/s. 263 of the Act is that purportedly AIILSG has made donation of Rs.18.75 lakhs to the assessee. The assessee has categorically explained that the aforesaid amount is not donation by AIILSG. The said amount is donation made by donor under MOU to AIILSG for a specific charitable project. Since AIILSG could not carry out the project, on instructions from the donor AIILSG transferred the amount of donation to the assessee. To support this contention a letter dated 15/1/2016 from AIILSG has been placed on record at page 50 of the paper book.

11. Taking into consideration entire facts of the case, we do not find that the view taken by the Assessing Officer was in any manner erroneous. For invoking the provisions of section 263 of the Act twin conditions i.e. the assessment order should be erroneous and prejudicial to the interest of revenue should be satisfied. If any one of the above conditions are not met, the assessment order cannot be a subject matter of revision under section. 263 of the Act. The view taken by the Assessing Officer in the impugned assessment year in respect of rent from AIILSG is the view which has been consistently followed since 2005 and accepted by the Department. Since, we have held that the assessment order is not erroneous, one of the two mandatory condition as set out in section 263 of the Act is not satisfied. Ergo, the CIT(E) has erred in exercising revisional powers in the present case. Consequently, the impugned order is set-aside and appeal by the assessee is allowed.

ITA No. 675/Mum/2021 (AY-2015-16)

12. Both sides unanimously stated that the facts in the assessment year 2015-16 leading to exercise of revisional powers by the CIT(E) are identical to the facts in in AY 2016-17. The Ld. DR asserted that in the AY 2015-16, the AO failed to make necessary enquires during assessment proceedings with regard to rent from AIILSG. The ld. AR contended that the submissions made by him for AY 2016-17 would equally apply to AY 2015-16.

13. We have examined the order impugned order and the documents on record. The facts germane to the exercise of powers u/s 263 of the Act by the CIT(E) are identical. Since, the facts are identical to AY 2016-17, the detailed findings given by us while deciding the said appeal would *mutatis mutandis* apply to the present appeal. Hence, the appeal of the assessee is allowed for parity of reasons.

14. **To sum up, appeal of the assessee for AY 2015-16 and AY 2016-17 are allowed.**

Order pronounced in the open court on Friday the 22nd day of April, 2022.

Sd/-	Sd/-
(PRADIP KUMAR KEDIA)	(VIKAS AWASTHY)
लेखा सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 22/04/2022
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai