

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH**

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PRAKASH CHAND YADAV., JM**

**ITA No. 542/Coch/2024
Assessment Year: 2018-19**

Indian Medical Association Kerala State Branch..... Appellant
IMA Kerala Head Quarters, NH Bye Pass
Anayara P.O., Thiruvananthapuram 695029
[PAN: AAAAI3952N]

vs.

The Income Tax Officer (Exemptions), Respondent
Thiruvananthapuram

Appellant by: Shri R. Krishnan, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 21.05.2025
Date of Pronouncement: 30.05.2025

ORDER

Per: Inturi Rama Rao, AM

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Exemptions), Kochi, dated 30.03.2024 for Assessment Year (AY) 2018-19.

2. Brief facts of the case are that the appellant is a trust duly registered u/s. 12A of the Income Tax Act, 1961 (the Act). The return of income for AY 2018-19 was filed on 27.10.2018 declaring Nil income after claiming exemption u/s. 11 of the Act. Against the

said return of income, the assessment was completed by the Income Tax Officer (Exemptions), Thiruvananthapuram (hereinafter called "the AO") vide order dated 06.04.2021 passed u/s. 143(3) r.w.s. 143(3A) and 143(3B) of the Act at a total income of Rs. 1,81,81,500/-.

3. Subsequently, on review of the assessment record, the Id. Principal Commissioner of Income Tax (Exemptions) (Pr. CIT) observed that the schedule ER in the return of income indicates Nil utilisation and schedule EC shows utilisation of only Rs. 7,09,621/- of the outcome accumulated in the earlier years. Therefore, the Pr. CIT formed an opinion that the surplus carry forwarded from earlier years remain unutilised during the current year and, therefore, should have been taxed under the provisions of section 11(3) of the Act. Accordingly, formed an opinion that the assessment order passed by the AO is erroneous and prejudicial to the interests of Revenue.

4. Accordingly, issued a show cause u/s. 263 of the Act on 31.01.2019 proposing to revise the assessment order. In response to the show cause notice it is submitted that during the course of assessment proceedings the AO had raised specific queries with regard to receipts of the trust and utilisation of the carry forward surplus money u/s. 11(2) of the Act. The appellant submitted detailed explanation vide letter dated 08.09.2021. On due consideration of the reply filed by the appellant the AO sought

further clarification vide notice dated 24.02.2021 and 16.03.2021, which were duly replied by letter dated 29.03.2021. Thus, it is submitted that the AO had examined the issue which is sought to be revised by the Pr. CIT and took a plausible view that no addition is called for. Therefore, the order cannot be said to be erroneous. However, the ld. Pr. CIT brushing aside the explanation had proceeded to hold that since the AO had passed the assessment order without examining the issue, the assessment order is erroneous and prejudicial to the interests of Revenue. Accordingly, set aside the assessment order by directing the AO for fresh examination of the issue after affording reasonable opportunity of hearing to the appellant.

5. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

6. The learned counsel for the assessee submitted before us that during the course of assessment proceedings the AO sought clarification on the very same issue which is sought to be revised by the Pr. CIT. It is not the case that no enquiry has been conducted by the AO. The AO took a plausible view and, therefore, the CIT had fell in serious error in exercising the power of revision u/s. 263 of the Act.

7. On the other hand, the learned Sr. DR placing reliance on the order of the CIT submitted that no interference is called for.

8. We heard the rival submissions and perused the material on record. The Parliament had conferred the power of revision on the Commissioner of Income Tax u/s 263 of the Act in case the assessment order passed is erroneous and prejudicial to the interests of revenue. In order to invoke the power of revision, the above two conditions are required to be satisfied cumulatively. References in this regard can be made to the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT*, 243 ITR 83 (SC) and in the case of *CIT vs. Max India Ltd.*, 295 ITR 282 (SC). The error in the assessment order should be one that it is not debatable or plausible view. In a case where the Assessing Officer examined the claim took one of the plausible views, the assessment order cannot be termed as an "erroneous".

9. Now we proceed to examine the present case, whether the AO had examined the issue sought to be revised by the CIT. During the course of assessment proceedings, the assessing authority sought clarification on utilisation of accumulated surplus from the past years and explain the discrepancy in the return of income in Part B –T1 of the ITR. The appellant had filed detailed explanation and after considering the explanation, the AO had chosen not to make any addition on these issues. This could clearly demonstrate that the AO took a plausible view after examining the issue in detail. Furthermore,

nothing has been shown to us that the view taken by the AO is not a plausible view. In the circumstances, it cannot be held that the assessment order is erroneous and prejudicial to the interests of Revenue. Therefore, the CIT ought not have exercised jurisdiction u/s. 263 of the Act.

10. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 30th May, 2025.

Sd/-
(PRAKASH CHAND YADAV)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 30th May, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin