



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIT(EXEMPTION), HYD



To,

M.C.MODI EDUCATIONAL TRUST
5-4-187/3 AND 4 SOHAM MANSION,M.G ROAD
SECUNDERABAD
SECUNDERABAD 500003,Telangana

PAN: AAATM5488Q	Assessment Year: 2016-17	Dated: 30/03/2021	DIN & Letter No : ITBA/COM/F/17/2020-21/1031929625(1)
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Sir/ Madam/ M/s,

Subject: Online service of Orders - Letter

ORDER U/S.263 OF THE INCOME TAX ACT, 1961.

In this case, return of income for A.Y. 2016-17 was filed on 03.07.2017 showing NIL income. Assessment Order U/s.143(3) was passed on 18.12.2018.

2. It was observed that the Assessment Order passed U/s 143(3) was erroneous and prejudicial to the interest of the revenue. Therefore, notice U/s 263 was issued on 04.01.2021.

3. The assessee was required to show cause on the following issues:

On verification of the assessment record, it is noticed that the assessee has accumulated an amount of Rs. 29,51,794/- u/s 11(2) in the FY 2009-10 but could not be utilized within time provided. Thus the same need to be taxed during the AY 2016-17. While completing the scrutiny assessment u/s 143(3), the AO has not considered this aspect. Hence, the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue, as it did not address the issue of bringing to tax the unutilized accumulations of FY 2009-10.

As per section 11(3) of the Act, provides that where the income accumulated or set apart is not utilized for the purpose for which it is so accumulated or set apart during the period mentioned in clause (a) of

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AAYKAR BHAWAN, OPPOSITE LB STADIUM, BASHEER BAGH, HYDERABAD, HYDERABAD, Telangana, 500004
Email: HYDERABAD.CIT.EXMP@INCOMETAX.GOV.IN, Office Phone:04023465981

section 11(2), it shall be deemed to be the income of the person of the previous year immediately following the expiry of the aforesaid period.

For the failure on part of the AO in not making the above, the assessment made by the AO vide order u/s 143(3) of the Act, dt. 18.12.2018 for the A Y 2016-17, in your case, is thus erroneous, in so far as it is prejudicial to the interest of revenue. Hence, it is proposed to revise the said assessment made by the AO u/s 263 of the Act.

4. There has been substantial changes in Section 263 of the Act, hence, before discussing the case, Sec.263 of the IT Act is reproduced here under for ready reference:

"Section - 263, Income-tax Act, 1961-2017"

E.—Revision by the Principal Commissioner or Commissioner

Revision of orders prejudicial to revenue.

263. (1) *The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.*

⁴⁶*[Explanation 1.]—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—*

1. *an order passed on or before or after the 1st day of June, 1988 by the Assessing Officer shall include—*

(i) *an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A;*

(ii) *an order made by the Joint Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer conferred on, or assigned to, him under the orders or directions issued by the Board or by the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner authorised by the Board in this behalf under section 120;*

(b) *"record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner;*

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal filed on or before or after the 1st day of June, 1988, the powers of the Principal Commissioner or Commissioner under this sub-section shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

⁴⁷[Explanation 2.—For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

1. the order is passed without making inquiries or verification which should have been made;
2. the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.]

(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, National Tax Tribunal, the High Court or the Supreme Court.

Explanation.—In computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded."

5. Reply of the assessee :

The scanned copy of assessee's reply dated 19.01.2021 is reproduced as under :

From
MC Modi Educational Trust,
5-4-187/3 & 4, 2nd Floor,
Soham Mansion,
M.G. Road,
Secunderabad – 500 003.

Date : 19-01-2021

To
Commissioner of Income tax (Exemption),
Andhra Pradesh, Telangana & Odisha,
2nd Floor, Ayakar bhawan,
Basheer Bagh,
Hyderabad – 500 004.

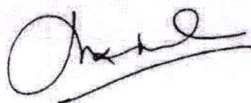
Respected Sir / Madam,

Sub: Reply to Show cause Notice u/s.263 – Own case – Asst. Year 2016-17
PAN – AAATM5488Q.

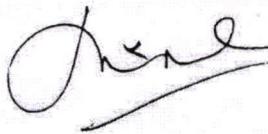
Ref: Your letter No.F No CIT(E)/HYD/263(04)/AAATM5488Q/2020-21 dated 04-01-2021.

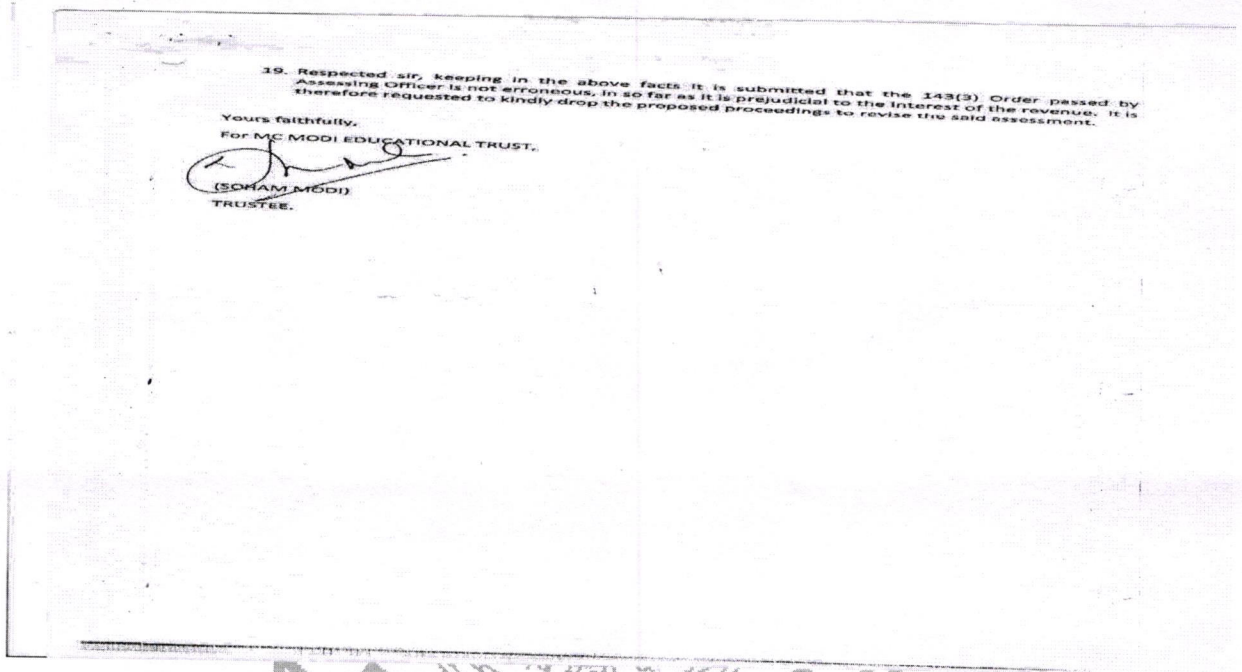
We acknowledge the receipt of the above Show cause notice for Asst. year 2016-17. In reply, the following is submitted for your kind consideration.

1. The revision u/s.263 is proposed for Asst. Year 2016-17.
2. The assessment made by the Assessing Officer vide Order u/s.143(3) dated 18-12-2018 is stated to be erroneous, in so far as it is prejudicial to the intent of the revenue.
3. The reason stated is that the Trust has accumulated an amount of Rs.29,51,794/- u/s.11(2) in the FY 2009-10 (relevant Asst. Year 2010-11) but could not be utilized within the time provided. Thus the same need to be taxed during the Asst. year 2016-17.
4. The Return of Income for Asst. year 2016-17 is filed declaring income at 'NIL' after claiming exemption u/s.11 of the Act.
5. During the assessment proceedings the Assessing Officer has sought several information including the copy of Trust Deed and Registration letter u/s.12A of the IT Act.
6. It is submitted to the Assessing Officer that the Trust is about 60 years old and the registration got obtained vide letter no.V/19/67-68 dated 01-06-1968. The same registration letter is misplaced and not available. It is also submitted that we have requested for duplicate letter or copy from the Commissioner of Income tax (Exemptions)Hyd. A reply is received from CIT (Exemptions) that there is no provision for issue of duplicate certificate.



7. The respective letters are enclosed herewith as Annexure 1 & 2.
8. In the backdrop of the above fact that the Original registration certificate is lost, the Trust has applied for registration u/s.12AA afresh on 26-02-2018. This application has been rejected by the Commissioner of Income tax (Exemption) vide order dated 27-08-2018.
9. The Assessing Officer in para 6 to 10 of this order u/s.143(3) dated 18-12-2018 has in detail examined the issue whether or not the Trust can be said to be registered u/s.12A and in concluding para no.10 has stated the following:
'As there is no registration u/s.12A and not carrying out charitable activities for which it has found, the surplus of income over expenditure is brought to tax by denying exemption u/s.11'
10. The Assessing officer after denying exemption u/s.11 has brought to tax the entire excess of income over expenditure of Rs.49,49,724/-. The tax is computed at 30%.
11. The Assessing Officer having concluded that the Trust is an un registered Trust and not entitled to exemption u/s.11, has taxed the entire surplus of income of Rs.49,49,724/- and taxed at the maximum marginal rate of 30%.
12. The Assessing Officer has rightly not included in income of Rs.29,51,794/- being the amount accumulated u/s.11(2) in the FY 2009-10 that has remained un-utilized within the time provided.
13. In fact this amount of Rs.29,51,794/- was offered to tax by the Trust itself while computing its income under the provision of section 11(3) as applicable to a registered Trust u/s.12A.
14. Since the Assessing Officer has categorily denied the exemption u/s.11 as the Trust can not be said to be registered u/s.12A, has made the assessment accordingly.
15. As the Trust is considered not registered u/s.12A, the provisions of section 11 do not get attracted at all and the Assessing Officer has correctly applied his mind not to add R.29,51,794/- under the provision of section 11(3).
16. The additions of Rs.29,51,794/- u/s.11(3) if made by the Assessing Officer would have lead to a dichotomy here by on one hand the exemption is denied u/s.11 and on the other hand an amount is considered as income u/s.11(3).
17. The Assessing Officer has after examining the facts of the issue has reacted to a conclusion that the Trust be denied exemption u/s.11.
18. The Assessment order u/s.143(3) passed by the Assessing Officer is not at all erroneous and is in line with the applicable provisions of the law. The Assessing Officer has not committed any error by not considering R.29,51,794/- as income under the provisions of section 11(3).





6. During the review of assessment by the Commissioner, the following things were observed:

The application for registration u/s.12A was rejected by the CIT(Exemptions) vide in F.No.CIT(E)/Hyd/68(02)/12A/2017-18, dated 27.08.2018. The fact of non-utilization of funds was also not disputed. The assessee has accumulated an amount of Rs. 29,51,794/- u/s 11(2) in the FY 2009-10 but could not be utilized within time provided. Thus the same need to be taxed during the AY 2016-17. While completing the scrutiny assessment u/s 143(3), the AO has not considered this aspect. Hence, the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue, as it did not address the issue of bringing to tax the unutilized accumulations of FY 2009-10.

For the failure on part of the AO in not making the above, the assessment made by the AO vide order u/s 143(3) of the Act, dt. 18.12.2018 for the A Y 2016-17, is thus erroneous, in so far as it is prejudicial to the interest of revenue. Hence, the said assessment made by the AO is to be revised u/s 263 of the Act.

7. The following case laws are relied upon while passing the revision order u/s.263:

(I) In the case of SIFI Software Ltd. Vs. ACIT, Hon'ble ITAT Chennai held as

under:

"In view of the foregoing, it can safely be said that an order passed by the Assessing Officer becomes erroneous and prejudicial to the interests of the Revenue under Section 263 in the following cases:

- (i) *The order sought to be revised contains error of reasoning or of law or of fact on the face of it.*
- (ii) *The order sought to be revised proceeds on incorrect assumption of facts or incorrect application of law. In the same category fall orders passed without applying the principles of natural justice or without application of mind.*
- (iii) *The order passed by the Assessing Officer is a stereotype order which simply accepts what the assessee has stated in his return or where he fails to make the requisite enquiries or examine the genuineness of the claim which is called for in the circumstances of the case."*

(II) *BSES Rajdhani Power Ltd. Vs. Pr.CIT, by Hon'ble Delhi High Court(399 ITR 228(Delhi))*

8. Therefore, in view of the facts stated above, the said assessment order passed by the Assessing Officer u/s 143(3) of the I.T. Act, 1961 for the A.Y. 2016-17, so far as it pertains to the issues discussed above, is erroneous, prejudicial to the interest of the revenue, hence, is hereby set aside with a direction to the Assessing Officer to examine the issues mentioned supra, and to redo the assessment, after verification of the issues, in accordance with law.

PEERYA PATHLAVATH
CIT(EXEMPTION), HYD

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

This document is digitally signed

Signer: PEERYA PATHLAVATH
Date: Tuesday, March 2, 2021 2:58 PM
Location: DIRECTORATE, India