Impact Foundation (India) — Income Tax Appeal No. 126/2024

Complete public court-copy transcription. Clean reference PDF generated by Finin2min; not an original court facsimile.

Public source: https://indiankanoon.org/doc/175550305/

2026:BHC-OS:11413-DB ITXA 126-24(1)..DOC LAXMI SUBHASH SONTAKKE Digitally signed IN THE HIGH COURT OF JUDICATURE AT BOMBAY by LAXMI SUBHASH SONTAKKE ORDINARY ORIGINAL CIVIL JURISDICTION Date: 2026.05.04 17:10:18 +0530 INCOME TAX APPEAL NO. 126 OF 2024 Commissioner of Income Tax (Exemptions), Mumbai ...Appellant Versus Impact Foundation (India) ...Respondent _______ Mr. Pritish Chatterjee for the Appellant. Mr. Dharmesh Shah a/w Dhaval Shah for the Respondent. _______ CORAM: G. S. KULKARNI & AARTI SATHE, JJ. RESERVED DATE: 24 APRIL 2026 > 3. Whether the Hon'ble Tribunal was justified in setting aside the order revising under when Hon'ble Bombay High Court in the case of 430 ITR 121 (Bom) held that whatever be the status of the queries, non-consideration and consequently, non-application of mind to the material on record is enough to uphold the order ?"

2. Briefly, the facts are as follows:- > i. The Respondent-Assessee is a non-profit company incorporated under of the Companies Act, 1956 (charitable institution) registered under of the Act, and is an organization formed as an NGO for helping organizations to improve implementation of programs which help women and children in education, health, and livelihoods. For the relevant AY, the Respondent-Assessee e-filed its Return of Income Tax (ROI) on 4 th October 2017, declaring total income at Nil. 2016-17 During the course of assessment proceedings, the assessee has neither submitted details nor documentary evidence for above mentioned utilization Further, AO has allowed the assessee's claim It is pertinent to mention here that as per balance sheet of AY 2017-18 there is no major addition in schedule of moveable and immoveable Page 4 of 29 Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 ::: ITXA 126-24(1)..DOC assets of the assessee. Further, assessee has not provided any documentary evidence for utilization of Rs.6 crore as claimed in A.Y. 2017-18. > iii) In view of the above, amount of Rs.6,00,00,000/-, which was shown as utilized during the financial year 2016-17 relevant to A. Y. 2017-18 must have been disallowed in current year, i.e., A.Y. 2017-18, as the assessee has failed to provide requisite documentary evidences. Further, the issue was not verified during the course of assessment proceedings. The AO has passed order without the basic verification of the above facts stated above and therefore the order is prejudicial to the interest of revenue.

3. In view of the above, may I request you to show cause why the assessment order made of the Act dated 12.12.2019 should not be set aside by invoking the provisions of of the Act with appropriate directions to the AO. You are accorded an opportunity to furnish a written response on/The electronically through your e-filing account in incometaxindia.gov.in on or before 20.01.2022. Sr. No. Objects for which Application made Amount

1. Urban as well as rural Sanitation (Sr. No. 1of 5,28,52,691 Board Resolution dated 29 September 2016)

2. For strengthening civil society in India and 71,47,309 enhancing management capacities of Indian NGOs, etc. (Sr. No. 6 of Board Resolution dated 29 September 2016) Total 6,00,00,000 vi. However, the CIT (Exemptions), without accepting the contentions as raised by the Respondent-Assessee invoked the provisions of Explanation 2 to of the Act, which were incorporated vby , which were brought into effect from 1st June 2015, and sought to revise the assessment order dated 12th December 2019 on the ground that the details as submitted by the Respondent-Assessee in respect of the utilization of Rs. 6 Crores out of the accumulated amount of Rs. Being aggrieved by the order passed by the CIT (Exemptions), the Respondent-Assessee preferred an Appeal before the ITAT and contended that the Page 7 of 29 Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 ::: ITXA 126-24(1)..DOC CIT (Exemptions), had erred in passing the order dated 24 th March 2022 under of the Act inasmuch as the original assessment order passed under of the Act dated 12 th December 2019 was passed after conducting the requisite enquiry/verification and on proper application of mind, and thus was not an order which was erroneous and prejudicial to the interest of the Revenue warranting the exercise of jurisdiction under of the Act. viii. The ITAT by the impugned order dated 2nd January 2023, allowed the Appeal filed by the Respondent-Assessee, on the ground that the order passed by the CIT (Exemptions), was incorrect inasmuch as the assessment order dated 12 th December 2019 was not erroneous or prejudicial to the interest of the Revenue. Referring to the decision of this Court in the case of ■22†Grasim Industries Vs. However, the question is whether the Ld CIT(E) can hold such a view when the AO has enquired about the issue and that too without pointing out the error, if any, in the assessment order in the revision proceeding of the Act?. According to us, the Ld. CIT(E) cannot do so, because AO has enquired about it and in such an event the Ld. CIT(E) himself has to enquire about the issue and point out that AO's view was erroneous/un-sustainable in law.

10. In this context, it would be gainful to refer to case-law in the case of (supra) wherein their Lordship answered the question as to when an order can be termed as "erroneous" which was explained as under:- > "From the aforesaid definitions it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an income tax officer acting in accordance with the law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. This section does not visualise a case of substitution of the judgment of the Commissioner for that of the Income-tax Officer, who passed the order, unless the decision is held to be erroneous. Cases may be visualised where the Income tax officer while making an assessment examines the accounts, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income either by accepting the accounts or by making some estimate himself. > (a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years; > (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5); > (c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of for furnishing the retur of income for the previous year: > Provided that in computing the period of five years referred to in clause > (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

14. deals with the situation, when the assessee fails to utilize the income accumulated of the Act. Before us, the Ld A.R made reference to clause (c) of and submitted that the taxability of the accumulated income of the Act if any, is required to be examined only in the year immediately following the expiry of period of accumulation is not correct in the facts of this case-because clause (c) of ■cite■23†sec.

11(3)■ is attracted only in the event assessee fails to utilize the accumulated income within the period for which it is set-apart as per of the Act; and that is not relevant to be considered. As far as the relevant facts of the present case are concerned, a perusal of Form 10 would reveal that the accumulated amount in AY 2016-17 was to the tune of Rs 14.51 crores up to 31.03.2021 ie, AY 2021-22; and therefore non-utilization of accumulated amount as per clause (c) of sec 11(3) will attract taxation in the previous year immediately following the expiry of the period i.e, in AY 2022-23. In such a scenario, his impugned action of finding the action of AO to accept the claim of expenditure of Rs.6 crores as erroneous and prejudicial to the interests of revenue is untenable. Accordingly, we are of the view that the impugned revision order passed by Ld PCIT is not sustainable in law and assessee succeeds on the legal issue raised before us. Accordingly, we quash the impugned revision order passed by Ld CIT(E).

17. In the result, the appeal filed by the assessee is allowed. Order pronounced in the open court on this 02/01/2023."

3. Learned Counsel Mr. Pritish Chatterjee appeared for the Appellant- Revenue, and Learned Counsel Mr. Dharmesh Shah, along with Mr. Dhaval Shah appeared for the Respondent-Assessee.

4. Mr. Chatterjee, learned Counsel for the Appellant-Revenue, contended that the order passed by the ITAT failed to properly appreciate the material available on record. He submitted that in the facts of the present case, the AO had not verified the complete details insofar as the Respondent-Assessee was concerned, and the assessment order was an order which was erroneous and prejudicial to the interest of the Revenue. He further contended that the assessment order was erroneous and prejudicial to the interest of revenue inasmuch as it was passed on an inadequacy of enquiry, and further the provisions of Explanation 2 to of the Act were rightly invoked by the CIT (Exemptions), Mumbai. We are also of the view that the Assessee, as recorded in the order of the ITAT, had submitted before the AO all the details as called for, in respect of the accumulation of funds in the earlier years, and also submitted details of the amounts utilized out of those funds. The Respondent-Assessee had furnished all the relevant details of Rs. 6 crores spent by it during the year under consideration, out of the amounts accumulated in the preceding year, and therefore the CIT (Exemption), Page 19 of 29 Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 ::: ITXA 126-24(1)..DOC erroneously held that the Respondent-Assessee had furnished utilization of accumulated amounts under broad heads. The CIT (Exemptions), was therefore of the view that the AO could have asked for breakup details, and examined with supporting evidences that the said utilization is as per the objects of the Respondent-Assessee.

8. Such view and approach to our mind, did not warrant invoking the provisions of of the Act, inasmuch as it is not the case that the AO had not verified any details. In fact, it is very clear that the Respondent-Assessee had, by letters dated 30th January 2019 and 3rd December 2019, along with the required board resolutions, Form No. (d) would only arise in the year after the expiry of the accumulated period, that is AY 2022-23, and not in the relevant AY. The ITAT has correctly referred to the decision in 7, wherein the Supreme Court has held that before the Commissioner invokes revisional jurisdiction under of the Act, twin conditions should be satisfied, i.e.,: i. The order of the AO should be erroneous. ii. As a consequence of passing of the erroneous order, prejudice is caused to the interest of the revenue. These conditions, in the facts of the present case, were certainly not satisfied, hence the provisions of of the Act could not be attracted.

13. We are also in agreement with the submissions made on behalf of the Respondent-Assessee that prior to the invocation of the provisions of Explanation 2 to of the Act, the show-cause notice was required to specify that the aforesaid Explanation is to be invoked against the Assessee, and if the show-cause notice does not mention that the Explanation is to be invoked, then the provisions of of the Act cannot apply. As the Respondent-Assessee was not confronted with the aforesaid Explanation, hence, such an order, without 7 [2000] 243 ITR 83 (SC) Page 23 of 29 Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 ::: ITXA 126-24(1)..DOC confronting the Respondent-Assessee with the invocation of Explanation 2 to was not appropriate and sustainable in law. We are therefore in agreement with learned Counsel on behalf of the Respondent-Assessee on this issue. Once the Assessing Officer was satisfied with regard to the same, there was no further requirement on the part of the Assessing Officer to disclose his satisfaction in the Assessment Page 25 of 29 Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 ::: ITXA 126-24(1)..DOC Order passed thereon. Thus, this objection on the part of the Revenue, cannot be accepted. > 8. It is next submitted that the donor had not been examined by the Assessing Officer. It is not in every case that every evidence produced has to be tested by cross examination of the person giving the evidence. It is only in cases where the evidence produced gives rise to suspicion about its veracity that further scrutiny is called for. If there is nothing on record to indicate that the evidence produced is not reliable and the Assessing Officer was satisfied with the same, then it is not open to the CIT to exercise his powers of Revision without the CIT recording how and why the order is erroneous due to not examining the donors. Thus, this objection to the impugned order by the Revenue is also not sustainable. > 9. It was next submitted that no enquiry was done by the Assessing Officer to find out whether the donor Mr Deepak Modi (father) had received money from M/s. Chang Jiang as claimed. Nor any inquiry was done to find out whether the sister had in fact earned amounts on account of Foreign Exchange Transactions as claimed by her. We find that this enquiry of a source of source is not the requirement of law. Thus, the Bachchan's case was a case where once the claim was withdrawn, then enquiry which was to be conducted, was aborted by the Assessing Officer. Therefore, a case of non- enquiry. It may have been different, if the Assessing Officer had enquired into the cash expenditure and its source as claimed, to come to his own conclusion and even accepted the stand of the Assessee. In such a case, even if the CIT would have taken a view that the satisfaction of the Assessing Officer is not correct, he would not have been able to exercise his powers of Revision under of the Act. Page 27 of 29 > Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 ::: ITXA 126-24(1)..DOC > 12. In the present facts, the Assessing Officer was satisfied, consequent to making an enquiry and examining the evidence produced by the Assessing Officer, establishing the identity and creditworthiness of the donor as also the genuineness of the gift. The CIT in his order of Revision, does not indicate any doubts in respect of the genuineness of the evidence produced by the Assessee. The satisfaction of the Assessing Officer on the basis of the documents produced is not shown to be erroneous in the absence of making a further enquiry. It is made clear that our above observations should not be inferred to mean that it is open to the Assessing Officer to enquire into the source of source for the purpose of the present facts. This is a case where a view has been taken by the Assessing Officer on enquiry.

18. Resultantly the impugned order passed by the ITAT does not give rise to any substantial questions of law requiring interference or consideration in the present Appeal. The Appeal is accordingly dismissed. No costs. (AARTI SATHE, J.) (G. S. KULKARNI, J.) Page 29 of 29 Laxmi ::: Uploaded on - 04/05/2026 ::: Downloaded on - 04/05/2026 21:45:29 :::