



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

WEDNESDAY, THE 5TH DAY OF NOVEMBER 2025 / 14TH KARTHIKA, 1947

ITA NO. 81 OF 2025

AGAINST THE ORDER DATED 19.05.2025 IN I.T.A.NO.138/COCH/2020

APPELLANT:

SAVE A FAMILY PLAN (INDIA),
AISWARYAGRAM, PARAPPURAM, KANJOOR, ERNAKULAM,
REPRESENTED BY ITS EXECUTIVE DIRECTOR, FR. ANTONY V U,
PIN - 683593

BY ADVS.
SHRI.ABRAHAM JOSEPH MARKOS
SRI.V.ABRAHAM MARKOS
SRI.ISAAC THOMAS
SHRI.ALEXANDER JOSEPH MARKOS
SRI.P.G.CHANDAPILLAI ABRAHAM
SHRI.JOHN VITHAYATHIL
SRI.PAUL P. ABRAHAM
SRI.JOSEPH MARKOSE, SENIOR COUNSEL

RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX (EXEMPTIONS),
CENTRAL REVENUE BUILDING, I.S. PRESS ROAD,
KOCHI, PIN - 682018.

BY ADVS.
SHRI.JOSE JOSEPH, SC, INCOME TAX DEPARTMENT, KERALA
SRI.CYRIAC TOM

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 03.11.2025, THE COURT ON 05.11.2025 DELIVERED THE FOLLOWING:



J U D G M E N T

Harisankar V. Menon, J.

The appellant is stated to be a Charitable Trust, having obtained registration under Section 12A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), and therefore entitled for the benefits flowing out of Section 11 of the Act. During the financial year 2013-14, relevant to the assessment year 2014-15, the appellant received various donations, both from India and foreign countries, and made further donations to 72 other institutions, which were also stated to be having registration under Section 12A of the Act. By Annexure-A assessment order dated 30.12.2016, the assessing authority examined the books of accounts and other records and accepted the return of income by the appellant. However, the Commissioner of Income Tax (Exemptions), Kochi, initiated *suo motu* revisional steps under Section 263 of the Act, leading to Annexure-B order dated 29.03.2019, as per which, the assessment order was *set aside*, remitting the matter back to the Assessing Officer for fresh disposal as per law. A reading of the afore order would show that, according to the revisional authority, only the donations made to



institutions that have a similar nature of categorization under the Foreign Contribution (Regulation) Act, 2010 (hereinafter referred to as 'the FCRA Act'), as that of the appellant herein were entitled for exemption. In the appeal instituted by the appellant against this order, the Income Tax Appellate Tribunal, Cochin Bench, by Annexure-E order dated 19.05.2025, found that the donations made by the appellant were not hit by the provisions of the Act and hence amounts to an application of income for charitable purposes. However, the Tribunal went on to hold further that the donations should be consistent with the objects of the Trust, and since the assessment order was silent in that regard, there was no illegality in the exercise of the revisional power under Section 263 of the Act. It is in the above circumstances that the appellant has instituted the captioned appeal, raising the following questions of law:-

- "1) Whether on the facts and in the circumstances of the case the Appellate Tribunal is right in holding that the Commissioner was justified in invoking the revisionary jurisdiction under Section 263 of the Income Tax Act?
- 2) Whether on the facts and in the circumstances of the case there was any evidence or material before the



Appellate Tribunal to justify its finding that the Assessing Officer has not made any enquiry with respect to the issue in question and therefore the Commissioner was justified in invoking the jurisdiction under Section 263 of the Income Tax Act.”

2. Heard Sri.Joseph Markos, the learned senior counsel for the appellant-assessee, and Sri.Joseph Joseph, the learned Standing Counsel for the respondent-Revenue.

3. The order of the revisional authority under Section 263 of the Act, as noticed earlier, was issued for the reason that the benefits under Section 11(1)(a) of the Act could be extended only when the institutions to which donations were made had a similar categorization as that of the appellant under the FCRA Act. The Tribunal, while passing the impugned order, found – quite rightly – that insofar as the donations were made to another charitable trust out of the current year’s income, that amounts to the application of income for charitable purposes. It is to be noticed that the benefits under Section 11 of the Act are not in relation to the provisions of the FCRA Act. Therefore, the Commissioner was not justified in exercising the *suo motu* revisional power under Section 263 of the Act, as rightly found by the Tribunal.



4. At this juncture, it is to be noticed that the appeal before the Tribunal was instituted against the order at Annexure-B issued by the Commissioner under Section 263 of the Act. The sustainability or otherwise of the exercise of powers under Section 263 of the Act, as borne out of the said order alone, was the subject matter of consideration by the Tribunal. As regards the afore issue, the Tribunal has found in favor of the appellant- assessee. When that be so, there was no requirement for the Tribunal to have proceeded out of the scope of consideration and held that the revision order requires to be sustained for the reason noticed in the latter portion of paragraph No.11 of the impugned order. It is the finding of the Tribunal that the appellant was not able to demonstrate that the donations were made to trusts having the same objects as that of the appellant. Here, we may straight away notice that this was not an issue highlighted by the Commissioner while exercising the revisional power under Section 263 of the Act. When that be so, the Tribunal was not expected to go out of the scope of consideration in the appeal and issue further findings so as to sustain the revision order.



5. The learned senior counsel for the appellant has relied, in our opinion, quite rightly, on the Division Bench judgment of this Court in ***Commissioner of Income Tax v. Chandrika Educational Trust [(1994) 207 ITR 108]***. That was also a case where the revisional power under Section 263 of the Act was invoked by the Commissioner, setting aside the assessment order for a particular ground/reason. Considering this issue, the Division Bench of this Court found as under:-

“In entertaining an appeal from the Commissioner's order what the Tribunal does is to examine whether the said order is sustainable in law and whether it is within the powers conferred by section 263. Therefore, when the Commissioner has chosen to set aside the order of the Income-tax Officer only on a particular ground, the Tribunal is not entitled to go beyond and sustain the order of the Commissioner on grounds different from that relied on by the Commissioner himself.”

We are in agreement with the principles laid down as above. The dictum laid down by this Court would apply to the facts and circumstances of the case at hand also, insofar as, only one reason was highlighted by the Commissioner for exercising the power under Section 263 of the Act and the Tribunal having found the said reason as not a valid one, the Tribunal should have



stopped there rather than making further observations as regards the sustainability or otherwise of the extension of the benefits under Section 11 of the Act through the assessment order.

In the result, we are of the opinion that the appellant is entitled to succeed. Hence, this appeal would stand allowed, with the questions raised being answered in favour of the assessee and against the Revenue.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

Sd/-
HARISANKAR V. MENON
JUDGE

anm/ln



APPENDIX OF ITA 81/2025

APPELLANT'S ANNEXURES:

- ANNEXURE A TRUE COPY OF ASSESSMENT ORDER DATED 30.12.2016
FOR AY 2014-15.
- ANNEXURE B TRUE COPY OF THE ORDER OF THE COMMISSIONER OF
INCOME TAX (EXEMPTIONS) UNDER SECTION 263 DATED
29.03.2019.
- ANNEXURE C TRUE COPY OF APPEAL DATED 13-02-2020 FILED
AGAINST ANNEXURE B ORDER.
- ANNEXURE D TRUE COPY OF JUDGMENT DATED 06.12.2023 OF THIS
HON'BLE COURT IN ITA NO. 36 OF 2023.
- ANNEXURE E CERTIFIED TRUE COPY OF IMPUGNED ORDER OF THE
INCOME TAX APPELLATE TRIBUNAL DATED 19.05.2025
IN ITA NO. 138/COCH/2020.