

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

I.T.A. No.2659/KOL/2026
Assessment Year: (2022-23)

Eastern India Healthcare Foundation, 127, Mukundapur, E.M. Bypass, Kolkata – 700099, West Bengal [PAN: AAATE2379J] (Appellant)	Vs.	CIT(Exemption), Kolkata (Respondent)
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Appellant by :	Shri S. K. Tulsiyan, Advocate and Ms. Lata Goyal, CA
Respondent by:	Shri Raman Garg, CIT-DR

Date of Hearing	29.09.2026
Date of Pronouncement	26.10.2026

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

This appeal preferred by the assessee is against the order passed u/s 250 of the Income-tax Act, 1961 (In short, 'the Act') by learned Commissioner of Income Tax (Exemption), Kolkata (hereinafter referred to as the "Id. CIT(E)"], dated 17.03.2026 for the Assessment Year (AY) 2022-23.

2. The appeal filed by the assessee is barred by 59 days. The assessee filed affidavit along with the condonation petition, explaining the delay in filing the appeal. The assessee submitted that explained the reasons to be for the bonafide and genuine reasons. Considering reasons to be reasonable, we are

inclined to condone the delay in filing the appeal and admit the appeal for adjudication.

3. The facts of the case in brief are that the assessee filed its ITR for A.Y.2022-23 in Form ITR-7 on 20.10.2022 declaring total income at NIL. The case of assessee was selected for scrutiny under CASS by issuance of notice u/s 143(2) of the Act, dated 02.06.2022. The assessment was completed vide order dated 23.02.2024 passed u/s 143(3)/144B of the Act, assessing total income at Nil. During the course of assessment proceedings u/s 143(3) of the Act, the Ld.AO raised query regarding the large foreign donation received by the Trust assessee in compliance with the provisions of Foreign Contribution Regulatory Act, 2010 and the Expenditure incurred and application made vide notices issued u/s 142(1) of the Act dated 07.07.2023 and 27.12.2023 copies whereof are enclosed at page 108-112 and 139-141 of paper book respectively. In response, the assessee filed reply on 13.07.2023 and 30.12.2023 and copies replies are enclosed at page 113-138 and 142-149 of paper book. The assessee also vide Annexure -1 at page 118 of the paper book explained the nature of activities undertaken during the year. The assessee trust also explained the nature of donations received from DEG, Germany for the purpose of COVID-19 activities. Further the assessee also furnished Cost Calculation/Funding Ratio on account of COVID-19 related activities certified by Chartered Accountant as Annexure-3 and the same is enclosed at page 120-123 of the Paper book. Thereafter, the Ld. AO passed an assessment order u/s 143(3) of the Act on 23.02.2024 without any variation to the returned income of the assessee.

4. Thereafter, the Id.CIT(E) issued notice u/s 263 of the Act on 15.01.2026 alleging that the trust has entered into transactions with a related party in

contravention of the provisions of section 13(3) of the Act. Further it was alleged that in view of section 13(1)(c)(ii), exemption u/s 11 and 12 is not available where the income or property of trust is applied directly or indirectly for the benefits of specified persons. Hence the Id.CIT(E) alleged that the AO allowed the claim of the assessee without conducting the requisite enquiries or verification that ought to have been made, resulting in an erroneous determination of income. The Id.CIT(E) alleged that the assessment order dated 23.02.2024 passed u/s 143(3) r.w.s. 144B of the Act is thus prima facie erroneous in so far it is prejudicial to the interests of the Revenue within meaning of section 263 of the Act. In response the assessee filed detailed reply on 06.02.2026. Thereafter, further notice was issued on 26.02.2026 calling for certain details and documents which were also submitted during the course of proceedings w/s 263 of the Act. Finally, the Id.CIT(E) passed order u/s 263 of the Act on 17.03.2026 setting aside the assessment order alleging the assessment order to be erroneous and prejudicial to the interest of the revenue due to the fact that the assessee has donated Rs.5,65,56,841/- to Medica Hospital Private Limited. It was further alleged that it is a related party and that transaction between the related the party is in contravention of the provisions u/s 13(3) of the Act and that it is impermissible under the FCRA provisions and therefore held the order to be erroneous in so far as it is prejudicial to the interests of revenue.

5. We have heard the rival contentions and perused the materials on records. The undisputed facts are that the assessment was framed vide order dated 23.02.2024 passed u/s 143(3)/144B of the Act, assessing total income at Nil. During the course of assessment proceedings, the Ld.AO raised query regarding the large foreign donations received by the assessee trust in consonance with the provisions of Foreign Contribution Regulatory Act, 2010.

We also note that the AO raised specific queries by issuing notices issued u/s 142(1) of the Act on 07.07.2023 and on 27.12.2023. We note that the assessee filed detailed reply on 13.07.2023 and 30.12.2023 copies whereof are enclosed at page 113-138 and 142-149 of paper book. The assessee also vide Annexure -1 at page 118 of the paper book explained the nature of activities undertaken during the year. The assessee trust also explained the nature of donations received from DEG, Germany for the purpose of COVID-19 activities. Further the assessee also furnished Cost Calculation/Funding Ratio on account of COVID-19 related activities certified by Chartered Accountant as Annexure-3 and the same is enclosed at page 120-123 of the Paper book. Thus, we note that the assessee framed the assessment after examining the issue of foreign donations received from DEG, Germany for the purpose of COVID-19 activities vide order u/s 143(3) of the Act on 23.02.2024 accepting the returned income.

6. It is absolutely clear from the above that the AO has taken a possible view on the issue and passed the order. The Id. PCIT has invoked the jurisdiction on the ground that the AO has failed to enquire into the issue which has rendered the assessment to be erroneous and prejudicial to the interest of the revenue. In our considered view the jurisdiction u/s 263 is not available to the PCIT where the AO has taken a possible view. The case of the assessee is squarely covered by the decision in CIT vs. Max India Ltd. (2007) 295 ITR 0282 (SC) wherein it has been held as under:

"The phrase "prejudicial to the interests of the Revenue has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer, cannot be treated as prejudicial to the interests of the Revenue, for example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not

agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue unless the view taken by the Income-tax Officer is unsustainable in law."

7. We have perused the new explanation "Explanation - 2" to section 263 vide Finance Act, 2015 w.e.f. 01-06-2015 of the Act which reads as follows:

"Explanation 2.- For the purposes of this section, it is hereby declared that an order passed by the AO 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.-

(a) the order is passed without making inquiries or verification which should have been made:

(b) 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."

8. It is apparent from the perusal of the above explanation that the following orders passed by assessing officer shall now be considered as erroneous and prejudicial to the interest of revenue w.e.f. 01.06.2015, where AO passed order in the following manners, (i) without making any inquiries/verification which he/she is required to be made, (ii) without making inquiry into a claim which is claimed by assessee and allowed such claim, (iii) which is not in accordance with any order/direction/instruction (i.e. circulars) issued by CBDT, (iv) which is not in accordance with any decision of jurisdictional High Court or Supreme Court which is prejudicial to the assessee or any other person. In other words, where jurisdictional High Court or Supreme Court's decision is against the assessee or any other person and AO passed the order without considering such judgment then such order shall be considered as erroneous and prejudicial to the interest of revenue.

9. We also note that the Id.CIT(E) in the notice u/s 263 and order u/s 263 of the Act has alleged that the Ld.AO has failed to conduct enquiries in regard to the mandate of section 13(1)(c)(ii) of the Act. In this regard, firstly reference is made to the audited Financial Statement of the Trust enclosed at page 104-107 of the paper book. The said accounts were duly filed during the course of assessment. On perusal of Receipt and payment Account at page 107, it shall be evident that the amount of Rs.14.40 crore was received from DEUTSCHE INVESTITIONS-UND ENTWICKLUNGSGESELLSCHAFT MBH (DEG), Germany for the purpose of developPPP.de COVID-19 programme for relief activities during COVID-19 pandemic. The same was donated to the persons in the payment side out of the said Receipt and Payment Account out of which one is Media Hospital Private Limited to whom amount of donation made is Rs.5,65,56,841/-,

10. We note that the AO during the course of assessment has conducted enquiries by issuing notice u/s 142(1) of the Act dated 07.07.2023 which is available at page 110-111 of paper book. We find that at Sl. Nos. 5 and 6, a specific query was raised specifically in regard to FCRA donation and its utilization. In response, the assessee vide reply filed on 13.07.2023, in Annexure 1, submitted detailed note on the objects of the Trust and the same is enclosed at page 118 of paper book. As per said note on object of Trust, it is evident that the assessee duly explained the sourcing of fund to help people in COVID-19 distress. The assessee brought to the notice of the AO about the FCRA registration dated 09.07.2021. The assessee also provided the information about the DEG, Germany funding programme under General Federal Ministry of Economic Cooperation and Development called

"develpPPP.de". The assessee also brought before the AO the facts about the agreement "develoPPP.de COVID-19 Agreement" with DEG on 29.09.2021.

11. We also note that the assessee vides Annexure 3 enclosed at page 120-138 submitted the evidences for exemption claimed u/s 12A/12AA/10(23C) of the Act. The said Annexure 3 comprised of detailed calculation of estimated cost, actual cost incurred and funding ratio for COVID- 19 relief activities. The total estimated cost of such activities amounted to EURO 48,77,761. Out of the estimated cost, actual cost incurred amounted to EURO 43,92,227 [equivalent to INR 37,75,73,412/-]. The said 37.75 crore was funded by:

DEG	Rs. 14.40 Cr
Other corporate-	Rs.10 Cr
Medica-	Rs.13.35 Cr

12. We further note that vide notice dated 27.12.2023, the Ld.AO further enquired into whether the FCRA donation received by the assessee is in compliance with the provisions of FCRA, 2010. In response the assessee filed detailed reply along with supporting documents. Hence, on perusal of the notices issued u/s 142(1) of the Act during the course of assessment proceedings, it shall be evident that the entire proceedings u/s 143(3) of the Act was for verification of this FCRA donation from DEG, Germany and utilization of the same. Further, it is submitted that the COVID-19 relief activities undertaken by Medica was published in newspapers and various news channels. This shall be evident from some sample newspaper articles enclosed at page 150-154 of paper book. Further, COVID-19 related support provided by DEG, Germany is also available in website of DEG, Germany. The same is enclosed at page 155-156 of paper book. Hence, it shall be evident that entire funding by DEG, Germany and the purpose for which such funding was made, utilization of said fund, entire estimate cost of the object-COVID-19

Relief activities, actual cost incurred, source of funding etc. and all the related information was already on record of the AO. He has conducted necessary enquiries and allowed the claim of the assessee. The case of the assessee also find support from the decision of the coordinate bench Kolkata in the case of JL Morison (India) Ltd Vs ACIT, ITA No.786 (Kol) of 2010, wherein it held that:

"It is now settled law that if, while making the assessment, the AO examines the accounts and other details, makes enquiries, applies his mind to the facts and circumstances of the case and determines the income, the Id. CIT while exercising his power under Section 263 of the Act, is not permitted to substitute his own view about the computation of income in case and determines the income, the Id. C.L.T., while exercising his power under sec. 263 place of the income assessed by the A.O., unless the order of the AO is patently unsustainable in law."

13. We also note that the said decision of the coordinate bench was affirmed by the Hon'ble Calcutta High Court dismissing the appeal of the revenue. The Hon'ble High Court vide its judgment dated 15.05.2014 [2014] 46 taxmann.com 215 (Calcutta) has held as under:

"If the Assessing Officer has taken a possible view, it cannot be said that the view taken by him is erroneous nor the order of the Assessing Officer in that case can be set aside in revision. It has to be shown unmistakably that the order of the Assessing Officer is unsustainable. Anything short of that would not clothe the Commissioner with jurisdiction to exercise power under section 263

The fact, that all requisite from time to time coupled with the fact that the view taken by him is not shown by the requisite papers were summoned and thereafter the matter was heard revenue to be erroneous and was also considered by the Tribunal to be a possible view, strengthens the presumption under clause (e) of section 114 of the Evidence Act. A prima facie evidence, on the basis of the aforesaid presumption, is thus, converted into a conclusive proof of the fact the order was passed by the Assessing Officer after due application of mind. [Para 89]

The Tribunal had before them the records of both the Assessing Officer and the Commissioner After examining the records both of the Commissioner and the Assessing Officer, the Tribunal reached the conclusion that the order of the Assessing Officer was not passed without application of mind. [Para 112]

In view of aforesaid, the Tribunal was justified in setting aside revisional order passed by the Commissioner. In the result, the revenue's appeal is dismissed. [Para 115)

14. In our opinion the AO is not supposed to give detailed reasoning or discussion on every issue in the assessment order. It would be sufficient if the has made an enquiry into the issue. The CIT(E) cannot invoke the jurisdiction for the reason that he is not agreeing with the view taken by the AO and the AO should have taken other view. The case of the assessee find support the judgment of the Bombay High Court in the case of Commissioner of Income-tax v. Sunbeam Auto Ltd (2011) 332 ITR 0167-Del wherein it was held as under:

"The Assessing Officer in the assessment order is not required to give a detailed reason in respect of each and every item of deduction, etc. Whether there was application of mind before allowing the expenditure in question has to be seen. If there was any inquiry, even inadequate that would not by itself give occasion to the Commissioner to pass orders under section 263 of the Income-tax Act, 1961, merely because he has a different opinion in the matter. It is only in cases of lack of inquiry that such a course of action would be open."

15. Thus, it is evident that the issue relating to the receipt of donation under FCRA, 2010 and its utilization including through Medica Hospitals Pvt Ltd (Medica) was duly examined by the Ld.AO and necessary compliances was made by the appellant in the course of assessment proceedings. The impugned donation to Medica was completely for carrying out the charitable object of granting COVID-19 relief to the suppressing masses and had nothing to do with any related party benefit extendable by the appellant. The AO having accepted the claim of the appellant, after due examination of all the materials on the basis of equities/verification conducted by him, the impugned order cannot be called erroneous in as much as the Explanation 2(a) of Section 263 of the Act requirement was fully satisfied. Likewise, the order

having been passed and deduction having allowed after due enquiries, the impugned order also satisfied the requirement of Explanation 2(b) of Section 263 of the Act. In regard to Explanation 2(e) of section 263 of the Act, the impugned deduction did not suffer of Explanation 2 also do not come into play. and w/s 119 of the Act. Therefore, sub-clause (c) of Explanation 2 also does not come into play. As regard Explanation 2(d) of section 263 of the Act, the order by the AO is not contrary to the decisions of Courts. The case of the assessee is also supported by the decision of the Hon'ble Bombay High Court in Commissioner to Income-tax vs. Gabriel India Ltd. (1993) 203 ITR 108 (Bombay), wherein the Hon'ble Bombay High Court held as under:

"13. We, therefore, hold that in 263 there must be material before the Commissioner to consider that the order passed by in order to exercise power under sub-section (1) of section the ITO was erroneous insofar as it is prejudicial to the interests of the revenue. We have already held what is erroneous. It must be an order which is not in accordance with the law or which has been passed by the ITO without making any enquiry in undue haste. We have also held as to what is prejudicial to the interests of the revenue. An order can be said to be prejudicial to the interests of the revenue if it is not in accordance with the law in consequent whereof the lawful revenue due to the State has not been realized or cannot be realized. There must be material available on the record called for by the Commissioner to satisfy him prima facie that the aforesaid two requisites are present. If not, he has no authority to initiate proceedings for revision.

14. We may now examine the facts of the present case in the light of the powers of the Commissioner set out above. The ITO in this case had made enquiries in regard to the nature of the expenditure incurred by the assessee. The assessee had given detailed explanation in that regard by a letter in writing. All these are part evidently the claim was allowed by the ITO on being satisfied with the explanation of the part of the record of the case. assessee. Such decision of the ITO cannot be held to be 'erroneous' simply because in his order he did not make an elaborate discussion in that regard. Moreover, in the instant case, the Commissioner himself, even after initiating proceedings for revision and hearing the assessee, could not say that the allowance of the claim of the assessee was erroneous and that the expenditure was not revenue expenditure but an expenditure of capital nature. He simply asked the ITO to re-examine the matter that, in our opinion, is not Further inquiry

and/or fresh determination can be directed by the Commissioner only after not permissible. coming to the conclusion that the earlier finding of the ITO was erroneous and prejudicial to the interests of the revenue. Without doing so, he does not get the power to set aside the assessment. In the instant case, the Commissioner did so and it is for that reason that the Tribunal did not approve his action and set aside his order. We do not find any infirmity in the above conclusion of the Tribunal.”

16. Thus, in light of the aforesaid decisions, it is established that the order in question passed by the AO was not erroneous.

17. Moreover, the Id.CIT(E) has failed to show that the assessment order is prejudicial to the interest of the revenue. We note that the DEG, Germany. DEG, Germany has donated the fund with the object to provide relief to persons in COVID-19 pandemic through Medica Hospitals Pvt Ltd. The said fund was received by the assessee trust after obtaining FCRA certificate on 09.07.2021, copy enclosed at page 144-145 of paper book. The assessee also filed Form FC-4 as per section 18 of FCRA, 2010 and the same is enclosed at page 146-149 of Paper book. None of the authorities under FCRA, 2010 raised any allegation or objection about the utilization of fund in COVID-19 relief related activities. The Ministry of Home Affairs, Foreigners Division (FCRA Wing) has right to inspect the activities carried on by the assessee trust from time to time. FCRA wing has not raised any objection to the activities carried on by the assessee trust after receiving funds from DEG, Germany. Hence it is not understood on what basis the Ld.CIT(E) has held that the donation to Medica is in violation to FCRA 2010.

18. Further section 13(1)(c)(ii) of the Act states that a charitable or religious trust or institution loses its tax exemption on any part of its income if its income or property is used or applied directly or indirectly for the private

benefit of any person defined under Section 13(3) of the Act. The provision of section 13(3) of the Act is reproduced as under:

"(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:-

(a) the author of the trust or the founder of the institution:

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family:

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

Explanation 3. For the purposes of this section, a person shall be deemed to have a substantial interest in a concern-

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3)

(ii) in the case of any other concern, if such person is entitled, or such person and one more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern."

19. A clear reading of provision of section 13(1)(c)(ii) read with section 13(3) provides that any part of income or property of the trust shall not be utilized for the benefit of author of the trust or the founder of institution, any person who has made contribution exceeding Rs.50,000/- where such author, founder or person is a HUF, a member of the family, trustee or manager of the trust/institution, any of their relative or any concern in which such persons has substantial interest. Here in the case of the assessee, the Id.CIT(E) has

failed to show what benefit has been given to the person referred to in section 13(3) of the act on account of fund received from DEG. Further, it is submitted that, amount was paid to Medica Hospital Pvt Ltd and therefore as per clause (e) of section 13(3), a company can be said to be related party only if the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest in the company. As per Explanation 3 of section 13, a person shall be deemed to have substantial interest in company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3). Here, in order to show that neither the assessee trust nor any of the person referred to in clauses (a), (b), (c), (cc) and (d) of section 13(3) has substantial interest in Media Hospital Pvt Ltd, the shareholding pattern of Media Hospital Pvt Ltd is enclosed at page 184 of the Paper book. On perusal of the same it shall be evident that 100% of shares of Medica Hospitals is held by Media Synergie Private Limited.

20. Further, shareholding pattern of Medica Synergie Pvt Ltd is enclosed at page 200 of the paper book and MGT-7 is enclosed at page 185-199 of paper book. On perusal of the same, it shall be evident that 87.11% of shares were held by FII and 8.1% of shares were held by public shareholders- other than promoters. Only 4.79% of shares were held by Indian Promoters. Hence in no case, any of the trustee/author/founder of trust whose name is appearing in the list of shareholders of Medica Synergie has substantial interest i.e. 20% of voting power in Media Hospitals Pvt Ltd. Hence the said transactions do not fall under section 13(1)(c)(ii) of the Act. We further note that the said fund

was never used for the benefit of persons referred to in section 13(3) of the Act. In this regard, reference is made to the Funds Flow enclosed at page 120-122 of the paper book which shows as under:

<i>Estimated cost</i>	:	<i>Euro 48,77,761.00</i>
<i>Actual Cost incurred</i>	:	<i>EURO 43.92.227.00</i>
<i>Actual Cost IN INR</i>	:	<i>Rs. 37.75 crore</i>
<i>Funded by DEG</i>	:	<i>Rs. 14.40 cr.</i>
<i>Funded by Other corporate:</i>		<i>Rs. 10 cr.</i>
<i>Funded by Medica</i>	:	<i>Rs. 13.35 cr</i>

21. Since, Medica itself contributed Rs.13.35 crore, we are not able to understand as to how an amount paid to Medica by the assessee company may lead to any benefit to the persons referred to in section 13(3) of the Act. In view of the above, it stands establish that the Id.CIT(E) has initiated this present proceeding without application of mind to the case of the assessee. The Id.CIT(E) failed to establish how Medica Hospitals Pvt Ltd fall under persons referred to in section 13(3) of the Act. The Id.CIT(E) also failed to establish what benefit has been transferred to the Persons referred to Section 13(3) of the Act. Considering these facts and the ratio laid in the above decisions, we are of the view that the jurisdiction u/s 263 has been invalidly invoked by the Id. CIT(E) and consequently the proceedings u/s 263 and order u/s 263 are hereby quashed.

22. In the result, the appeal of the assessee is allowed.

The order is pronounced on 26/10/2026.

Sd/-
(Pradip Kumar Choubey)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Kolkata, Dated: 26/10/2026

SAMANTA

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to:

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधित आयकर आयुक्त/ Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,/ DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

BY ORDER,

// TRUE COPY //

Deputy Registrar, ITAT, Kolkata