

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

Before Sh. N. K. Saini, AM And Smt. Beena Pillai, JM

ITA Nos. 2573/Del/2012 : Asstt. Year : 2006-07

Pacific Projects Educational Society, Plot No. 1, Pocket No. 11, Sector -5, Rohini, Delhi-110085	Vs	DDIT(E), Trust Cir.-IV, Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABTP1483D		

Assessee by : Ms. Payal Goyal, CA

Revenue by : Sh. Ved Prakash Mishra, Sr. DR

Date of Hearing : 01.12.2015	Date of Pronouncement : 01.12.2015
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 29.03.2012 of CIT(A)-XXI, New Delhi.

2. Following grounds have been raised in this appeal:

“1. That on the facts and the circumstances of the case, the learned Assessing Officer and CIT(A) erred by considering the appellant as non registered society u/s 12A of the Income Tax Act, 1961 whereas the appellant had filed the Form No. 10A dated 24.03.2006 which was not disposed in accordance to sub section 2 of section 12AA of the Income Tax Act, 1961. Hence the society is deemed registered u/s 12A and the presumption of Ld. AO & CIT(A) was wrong.

2. *Without prejudice to our main contention that the appellant is deemed registered u/s 12A of the Income Tax Act, 1961, if the appellant is non registered institution then the assessing officer had wrongly assumed the jurisdiction of the appellant and passed the order u/s 143(3) dated 30.12.2008 which is not in accordance to the law and shall be declared as null and void.*

3. *That on the facts and the circumstances of the case, the learned Assessing Officer and CIT(A) wrongly did not allow the application of income of Rs. 29,01,693 towards acquisition of capital asset which is available to the appellant as deemed registered institution. Hence the disallowance is unjustified.*

4. *That on the facts and the circumstances of the case, the appellant itself considered the members contribution of Rs. 12.00 lacs as the income under Income & Expenditure Account of the institution, then applying the provision of section 68 as income by learned CIT(A) and the assessing officer has no meaning in the law.*

5. *Without prejudice to our main contention that*

- a) the appellant is deemed registered institution under section 12A and*
- b) not allowing the application of Rs. 29,01,693/- towards acquisition of capital assets is unjustified.*

The learned assessing officer did not provide/allow the basic exemption of Rs. 1,00,000/- as applicable to the AOPs as per the provision of the Income Tax Act,

1961 while calculating the tax payable and calculated wrong tax at rate of tax at 30%.

6. The appellant craves leave to add, alter or modify any of the grounds of appeal at the time of hearing.”

3. During the course of hearing the ld. Counsel for the assessee at the very outset stated that proper and reasonable opportunity of being heard was not provided by the ld. CIT(A) who decided the appeal of the assessee *ex-parte* and sustained the addition made by the AO. She requested to set aside this case to the file of the ld. CIT(A) to be decided after providing due and reasonable opportunity of being heard to the assessee.

4. In his rival submission the ld. DR although supported the order of the authorities below but could not controvert the aforesaid facts narrated by the ld. Counsel for the assessee. He also submitted that the assessee did not cooperate and never appeared before the ld. CIT(A) in spite of the fact that many opportunities of being heard were provided by the ld. CIT(A).

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is an admitted fact that the ld. CIT(A) decided the appeal of the assessee *ex-parte* which is clearly mentioned in para 2 of the impugned order. He simply stated that notice of hearing was issued on 24.02.2011 but it is

not mentioned when the case was fixed for hearing. In the instant case, nothing is brought on record to substantiate that the said notice dated 24.02.2011 was served upon the assessee for hearing. It is well settled that nobody should be condemned unheard as per *maxim "audi alteram partem"*. We, therefore, deem it appropriate to set aside this case back to the file of the Id. CIT(A) to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. We also direct the assessee to cooperate and not to seek unwarranted or undue adjournment.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 01/12/2015)

Sd/-
(Beena Pillai)
JUDICIAL MEMBER

Dated: 01/12/2015

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR