

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री बी.आर.बास्करन, लेखा सदस्य
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ITA No.376/Mds/2014
निर्धारण वर्ष /Assessment Year : 2010-11

M/s. Caruna Bal Vikas,
No.128, Brick Klin Road,
Purasawalkam,
Chennai – 600 007.
PAN AAATC3951G
(अपीलार्थी/Appellant)

v. The Deputy Director of
Income-tax(Exemptions)-II,
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P.B.Sekaran, CIT

सुनवाई की तारीख/Date of Hearing : 05.02.2015
घोषणा की तारीख/Date of Pronouncement: 05.02.2015

आदेश / O R D E R

PER VIKAS AWASTHY, JUDICIAL MEMBER

The appeal has been filed by the assessee impugning
the order of the Commissioner of Income-tax(Appeals)-VII,
Chennai dated 18.12.2013 for the assessment year 2010-11.

2. The brief facts of the case are: The assessee is a public charitable society and is enjoying the benefit of Section 12AA of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee filed its return of income for the assessment year 2010-11 on 28.9.2010 declaring taxable income as 'nil'. The assessee-society was formed with the main object of development of poor and under-privileged children all over India through its various projects and programmes. The assessee is providing education, health care, social, spiritual and moral development irrespective of caste, creed, class or religion. The assessee in order to achieve its objects selected several societies / trusts throughout India known as "channel partners". Before selecting 'channel partners', the assessee ensures that the society/trust is already carrying on similar objects and is enjoying benefit of registration u/s.12AA of the Act. The assessee-society identified 129 channel partners during the impugned assessment year to achieve its objectives. The assessee received foreign contribution to the tune of ₹ 82.56 crores during the year.

In the course of scrutiny assessment, the Assessing Officer observed that out of 129 channel partners of the

assessee, 51 are “wholly charitable”, 19 are “wholly religious” and 59 are “partly religious and partly charitable”. The Assessing Officer held that in respect of 19 religious societies/trusts, it is a clear case of diversion of funds and violation of objects of the society. In respect of 59 “channel partners”, which are partly charitable and partly religious, there is nothing on record to show that the funds were utilized for charitable activities and not for religious purpose. The Assessing Officer held that since the assessee has utilized part of its funds for religious activities through “channel partners”, the said amount is not application of funds and is hit by the provisions of Sec.13(1)(b) of the Act. The Assessing Officer held that only a sum of ₹22.89 crores utilized for funding “channel Partners”, exclusively engaged in charitable activities is considered as application of funds. Therefore, only ₹ 22.89 crores qualify for exemption u/s.11(1)(a) of the Act. The balance sum of ₹ 50 crores was thus disallowed.

Aggrieved by the assessment order dated 30.3.2013, the assessee preferred an appeal before the Commissioner of Income-tax(Appeals). The Commissioner of Income-tax(Appeals) confirmed the aforesaid addition.

Against the order of the First Appellate Authority, the assessee has come in second appeal before the Tribunal.

3. Before the Tribunal, the assessee has raised following grounds :

“1. The CIT(Appeals) erred in sustaining the order of the Assessing Officer in bringing to tax ₹50,00,25,307/- out of the total of ₹ 72,89,46,618/- being the claim of application of income for child welfare programs/projects while re-computing the tax exemption provided in section 11(1)(a) of the Act read with section 13(1)(b) of the Act without assigning proper reasons and justification.

2. The CIT(Appeals) failed to appreciate that having accepted the statutory prescription/import of section 13(1)(b) of the Act and having not disputed the fact of registration of the Appellant Society as a public charitable trust in terms of section 12AA of the Act vid order dated 23.09.2002 in DIT(E) No.2(336)/2001-02, the sustenance of the denial of tax exemption by the Assessing Officer was wrong, erroneous, unjustified, incorrect and not sustainable in law.

3. The CIT(Appeals) erred on facts and in law in confirming the disallowance of depreciation amount to ₹ 65,91,434/- made by the Assessing Officer, holding

that the same does not amount to application of income.”

4. Shri S. Sridhar, appearing on behalf of the assessee, submitted that the authorities below have not disputed the fact that the assessee is a charitable society and is engaged in upliftment and development of under-privileged and poor children. The assessee is accomplishing its objects throughout India by roping various organizations with similar objects known as “channel partners”. The assessee has 129 “channel partners”, which are assisting the assessee in achieving its mission. The Assessing Officer applied the provisions of Sec.13(1)(b) of the Act on the basis of information collected in respect of “channel partners” from the website of Ministry of Home Affairs, Govt. of India. The Assessing Officer has not made any effort to physically verify the activities of the “channel partners”, which are stated to be religious and/or religious and charitable in nature. The Id. Counsel for the assessee vehemently stated that the funds received by the assessee were utilized in accordance with its objects. In order to support his contentions, he filed 35 volumes of paper books containing information regarding the details of amounts received, the

activities being carried out by the assessee and its “channel partners” etc. The Id. Counsel contended that the thorough examination of information and data given in the paper books would show that donations received were in fact utilized in consonance with the objects of the trust.

5. Shri P.B.Sekaran, representing the Department, defended the impugned order of the Commissioner of Income-tax(Appeals). The Id. DR submitted that the assessee has received ₹ 82 crores of donations, out of which more than ₹ 50 crores was diverted towards religious activities through its “channel partners”. The information given by the Ministry of Home Affairs on its website shows that out of 129 “channel partners”, only 51 are wholly engaged in charitable activities and the remaining 78 channel partners are either religious or partly charitable and partly religious. The Assessing Officer had rightly invoked the provisions of sec.13(1)(b) of the Act to disallow exemption on the amounts advanced to religious and partly charitable & partly religious organizations.

6. We have heard the submissions made by the representatives of both the sides and have perused the orders of

the authorities below. In appeal, the assessee has primarily raised following two issues:

- (i) Whether the amount of ₹ 50 crores, which has been given by the assessee to its “channel partners” for carrying out charitable activities, fall within the scope of sec.13(1)(b) of the Act?
- (ii) Whether the disallowance of depreciation amounting to ₹65,91,434/- amounts to application of income?

The Id. Counsel for the assessee in order to substantiate his submissions, has filed 35 volumes of paper books containing detailed information regarding “channel partners”, their activities, amounts advanced to them by the assessee, application of funds including details of beneficiaries, etc. These details were not provided in an exhaustive manner before the authorities below. We are of the considered opinion that the first issue raised by the assessee in its appeal, is a question of fact, which has to be decided after examination of the data and information filed by the assessee. To answer the first issue, it is essential to examine the objects of “channel partners” and verify the activities performed by them. For proper adjudication of the issue, we

deem it appropriate to remit the file back to the Assessing Officer to decide the issue afresh after analyzing the exhaustive information and data filed by the assessee before the Tribunal. So far as, the second issue of depreciation is concerned, we remit this issue also back to the Assessing Officer to decide it afresh in accordance with law.

7. The impugned order is set aside and the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court at the time of hearing, on Thursday, the 05th of February, 2015 at Chennai.

Sd/-

(बी.आर.बास्करन)

(B.R.Baskaran)

लेखा सदस्य/Accountant Member

sd/-

(विकास अवस्थी)

(Vikas Awasthy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 05th February, 2015.

Mpo/Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.