



आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL

"K" BENCH, MUMBAI

श्री राजेंद्र, लेखा सदस्य एवं श्री शक्तिजीत दे, न्यायिक सदस्य के समक्ष

BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND

SHRI SAKTIJIT DEY, JUDICIAL MEMBER

आयकर अपील सं. / **ITA no. 265/Mum./2016**

(निर्धारण वर्ष / Assessment Year : 2011-12)

M/s. Adivasi Pragati Mandal
C/o Survey no.50, Plot no.42
Lokmanya Nagar
At & Post Palghar
Dist: Thane 401 404
PAN – AAETS4024L

..... अपीलार्थी /
Appellant

v/s

Asstt. Commissioner of Income Tax
Palghar Circle, Palghar

..... प्रत्यर्थी /
Respondent

निर्धारिती की ओर से / Assessee by : Shri Rahul K. Hakani

राजस्व की ओर से / Revenue by : Shri Sujit Banger

सुनवाई की तारीख /
Date of Hearing – 17.01.2016

आदेश घोषणा की तारीख /
Date of Order – 21.10.2016

आदेश / ORDER

शक्तिजीत दे, न्यायिक सदस्य के द्वारा /
PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the assessee is directed against the order dated 21st October 2015, passed by the learned Commissioner (Appeals)-3, Mumbai, pertaining to assessment year 2011-12. Ground no.I(1) with its sub-grounds relate to denial of assessee's claim of

exemption under section 11 of the Income Tax Act, 1961 (for short "*the Act*").

2. Brief facts are, the assessee a society is registered under section 12AA of the Act. For the assessment year under dispute, assessee filed its return of income on 24th August 2011, declaring total income at nil after claiming exemption under section 11 of the Act. The Assessing Officer noticing that registration under section 12AA of the Act was granted w.e.f. 1st April 2011, denied assessee's claim of exemption under section 11 on the reasoning that during the relevant financial year the assessee was not registered under section 12AA of the Act and accordingly completed the assessment by treating the surplus of income over expenditure as business profit. Further, he also disallowed an amount of ₹ 2,73,200 under section 40(a)(ia) of the Act. Being aggrieved of the assessment order so passed, assessee preferred appeal before the learned Commissioner (Appeals).

3. The learned Commissioner (Appeals) also sustained disallowance of assessee's claim of exemption under section 11 of the Act as well as disallowance made under section 40(a)(ia).

4. Learned Authorised Representative submitted before us that in course of proceedings before the first appellate authority, the assessee had specifically raised the issue of claim of exemption under section

11, which the learned Commissioner (Appeals) refused to adjudicate by raising a technical objection that assessee had not raised a specific ground on the issue. He, therefore, submitted the matter may be restored back to the file of the learned Commissioner (Appeals) for deciding the issue of assessee's claim of exemption under section 11 on merits.

5. Learned Departmental Representative on the other hand justifying the action of the learned Commissioner (Appeals) submitted, as the assessee had not raised the issue before the first appellate authority, there is no scope for adjudicating the same.

6. We have considered the submissions of the parties and perused the material available on record. It is evident from the impugned order of the learned Commissioner (Appeals) that the assessee in the written submission filed before him had specifically raised the issue of denial of claim of exemption under section 11. In fact, in Para-5(iii), the learned Commissioner (Appeals), though, acknowledges this fact, however, raising a technical objection that the assessee has not raised any specific ground on the issue, has rejected the plea of the assessee. In our opinion, when the assessee in the course of proceedings before the learned Commissioner (Appeals), has specifically raised the issue of denial of exemption under section 11, the learned Commissioner (Appeals) instead of rejecting such plea on

a technical grand should have decided assessee's claim on merit. It is settled position of law when justice and technicalities are pitted against each other, judicial approach should always be in favour of substantial justice rather than technicalities. In view of the aforesaid, we are inclined to set aside the impugned order of the learned Commissioner (Appeals) with a direction to decide the issue relating to assessee's claim of exemption under section 11 on merits after due opportunity of being heard to the assessee. Ground no.I(1) is allowed for statistical purposes.

7. In view of our aforesaid decision, there is no need to adjudicate ground no.2, at this stage and the same is also set aside to the file of the learned Commissioner (Appeals) for deciding afresh on the basis of the decision to be taken on assessee's claim of exemption under section 11 of the Act.

8. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 21.10.2016

Sd/-
राजेंद्र,
लेखा सदस्य
RAJENDRA
ACCOUNTANT MEMBER

Sd/-
शक्तिजीत दे,
न्यायिक सदस्य
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 19.10.2016

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai