

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
श्री डी.टी.गरासिया, न्यायिक सदस्य तथा
श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.82/Ind/2013

निर्धारण वर्ष /Assessment Year: 2004-05

M/s Jasleen Education Society
Indore

PAN – AAAAJ 1218L

:: अपीलार्थी /Appellant

Vs
ACIT 2(1)

Indore

:: प्रत्यर्थी /Respondent

निर्धारिती की ओर से/Assessee by	Shri S.N. Agrawal and Shri Pankaj Mogra
राजस्व की ओर से/Revenue by	Shri Rajiv Jain

सुनवाई की तारीख Date of hearing	5.1.2017
उद्घोषणा की तारीख Date of pronouncement	19.1.2017

आदेश /O R D E R

PER SHRI D.T. GARASIA, JM

This appeal has been filed by the Revenue against the order of the learned CIT(A)-II, Indore, dated 31.12.2012.

2. The assessee has taken the following additional ground of appeal :-

“That on the facts and in the circumstances of the case, the assessment order as passed by the Assessing Officer was based on the invalid notice as issued u/s 143(2) of the Income Tax Act. Hence, the order u/s 143(3) of the Act as passed on this notice is not a valid order. The same now requires to be quashed.”

3. The short facts of the case are that the assessee is running a school and income of the assessee is exempt u/s 10(23C) of the Act. The Assessing Officer rejected the claim of the assessee for exemption u/s 10(23C) of the Act mainly on two grounds; firstly the assessee has shown surplus of Rs.22,29,702/- and secondly that the assessee has given loan/advance of Rs.1,25,95,668/- to Sheetu Education Service Pvt. Ltd. which is sister concern of the assessee. Therefore, the Assessing Officer has come to the conclusion thatg the assessee is not existing solely for educational purposes but it is existing for the purpose of profit. As a result, the Assessing Officer added surplus shown by the

society of Rs. 22,29,702/-. The Assessing Officer also added the opening balance of unsecured loans of Rs.32,85,966/- u/ 69C of the Act and also disallowed some part of salary expenses, gardening expenses, kitchen expenses, etc. As such, the Assessing Officer assessed the total income of the assessee at Rs.65,36,970/-.

4. During the course of hearing, the learned counsel for the assessee has taken a legal ground that in the present case the assessee has filed the return of income on 31.10.2004. The Assessing Officer has issued notice u/s 143(2) of the Act on 1.8.2005. As per CBDT Circular No.19/2004 dated 20.9.2004 it was directed to the concern Assessing Officers that the process of selection of cases for scrutiny for returns filed upto 31.3.2004 must be completed by 15th October, 2004. For returns filed during the current financial year 2004-05, the selection of cases for scrutiny will have to be completed within 3 months of

the date of filing of the return. As per said CBDT Circular, the Assessing Officer ought to have issued notice u/s 143(2) within three months from the date of filing of the return of income during the financial year 2004-05. In the year under consideration the assessee has filed the return of income on 31.10.2004 which falls during the financial year 2004-05 and, therefore, notice u/s 143(2) of the Act ought to have been issued on 31.1.2005 but in the present case the notice u/s 143(2) of the Act was issued on 1.8.2005 which is barred by limitation as per Circular No. 10/2004. The learned counsel for the assessee relied upon the decision of the Chhattisgarh High Court in the case of DCIT vs. Sunita Finlease Ltd.; 330 ITR 491 wherein it is held that notice for selection of scrutiny issued beyond the period as prescribed in the CBDT Circular No. 9/2004 is not valid. The learned counsel for the assessee also relied upon the decision of the ITAT, Indore Bench, in the case of

Shri Sanjay Agrawal; ITA No. 490/Ind/2008 dated 27.11.2012 wherein the issue was decided in favour of the assessee. Similarly in the case of Piyush Agrawal, ITAT, Indore Bench vide ITA No. 184/Ind/2012 had taken a similar view. Similarly Calcutta Bench of ITAT had also considered this issue and decided the issue in favour of the assessee.

5. The learned DR has objected to the proposition of the assessee on the ground that as per the decision of the Hon'ble Supreme Court in the case of Kerala Financial Corporation vs. CIT (SC); 210 ITR 129(SC) it was decided that the Circular issued by CBDT in exercise of powers conferred by section 119 of the Act has no significance insofar as the point under consideration namely whether the circular can override or detract from the provisions of the Act is concerned, inasmuch as what section 119 has empowered is to issue orders, instructions or directions for

the “proper administration” of the Act or for such other purposes specified in sub-section (2) of the section. Such an order, instruction or direction cannot override the provisions of the Act; that would be destructive of all the known principles of law as the same would really amount to giving power to a delegated authority to even amend the provision of law enacted by Parliament. The learned DR, therefore, submitted that as per the decision of the Hon'ble Supreme Court, any Circular issued by CBDT does not override the provisions of the Act and in the Income tax Act the limit for issuing the notice u/s 142 is one year and this notice is, therefore, within time. The learned DR argued that this plea of the assessee is, therefore, not tenable. Moreover, he also relied upon the decision of the Bombay High Court in the case of Banque Nationale De Paris vs. CIT; 237 ITR 518 (Bom) wherein the same principle has been laid down. The learned DR, therefore, prayed that

this Circular is not binding and the matter may be decided on merit.

6. We have considered the submissions of both the sides. We find that an identical issue had come up before this Bench of the Tribunal in the case of Shri Sanjay Agrawal; ITA No. 490/Ind/2008 dated 27.11.2012 wherein the same CBDT Circular No. 10/04 was considered the the matter was decided by the Tribunal as under :-

"7. We have considered the rival submissions and have gone through the orders of the authorities below in the light of judicial pronouncement cited at bar. There is no dispute to the factual position regarding date of filing the return, date of issue of notice u/s 143(2) and the date on which such notice was served on the assessee. As per C.B.D.T. instruction no.10/2004, the process of selection of scrutiny of returns filed during the financial year 2004-05 must be completed within 3 months of the date of filing of return. However, in the instant case before us, as the return was filed on 28.10.2004, the same falls during the financial year 2004-05, therefore, as per this instruction of C. B. D. T., Notice u/s 143(2) was to be served latest by 27.1.2005. However, the Assessing Officer has issued notice dated 28.7.2005, which was served on the assessee on 8.8.2005. Since notice u/s 143(2) served beyond the period of three months, proceedings u/s 143(2) was liable to be quashed in view of the direct decision of Hon'ble Chhatisgarh High Court in the case of Sunita Finlease Limited, 17 ITJ 272, wherein the Court held that C.B.D.T. Instruction No.9/2004 is binding on Department and same is not violative of the provisions of the Act. Accordingly, Tribunal was held to be justified in holding that since the notice u/s 143(2) was issued in non-compliance of said C.B.D.T. Instruction No.9/2004, which was binding on the revenue,

the assessment so framed was invalid. As the issue under consideration is squarely covered by the decision of Hon'ble High Court, respectfully following the same, we allow the ground of invalidity of assessment. However, no contrary judicial pronouncement was brought to our notice. We, therefore, follow the judgment of Chhatisgarh High Court."

In view of the above discussion, we hold that CBDT Instruction No.10/2004 is binding on Department and same is not violative of the provisions of the Act. We further hold that since the notice u/s 143(2) was issued in non-compliance of said CBDT Instruction No.9/2004, which was binding on the revenue, the assessment so framed was invalid.

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

The order has been pronounced in open Court on 19th January, 2017.

Sd/-

(ओ.पी.मीना)

लेखा सदस्य

(O.P.Meena)

Accountant Member

दिनांक /Dated :19th January, 2017.

sd/-

(डी.टी.गरासिया)

न्यायिक सदस्य

(D.T.Garasia)

Judicial Member

M/s Jasleen Education Society
ITA No. 82/Ind/2013

Dn/