

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1910/Bang/2017
Assessment Year : 2011-12

M/s. Annapurneshwari Anantha Ashrama Trust, # 341, B Cross, Vyalikaval, Malleshwaram, Bangalore – 560 003. PAN: AAETS 9166P	Vs.	The Deputy Director of Income Tax (Exemptions), Circle – 17 (2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri T. Srinivasa, CA
Respondent by	:	Smt. Swapna Das, JCIT (DR)

Date of hearing	:	16.01.2018
Date of Pronouncement	:	24.01.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT (A) – 14, LTU, Bangalore dated 30.06.2017 for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under.

“1. The impugned order passed by the learned Commissioner is unjust and illegal being to contrary to facts and circumstances as well as the binding decisions on the issue.

2. The Learned Commissioner is not justified in confirming the order passed by the learned assessing officer , ignoring the submissions made by the appellant.

3. The Learned Commissioner ought to have appreciated that the voluntary contributions received by the Appellant were covered under exceptions covered under sub-section (2)(b) of section 115BBC of the Income Tax as clarified CBDT, vide circular No 14/2006 dated 28.12.2006.

4. The Learned Commissioner has grossly erred in holding that the object of the appellant trust Viz., to maintain, establish, run, develop,

improve, extend grant donate for old age home and home for deaf and dumb, and also to establish and maintain, run, improve extend, grant, donate for hospitals; to help the poor and needy and the deserved in general and especially in respect of their food, clothing, providing shelter and health including all types of medical aid and payment of hospital charges etc., and also to conduct marriages including mass marriage" does not qualify to be categorized as a "religious trust" .

5. The Learned Commissioner ought to have been guided by the ratio of the decision on the Hon'ble High Court of Delhi in the case of Delhi CIT (E) Vs. Bhagwan Shree Lakshmi Naraindham Trust, whose target groups are widows, orphans, old and infirm people, destitute, illiterate, handicapped, mentally retarded, providing food and shelter to poor and needy, night shelter, nari-niketan, mahila ashram, weaker sections and all other groups who can be included in the phrase in need of physical, mental and financial help was declared to fall under the category of religious activities.

6. For the above grounds and such other grounds that may be urged at the time of hearing, with kind permission, Appellant prays that the Hon'ble Tribunal may kindly be pleased to allow the appeal in the interest of Justice."

3. The assessee has also raised some additional grounds which are as under.

"1) The Learned assessing officer has erred in treating an amount of Rs.34,24,180/- being the voluntary donations received towards corpus fund as anonymous donations and subjecting the same to taxation 115BBC of the IT Act 1961 (Act), ignoring the details of such donations filed during the assessment proceedings furnishing SI. No & date, name and amount of all such donations except for address, which under law are neither required nor mandated.

*2) Learned Assessing Officer has failed to appreciate that the appellant Trust , being registered u/s 12A of the Act, falls under the category of "**any trust or institution created or established wholly for religious and charitable purpose**" and consequently such donations were specifically excluded from the provisions of sec 115BBC relevant extract of which is reproduced herein below:*

115BBC(2)

"The provisions of sub section (1) shall not apply to any anonymous donation received by (a)any trust or institution created or established wholly for religious and charitable purpose"

3) The Learned Assessing Officer, ought to have followed the Board circular No – 14/28-12-2006 (Copy of the said Circular is enclosed Annexure - A), wherein vide Para 25.2 it has been clarified as under.

"With view to prevent channelization of unaccounted money to these

*institution by way of anonymous donations , a new section 115BBC has been inserted to provide that any income a wholly charitable trust or institution by way of anonymous donation shall be included in its total income and taxed at the rate of 30%. **Anonymous donation made to wholly charitable and religious trust or institution, i.e. mixed purpose trust or institution shall be taxed only if it is for any university or other educational institution or any hospital or other medical institution run by them. Anonymous donation to wholly religious trusts or institution will not be taxed.***"

4) *The appellant relies upon and invites your Honour's kind reference to the following decisions, wherein, under similar circumstances, Hon'ble High Courts/ ITAT have held that such voluntary donations were exempt and outside the ambit of section 115BBC of the Act.*

- *ITAT Lucknow in the case of ITO-11(3) Lucknow Vs. Saraswathi Education Charitable Trust.*
- *Bombay High Court in the case of DIT(E) Vs. Bombay Panjrapole Trust.*
- *Hon'ble High Court of Delhi in case of Delhi CITE) Vs. Bhagwan Shree Lakshmi Naraindham Trust.*

*Copies of the above decision are enclosed as **Annexure – B***

5) *The LAO, is not justified in failing to appreciate that the Appellant had spent and utilized the entire (100%) donations/revenues received during the year towards charitable purpose and consequently ought to have applied provision of section 11 and excluded the same from the computation of "Total income".*

For the above additional grounds and such other grounds that may be urged at the time of hearing, with kind permission, the Appellant humbly prays that you Honour may kindly be pleased to allow the appeal in the interest of Justice.

4. It was submitted by Id. AR of assessee that the issue in dispute is squarely covered in favour of the assessee by various judicial pronouncements which are available in case law paper book containing one Tribunal order and some judgments of various High Courts.
5. First he pointed out the Tribunal order rendered in the case of ITO(Exemption) Vs. Sri Shirdi Sai Samaj as reported in ITA No. 1044/Bang/2015 dated 11.05.2016 copy available on pages 1 to 6 of the case law paper book. He submitted that as per this Tribunal order, it was held that anonymous donations made to religious trust will not come within the purview of the provisions of sec.

115BBC of the Act. Then he placed reliance on the judgment of Hon'ble Bombay High Court rendered in the case of DIT(E) Vs. Bombay Panjrapole Trust as reported in 2015 (3) TMI 718 copy available on pages 7 to 10 of the case law paper book and he also placed reliance on judgment of Hon'ble Delhi High Court rendered in the case of CIT(E) Vs. Bhagwan Shree Laxmi Naraindham Trust in ITA No. 269/2015 dated 07.09.2015 copy available on pages 11 to 22 of case law paper book. My attention was drawn to Para no. 5 of this judgment of Hon'ble Delhi High Court. The Id. DR of revenue submitted that these judicial pronouncements are not applicable in the facts of the present case. She drawn my attention to Para no. 11 of the order of CIT(A) and submitted that a clear finding has been given by CIT(A) in this Para that full details of identity and address of the donors are not available.

6. I have considered the rival submissions. The relevant objects of the assessee trust are reproduced by AO on page no. 2 of the assessment order in Para no. 6 which are reproduced herein below for the sake of ready reference.

“a. To establish, maintain, run, develop, improve, extend, grant, donate for and to aid in the establishment, maintenance, improvement and extension of schools, colleges and other educational institutions and ananthashrama.

b. to maintain, establish run, develop, improve, extend, grant donate for old age home and home for deaf and dumb, and also to establish maintain, run, improve extend, grant, donate for hospitals.

c. To help the poor and needy and the deserved in general and especially in respect of their food, clothing, providing shelter and health including all types of medical aid and payment of hospital charges etc., and also to conduct marriages including mass marriage.”

7. From the above Para of the assessment order, it is seen that one of the objects of the assessee trust is to help the poor and needy and the deserved in general and especially in respect of their food, clothing, providing shelter and health including all types of medical aid and payment of hospital charges etc., and also to conduct marriages including mass marriage.
8. Now in the light of these facts, I examine the applicability of the judgment of Hon'ble Delhi High Court rendered in the case of CIT(E) Vs. Bhagwan Shree

Laxmi Naraindham Trust (supra). Para 2 of this judgment is relevant because it contains the objects of that trust. Para 5 of this judgment is also relevant and hence, both these paras are reproduced herein below for the sake of ready reference.:-

“2. The Assessee, Bhagwan Shree Laxmi Narain Dham Trust („Trust”), was accorded registration under Section 12A of the Act on 20th May 2005. The Assessee-Trust was set up on 30th December 2002 to carry out various charitable, spiritual and religious objects as set out in the trust deed. Some of the objects of the Trust as set out in the Trust Deed are as under:

(i) To establish, promote, set-up, run, maintain assist finance, support and/or help in setting up and/or maintaining and/or running schools, and other institutions orphanages, widow home, poor houses or other establishments of relief and/or help to the poor, old and infirm people.

.....

(vii) To arrange, establish, manage and supervise orphanages, old age homes, night shelters, hospitals, dharmshala, nariniketan and mahila ashram etc.

(viii) To give spiritual lectures to mental disturbed person and spiritual lecture to all kinds of human beings.

.....

(xi) To do all other activities for the interest of the human beings to help in physical, mentally and financially.

(xii) To give provide and/or render food, medicine and other help and/or assistance in any shape or form to the poor deserving and needy person. To give provide and/or render monetary and/or other help and assistance for the relief of persons and animals affected by natural and other calamities such as food, fire, famine, cyclone, earthquake, storm, accident, pestilence drought, cyclone, epidemic and the likes to give donations, subscriptions or contributions to institutions, establishments centres of persons doing relief work on such occasions.

.....

(xiv) To open found, establish, manage, promote, set-up, run, maintain, assist, finance, support and/or help in the setting up and/or maintaining and/or running schools, colleges, arts and science medical, para medical and technical, lecture halls and other establishments or institutions etc. for advancement of education and knowledge in arts, science, literature, humanities and all other useful subjects in all their manifestation.

.....

(xvii) To promote, organize, administer, establish support maintain and/or grant and to person institution or society or organization is ever having for the objects of charitable purpose and to incur expenditure in connection therewith."

"5. In the impugned order dated 20th August 2014 the ITAT while allowing the Assessee's appeal concluded, after discussing the relevant clauses of the Trust Deed as well as the decision of the Supreme Court in Commissioner of Income-Tax v. Dawoodi Bohra Jamat (2014) 364 ITR 31 (SC), that the AO and CIT had proceeded "on a very narrow and incorrect understanding in holding that the Assessee Trust was engaged in spreading spirituality and since Section 115BBC only exempts religious trust, a trust allegedly imparting spiritual knowledge was consequently not contemplated as an exception by the Legislature as much as it consequently is barred to claim exemption vis-a-vis the anonymous donation." The ITAT held that the "said aim has to be understood in the context of and read along with the other objects of the trust whose target groups are widows, orphans, old and infirm people, destitute, illiterate, handicapped, mentally retarded, providing food and shelter to poor and needy, night shelter, nari-niketan, mahila ashram, weaker sections and all other groups who can be included in the phrase 'in need of physical, mental and financial help.'" Further the ITAT held that the "objects of the Trust and the context in which spiritual lectures espousing the philosophy, i.e., the spirituality of the major and predominant religious of the country needs to be considered in the light of the well-accepted and well-known fact that all the major religions of the world with one voice eulogies the importance of taking care of the old, infirm, disabled" Accordingly, it was held that the Revenue had incorrectly applied Section 115BBC to the facts of the Assessee's case."

9. In the above paras 2 & 5 of **this** judgment, it is seen that in that case, the objects of the assessee trust included mainly this object that the target groups such as widows, orphans, old and infirm people, destitute, illiterate, handicapped, mentally retarded persons were to be provided food and shelter and it was held in that case that it is a well-known fact that all the major religions of the world with one voice eulogies the importance of taking care of the old, infirm, disabled. In the light of this, it was held that carrying on charitable activities along with organizing of spiritual lectures, the assessee by no means ceases to be a religious institution. The relevant Para being Para no. 15 is also reproduced herein below.

“15. It might well be that a Hindu religious institution like the Assessee is also engaged in charitable activities which are very much part of religious activity. In carrying on charitable activities along with organising of spiritual lectures, the Assessee by no means ceases to be a religious institution. The activities described by the Assessee as having been undertaken by it during the AY in question can be included in the broad conspectus of Hindu religious activity when viewed in the context of the objects of the Trust and its activities in general.”

10. In the present case, as per the objects clauses reproduced by the AO and also reproduced above in Para 6, this is also an object of the assessee to establish and maintain ‘anathashrama’, ‘old age home’ ‘home for deaf and dumb’ and to render all sorts of help to the poor and needy including conducting of marriage and mass marriage. These objects are similar to the objects of the assessee trust in the case of judgment of Hon’ble Delhi High Court rendered in the case of CIT (E) Vs. Bhagwan Shree Laxmi Naraindham Trust (supra) as reproduced in Para 8 above except this that in that case, this was also an object that the assessee trust will arrange spiritual lectures but in the present case, there is no such object. But in my considered opinion, this difference is not material because spreading spirituality was not considered to be a religious activity in that case as can be seen in Para 15 of that judgment reproduced above. Hence, In my considered opinion, the issue in the present case is covered in favour of the assessee by this judgment of Hon’ble Delhi High Court rendered in the case of CIT (E) Vs. Bhagwan Shree Laxmi Naraindham Trust (supra) and respectfully following the same, the issue is decided in favour of the assessee.

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

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 24th January, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.