

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.541/Vizag/2017
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Golla's Educational &
Research Trust
Vijayawada
[PAN No.AABTG8836H]
(अपीलार्थी / Appellant)

The ACIT, (CPC)
Bangalore
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri V. Appala Raju, DR
सुनवाई की तारीख / Date of hearing : 25.04.2018
घोषणा की तारीख / Date of Pronouncement : 26.04.2018

आदेश / O R D E R

PER D.S. SUNDER SINGH, Accountant Member:

This appeal filed by the assessee is directed against order of the
Commissioner of Income Tax, Vijayawada vide ITA
No.408/CIT(A)/VJA/2015-16 dated 31.8.2017 for the assessment year
2014-15.

2. The assessee is an educational research trust registered under Trust Act. The assessee filed return of income on 6.1.2015 admitting total income of ₹ 65,526/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called as 'the Act') and the income of the assessee was taxed under maximum marginal rate.

3. Aggrieved by the intimation u/s 143(1) of the Act, the assessee went on appeal before the CIT(A) and the Ld. CIT(A) upheld the charging of income under maximum marginal rate.

4. Aggrieved by the order of the A.O., the assessee filed appeal before this Tribunal. During the appeal hearing, the Ld. A.R. argued that the return was processed u/s 143(1) of the Act and as per section 164(2) of the Act the income of a Charitable Trust required to be taxed at normal rates. The only ground pressed by the Ld. A.R. in this appeal is ground No.(d) with regard to charging of tax at normal rates.

5. On the other hand, the Ld. D.R. supported the intimation u/s 143(1) of the Act.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, even if the income of the assessee not exempt u/s 11 & 12 of the Act as per section 164(2) of the Act, the income of the Trust required to

be taxed at normal rates. For ready reference, we extract relevant part of Section 164(2) of the Act of the proviso which reads as under:

[Charge ³¹ of tax where share of beneficiaries unknown.

³² 164. (1) ³³[Subject to the provisions of sub-sections (2) and (3), where] any income in respect of which the persons mentioned in clauses (iii) and (iv) of sub-section (1) of [section 160](#) are liable as representative assessee or any part thereof is not specifically receivable on behalf or for the benefit of ³¹any one person ³¹ or where the individual shares of the persons on whose behalf or for whose benefit such income or such part thereof is receivable are indeterminate or unknown (such income, such part of the income and such persons being hereafter in this section referred to as "relevant income", "part of relevant income" and ³¹"beneficiaries", respectively), ³⁴[tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate³⁵ :]

.....

⁴⁴(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, ⁴⁵[or which is of the nature referred to in sub-clause (iia) of clause (24) of [section 2](#),] ⁴⁶[or which is of the nature referred to in sub-section (4A) of [section 11](#),] tax shall be charged on so much of the relevant income as is not exempt under [section 11](#)⁴⁵[or [section 12](#)], as if the relevant income not so exempt were the income of an association of persons :

⁴⁷[**Provided** that in a case where the whole or any part of the relevant income is not exempt under [section 11](#) or [section 12](#) by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of [section 13](#), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.]]

7. Plain reading of section 164(2) of the Act, shows that the income derived from the property held under the Trust wholly for charitable purposes required to be taxed at normal rates. On the similar facts, in the case of ITO Vs. Shri Hanuman Mandir Trust (2003) 84 ITD 0083 the Pune Tribunal has held as follows:

"I have considered the rival submissions and perused the facts on record. I have perused the terms and contents of the trust deed which have been reproduced (supra) and after doing so, I hold that the assessee trust has to be considered as a public religious trust in view of the judgement of the Hon'ble Supreme Court in the case of Devki Nandan Vs. Murlidhar (supra). The submission of the assessee before the CIT(A) that it is the deity who is the assessee and that, therefore, the status should be that of individual is not correct, in view of the observations of the Hon'ble Supreme Court reproduced (supra). Accordingly, I direct that the status of the assessee has to be taken as that of AOP. But since the assessee's income is one derived from property held under the trust wholly for

charitable or religious purposes, provisions of s. 164(2) will come into operation, but since under Schedule to Finance Act, rates of income-tax for AOP were the same as those of individual and, therefore, the assessee even though assessable under the status of AOP is still to be taxed as per the rates applicable to an individual. I further hold that proviso to s. 164(2) was wrongly applied in the present case to tax the assessee at the maximum marginal rate, because maximum marginal rate could be applied only if there was failure on the part of the trust under s. 13 (1)(c) or 13(1)(d) of the Act, which is not the reason for denying benefits of s. 11 in the present case. In view of the above legal position, I hold that s. 164(2) applies and the tax is to be calculated on the AOP on the minimum marginal rate."

8. Tax Payers Information Series -37, Assessment of Charitable Trusts and Institutions published by the Income tax Department clarifies the position in para No.5.7 as follows:

Income derived from property held under Trust wholly for charitable or religious purpose (including voluntary contributions received from donors), to the extent it is not exempt under Sections 11 and 12, is liable to tax at the normal rates applicable to an Association of Persons (AOP), except for anonymous donations discussed in Para 5.4 above. .

Therefore, we hold that the income of the assessee required to be taxed at normal rates of AOP but not at maximum marginal rate. Accordingly, we direct the A.O. to tax the income of the assessee at normal rates.

9. Even otherwise, whether to charge the income at normal rates or at maximum marginal rate is an issue of debate and require verification of facts which cannot be decided u/s 143(1) of the Act. The A.O. u/s 143(1) of the Act taxed the assessee's income at maximum marginal rate though the assessee claimed the same at normal rates. The issue is a debatable which has to be decided after taking into consideration

facts and merits of the case and the relevant facts and case laws. Therefore, such adjustments assessments are not permissible u/s 143(1) of the Act, hence, we set aside the orders of the lower authorities and allow the appeal of the assessee.

10. The remaining ground No.1 (a,b,c & e) are not pressed by the Ld. A.R. during the appeal hearing. Hence, ground Nos. 1(a), (b), (c) and (e) are dismissed as not pressed.

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

The above order was pronounced in the open court on 26th Apr'18.

Sd/-
(वी. दुर्गराव)
(V. DURGA RAO)

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)
न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam:
दिनांक /Dated : 26.04.2018
VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – M/s. Golla's Educational and Research Trust, 26-25-9, Durgi Vari Street, Gandhinagar, Vijayawada
2. प्रत्यार्थी / The Respondent – The ACIT (CPC), Bengaluru.
3. आयकर आयुक्त / The CIT, Vijayawada
4. आयकर आयुक्त (अपील) / The CIT (A), Vijayawada
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, VISAKHAPATNAM