

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 2355/Kol/2017
Assessment Year: 2013-14

Pediatric Infectious Diseases Academy.....Appellant
Oriental Apartments, Flat No. H-1,
15C, Canal Street, Moulali,
Kolkata – 700 014.
[PAN: AACAP 0458 JJ]

I.T.O. Ward 31(2) Kolkata.....Respondent
10, Middleton Row,
Kolkata – 700 071.

Appearances by:

Shri Sandeep Vimal, FCA and Shri Ritesh Vimal, FCA appearing on behalf of the Assessee.

Shri Alok Nag, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : April 9, 2018

Date of pronouncing the order : May 24, 2018

ORDER

This appeal filed by the revenue is directed against the order of Ld. CIT(Appeals) – 9, Kolkata dated 09.08.2016 and the solitary issue involved therein relates to the disallowance of Rs. 41,59,000/- made by the A.O. and confirmed by the Ld. CIT(A) u/s 40(a)(ia) for non-deduction of tax at source from the payment of printing charges.

2. The assessee in the present case is an association of paediatric doctors. During the year under consideration, a journal was published and distributed by it to the members free of cost. The expenditure for printing of the said journal was claimed to be financed from sponsorship fees. In the return of income filed for the year under consideration on 26.11.2013, surplus of Rs. 4,58,880/- was offered to tax by the assessee. During the course of assessment proceedings, it was noticed by the A.O. that the assessee has paid printing charges of

Rs. 41,59,000/- to M/s. Reed Elsevier India Pvt. Ltd. without deduction of tax at source as required under section 194C. In this regard, it was explained by the assessee that there was no business carried on by it and the surplus generated from the activity of publication of journal was shown under the head 'income from other sources'. It was contended on behalf of the assessee before the A.O. that the provision of section 40(a)(ia) therefore was not applicable even if there was failure to deduct tax at source from printing charges under section 194C. This contention of the assessee was not found acceptable by the A.O. According to him, as per the proviso to section 2(15) of the Act, the activity of publication of journal carried on by the assessee was in the nature of business and the income from the said activity was chargeable to tax under the head profits and gains of business or profession. He, therefore, held that the printing charges of Rs. 41,59,000/- paid by the assessee without deduction of tax at source u/s 194C were liable to be disallowed u/s 40(a)(ia). He accordingly made a disallowance to that extent in the assessment completed u/s 143(3) vide an order dated 15.03.2016.

3. Against the order passed by the A.O. under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A). During the course of appellate proceedings before the Ld. CIT(A), it was contended on behalf of the assessee that the proviso to section 2(15) relied upon by the Assessing Officer was not applicable in its case as the activity of publication of journal was not in the nature of trade, commerce or business. It was reiterated on behalf of the assessee that the said activity was financed from sponsorship fees and the journals published were issued to the members free of cost. It

was contended that the A.O., therefore, was not justified in classifying the surplus from the said activity as business income instead of income from other sources and making a disallowance u/s 40(a)(ia) for non-deduction of tax at source from the payment of printing charges. The Ld. CIT(A) did not find merit in this contention of the assessee. He held that the assessee being a charitable organisation was of no relevance for the applicability of section 40(a)(ia) and the A.O., therefore, was fully justified in invoking the said provision to make the disallowance. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material on record. It is observed that the assessee in the present case is an association of paediatric doctors with the principal object of general public advancement. It is duly registered under the West Bengal Society Registration Act, 1961 as well as under section 12A of the Income Tax Act, 1961. During the year under consideration, it had published journal from the funds received from sponsorship fees and the journals so published were issued to the members free of cost. The surplus from the activity of publishing journal was offered to tax by the assessee under the head 'income from other sources' and when the disallowance was sought to be made by the A.O. u/s 40(a)(ia) for non-deduction of tax at source from the payment of printing charges, it was claimed by the assessee that the said provision could be invoked only when computing income under the head 'profits and gains from business or profession'. The A.O. however treated the surplus of the assessee from the activity of publication of journal as its business income by relying on the proviso

to section 2(15) and made a disallowance on account of printing charges u/s 40(a)(ia). As rightly contended on behalf of the assessee before the Ld. CIT(A) as well as before the Tribunal, the activity of publication of journal having been financed from the sponsorship fees and the said journals having been issued to the members free of cost, the same cannot be treated as in the nature trade, commerce or business as envisaged in the proviso to section 2(15) and the income of the assessee from the said activity cannot be treated as its business income. I, therefore, find merit in the contention of the learned counsel for the assessee that the A.O. was not justified in re-classifying the income of the assessee from the activity of publication of journals as business income and in making a disallowance u/s 40(a)(ia).

5. In my opinion, the Ld. CIT(A) is also not justified in holding that the fact of the assessee being the charitable organisation is of no relevance for the applicability of section 40(a)(ia). As pointed out by the learned counsel for the assessee, this view taken by the Ld. CIT(A) is contrary to the decision of the Hon'ble Bombay High Court in the case of Bombay Stock Exchange vs DDIT 365 ITR 181 wherein it was held that where the income of the assessee was exempt under section 11 and the assessee was not carried on the business, section 40(a)(ia) had no application. Moreover, the insertion of Explanation 3 to Section 11 by the Finance Act, 2018 making inter alia the provisions of Section 40(a)(ia) applicable in case of charitable or religious trust or institution with effect from 1st April, 2019 further shows that section 40(a)(ia) hitherto was not applicable in computing income of entities registration u/s 12A of the Act. I, therefore, hold that the

disallowance made by the A.O. under section 40(a)(ia) and confirmed by the Ld. CIT(A) is not sustainable and deleting the same, I allow this appeal of the assessee.

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

Order Pronounced in the Open Court on 24th May, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 24/05/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Pediatric Infectious Diseases Academy, Oriental Apartments, Flat No. H-1, 15C, Canal Street, Moulali, Kolkata – 700 014.
2. ITO Ward 31(2), 10, Middleton Row, Kolkata – 700 071.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata