

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri A.T. Varkey, JM & Shri M.Balaganesh, AM ]

I.T.A No. 2007/Kol/2016

Assessment Year : 2012-13

DCIT, Circle-40, Kolkata

(Appellant)

-vs- Thakurani Sree Sree Durgamata Jue Estate

[PAN: AAAJT 2385 D]

(Respondent)

For the Appellant : Shri Sandeep Lakra, Addl. CIT Sr. DR

For the Respondent : Shri Soumitra Choudhury, Advocate  
Shri Joydeep Chakraborty, Advocate

Date of Hearing : 25.09.2018

Date of Pronouncement : 05.10.2018

**ORDER**

**Per M.Balaganesh, AM**

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-12, Kolkata [in short the Id CIT(A)] in Appeal No. 20/CIT(A)-12/Kol/Cir-40/2015-16 dated 27.07.2016 against the order passed by the DCIT, Circle-40, Kolkata [ in short the Id AO] under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (in short “the Act”) dated 31.03.2015 for the Assessment Year 2012-13.

2. The first issue to be decided in this appeal is as to whether the Id CITA was justified in holding that the assessee was eligible for deduction u/s 80GGA of the Act in the facts and circumstances of the case. The inter connected issue is with regard to allowability of professional and legal fees of Rs 29,53,889/- as expenditure under the head income from other sources.

3. The brief facts of this issue are that the assessee is a religious trust created by Late Baikanto Nath Dutt by virtue of a Will dated 19.7.1916 and a Codicil dated 30.7.1919. By this Will and Codicil, the testator bequeathed some of his landed property to Goddess Thakurani Sree Sree Durga Mata Jue and directed the future shebait that income accruing from the properties shall be used in the first place for puja of the Goddess which shall be conducted as directed in the schedule of Will and Codicil and properties to be maintained and preserved and thereafter if there is any surplus it can be enjoyed by the shebait for other charitable purposes. One of the properties was let out to Calcutta Jute Manufacturing Limited since the year 1908 i.e before the creation of the trust. All the income from properties were utilized for religious and charitable purposes. As the income from all the properties were extremely low, the shebait of the trust filed a petition before the Hon'ble Calcutta High Court to sell the property leased out to Calcutta Jute Manufacturing Limited and accordingly obtained permission from the Hon'ble Calcutta High Court to sell the property for Rs 50 Crores. Accordingly the same was sold and the income out of it was utilized for the purpose of worship of Durga Mata and charity as per the direction of the Trust Deed and Codicil.

3.1. The only source of income of the trust was interest from the deposit of the sale proceeds and the major expenses incurred were puja expenses and donation as per the direction of the settlers. For the Asst Year 2012-13, the assessee trust filed its return of income declaring total income of Rs 2,36,34,587/- and paid taxes as per the provisions of the Act. The return was processed u/s 143(1) of the Act. Later the assessment was reopened by issuance of notice u/s 148 of the Act on 27.3.2014. The assessee replied that the return already filed may be treated as a return in response to notice issued u/s 148 of the Act.

3.2. The Id AO observed that the assessee had shown interest income of Rs 4,79,44,505/- under the head 'income from other sources'. During the year under

consideration, the assessee trust paid a donation of Rs 50 lakhs to Shri Arvindo Institute of Applied Scientific Research , registered u/s 35(1)(ii) of the Act for conducting scientific research and Rs 50 lakhs to Population and Social Development for conducting eligible project / scheme for carrying out research in social science / statistical research for general public welfare. The assessee claimed deduction u/s 35(1)(ii) and 35AC of the Act to the tune of Rs 1,37,50,000/- in the return of income. The Id AO observed that since the assessee trust does not have any income from business, no deduction u/s 35(1)(ii) and 35AC of the Act would be eligible to the assessee. Apart from that, the assessee also claimed deduction of certain expenses to the tune of Rs 1,05,59,908/- under the head 'income from other sources'.

4. The Id AO observed that the income of the assessee is assessed in the status of 'Association of Persons (AOP in short)'. He observed that since the income is assessed under the head 'income from other sources' , the expenditures that would become eligible for deduction would have to be examined in the touchstone of provisions of section 57 of the Act viz the expenditures incurred for the purpose of earning such income from other sources. Accordingly, the Id AO observed that expenses like professional fees, legal expenses , donation and charity are not allowable and since AOP was established from time immemorial for the purpose of Puja of Sree Sree Durga Mata Jue and for the maintenance of the property, the expenditure for repairs and maintenance for Rs 12,49,778/- ; puja expenses for Rs 2,02,655/- ; security service charges of Rs 1,38,000/- totaling to Rs 15,90,433/- was allowed as deduction under the head 'income from other sources'. The balance amount of expenditure of Rs 2,27,19,475/- ( 2,43,09,908 -15,90,433) was disallowed by the Id AO in the assessment framed u/s 143(3) / 147 of the Act on 31.3.2015.

5. Before the Id CITA, the assessee pleaded for an alternative claim of deduction u/s 80GGA of the Act in respect of donations paid to organizations registered u/s 35(1)(ii)

of the Act. This was allowed by the Id CITA after due examination of the various documents in this regard. He also directed the Id AO to grant deduction towards professional and legal expenses in the sum of Rs 29,53,889/- on the ground that the same were incurred in connection with the maintenance of the property of the assessee trust.

6. Aggrieved, the revenue is in appeal before us.

7. We have heard the rival submissions. At the outset, we find that the assessee, being a religious trust, does not have registration u/s 12A of the Act. It is not in dispute that the only source of income for the trust is interest income on deposits and that such interest income is assessable under the head 'income from other sources'. We find that the assessee had made contributions to Shri Arvindo Institute of Applied Scientific Research and to Population and Social Development, totaling to Rs 1 crore during the year under consideration. From the materials available in the paper book filed before us vide pages 52 to 80 of paper book, we find that Shri Arvindo Institute of Applied Scientific Research was set up on 25.10.1991 as a voluntary non profit charitable trust for undertaking research and development work in specialized area of medical sciences, medical & health care support to the poor and needy besides supporting other development activities relating to health, education and public awareness. It had undertaken a project for awareness and education of Thalesaemia and a sanction u/s 35(1)(ii) of the Act is obtained by it vide Gazette Notification No. 1843 E File No. CBDT / 203/107/2009-10 dated 10.4.2009. They are registered with income tax department u/s 12A of the Act and having exemption u/s 80G(5) of the Act apart from having registration under Foreign Contribution Regulation Act (FCRA in short) with Ministry of Home Affairs. They are registered under Department of Scientific and Industrial Research (SIRO) vide No. SIROs/INF/99-TU-V dated 3.5.2011.

7.1. Similarly with regard to contribution made to Population and Social Development, we find from the materials available in pages 81 to 104 of the paper book filed before us, that contributions made thereon would be eligible for deduction u/s 35AC of the Act in respect of business assesseees and u/s 80GGA of the Act in respect of non-business assesseees. Similar documents supra were placed on record in respect of contributions to Population and Social Development by the assessee in the paper book.

7.2. We have also gone through the correspondences exchanged between this trust and assessee trust regarding application seeking for donation and acceptance of the assessee for granting donation. It is not in dispute that the assessee not having business income would be eligible for deduction u/s 80GGA of the Act in respect of contributions made to eligible organizations. We find that all the aforesaid documents were duly verified and examined by the Id CITA in the appellate proceedings and deduction u/s 80GGA of the Act has been granted after being satisfied that the conditions prescribed therein were duly complied with by the assessee. Hence no infirmity could be found on the action of the Id CITA in this regard warranting any interference by us. Accordingly, the Ground Nos. 1 & 2 raised by the revenue are dismissed.

8. With regard to eligibility to claim deduction towards expenses on account of professional and legal fees in the sum of Rs 29,53,889/- , we find that the interest income on deposits is assessed to tax under the head 'income from other sources' and accordingly only the expenditure eligible for deduction u/s 57 of the Act could be allowed as deduction. We find that the payment of professional and legal fees were with regard to some disputes pertaining to the properties of the assessee trust, which has got absolutely no bearing on the earning of interest income on deposits. Hence we hold that the same are not incurred for the purpose of earning interest income and accordingly not eligible for deduction u/s 57 of the Act while computing the income under the head 'income from other sources'. In our considered opinion, the Id CITA grossly erred in

granting deduction towards professional and legal expenses in the sum of Rs 29,53,889/- . Accordingly, the Ground No. 3 raised by the revenue is allowed.

9. In the result, the appeal of the revenue is partly allowed.

**Order pronounced in the Court on 05.10.2018**

Sd/-

[A.T. Varkey]  
Judicial Member

Sd/-

[ M.Balaganesh ]  
Accountant Member

Dated : 05.10.2018

SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-40, Kolkata, 2<sup>nd</sup> Floor, 3, Govt. Place(W), Kolkata-700001.
2. M/s Thakurani Sree Sree Durgamata Jue Estate, 25, Raja Direndra Street, Kolkata-700009.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches