

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2248/Bang/2018
Assessment Year : 2009-10

M/s. Viswakalyan Educational Cultural & Social Association, Excellent School, Ashram Road, Adarsh Nagar, Vijayapura – 586 103. PAN: AAAAV5544K	vs.	The Income Tax Officer [Exemptions], Ward – 1, Gulbarga.
APPELLANT		RESPONDENT
Appellant by	:	Shri Ravi Shankar, Advocate
Respondent by	:	Shri D. Kiran, JCIT (DR)
Date of hearing	:	03.01.2019
Date of Pronouncement	:	11.01.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A), Gulbarga dated 16.05.2018 for Assessment Year 2009-10.

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

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT [A] is not justified in upholding the denial of exemption claimed u/s.10 [23C] [iiiad] in respect of the sum of Rs. 5,25,000/- on the ground that the said income from running coaching classes did not qualify for exemption u/s. 10[23C][iiiad] of the Act, under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] failed to appreciate that the aforesaid income derived by the appellant was also in furtherance of imparting education and not for the purpose of profit and consequently, the exemption claimed u/s.10[23C][iiiad] of the Act ought not to have been denied.

3. Without prejudice to the above, the learned CIT[A] is not justified in upholding the addition of Rs.8,94,000/- being the donation received by the appellant holding that the same has to be treated as income u/s.115BBC[3] of the Act, which provisions are not attracted to the

facts of the appellant's case since the appellant has given the name and address of the donors and thus the impugned addition made deserves to be deleted.

4. The learned CIT[A] is not justified in upholding the addition of Rs.10,95,500/- being the Building fund received by the appellant holding that the same has to be treated as income u/s.115BBC[3] of the Act, which provisions are not attracted to the facts of the appellant's case since the appellant has given the name and address of the donors and thus the impugned addition made deserves to be deleted.

5. The learned CIT[A] is not justified in upholding the addition of Rs.6,03,000/- being the being the Box collection received by the appellant holding that the same has to be treated as income u/s.115BBC[3] of the Act, which provisions are not attracted to the facts of the appellant's case since the appellant has given the name and address of the donors and thus the impugned addition made deserves to be deleted.

6. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s. 234A and 234B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. The assessee has also raised one additional ground which reads as under.

“1. The order of assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s.148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

2. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.”

4. At the very outset, it was submitted by Id. AR of assessee that in the additional ground raised by the assessee, the only issue is regarding validity of re-assessment proceedings and since this is a legal issue, the same should be admitted in view of the judgment of Hon'ble Apex Court rendered in the case of National Thermal Power Co. Ltd. as reported in 229 ITR 383

and the judgement of Hon'ble Karnataka High Court rendered in the case of GundathurThimappa and Sons as reported in 70 ITR 70. In course of hearing, he submitted copy of the reasons recorded by the AO for reopening and pointed out that as per the reasons recorded by the AO for reopening, he has noted various facts but from these reasons recorded by the AO, it is not coming out that there is any escapement of income in the facts of present case. He submitted that the gross receipt of the assessee is less than Rs. 1 Crore and in this regard, he drawn my attention to page no. 3 of the paper book which contains receipts and payments account for the year ending as on 31.03.2009. He pointed out that as per the same, after including the opening cash balance also, total receipt is of Rs. 83,13,803/-. He drawn my attention to the provisions of section 10[23C][iiiad] and Rule 2BC of IT Rules, 1962. He pointed out that as per these provisions of this section and this Rule, any income received by any person on behalf of an educational institution is exempt if aggregate annual receipt of such institution do not exceed the amount of Rs. 1 Crore. He submitted that in the present case, the aggregate annual receipt is less than Rs. 1 Crore and therefore, the entire income of assessee is exempt u/s. 10[23C][iiiad]. Regarding clause vi of section 10[23C], he pointed out that obtaining approval under this clause is not required in those cases which are covered under sub-clause (iiiab) or sub-clause (iiiad) of section 10(23C). He submitted that therefore, this ground should be admitted and if required, the matter may be restored back to the file of CIT(A) for decision on this issue. The Id. DR of revenue supported the order of CIT(A).

5. I have considered the rival submissions and in view of the facts discussed above, I admit the additional ground raised by the assessee and restore the matter back to the file of CIT(A) for decision on merit of this issue. Regarding the various grounds raised by assessee on merit, I feel it proper to restore the same also to the file of CIT(A) for fresh decision after deciding the technical aspect first because the issue on merit should be decided after final decision on technical aspect. Moreover, the issue on merit is decided by CIT (A) in cryptic manner as per Para 4 of his order without considering various details provided by the assessee before AO and CIT(A) in respect of

receipt of donations by the assessee during the present year of Rs. 10,19,500/- on account of building fund as available on pages 18 to 24 of the paper book and Rs. 8,94,000/- on account of other donations as per the details available on page nos. 25 to 30 of paper book. As per the assessee, these details were furnished by assessee before AO and CIT(A) both but, CIT(A) states in Para 4.2 of his order that in the case of the assessee, complete details of donors were not submitted by assessee during assessment proceedings. For this reason also, I feel it proper to restore the entire matter back to the file of CIT(A) for fresh decision after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.

6. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

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

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 11th January, 2019.
/MS/

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.