

आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 3190/Mum/2018

(निर्धारण वर्ष / Assessment Year 2015-16)

Great Eastern CSR Foundation Plot 34-A, Ocean House, Dr. Annie Besant Road, Shivaji Nagar, Worli, Mumbai-400 018	Vs.	The Asst. Commissioner of Income Tax, CPC, Bangalore
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAFCG88950P		

अपीलार्थी की ओर से / Appellant by : Shri Falee H. Bilimoria, AR

प्रत्यर्थी की ओर से / Respondent by : Shri Satischandra Rajore, DR

सुनवाई की तारीख / Date of hearing:	04.02.2019
घोषणा की तारीख / Date of pronouncement :	04.02.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-3, Mumbai [in short CIT(A)], in appeal No. CIT(A)-3/ACIT-CPC/IT-622/2017-18 vide dated 28.03.2018. The return of income was processed by Centralized Processing Centre



Bangalore under section 143(1) of the Income Tax Act, 1961 (hereinafter the Act) dated 15.09.2016.

2. The only issue in this appeal of assessee is against the direction of CIT(A), who passed the order without giving any finding that the assessee is a charitable Trust registered under section 12AA of the Act and consequently thereto which rate is applicable. For this assessee has raised the following two grounds: -

“1) The learned Commissioner of Income Tax (Appeals) erred in merely directing the Assessing Officer to re-compute the tax and education cess thereon as also the interest under Section 234B and 234C of the Act without giving any finding that the Appellant was a Charitable Trust registered under Section 12AA of the Act and consequent thereto, the rates applicable to a company were not applicable to the Appellant.

2) Having regard to the facts of the case, the Assessing Officer be directed to compute the tax and interest under Section 234B and 234C of the Act, by treating the Appellant as a Charitable Trust which is eligible for the benefit of the slab rates of tax and minimum threshold limit of Rs.2,50,000/-, applicable to an Association of Persons.”

3. Briefly stated facts are that the assessee filed its return of income for AY 2015-16 on 29.09.2015 declaring total income at ₹ 1,65,911/-. The



return was processed under section 143(1) of the Act by Central Centralized Processing Centre, Bangalore (CPC) added 15.09.2016. Thereby the demand of ₹ 88,693/- was created. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) directed the AO to recompute the tax and interest by observing in Para 4.4.1 as under: -

“4.4.11 have considered the appellant’s contentions. During the course of appeal proceedings, the appellant stated that the error in computation of income was rectified under section 154 but the error in computation tax was not rectified. The AO is therefore, directed to re-compute the tax and education cess and also interest under section 234B and 234C of the Act. The AO is also directed to furnish the computation of tax and interest in the order.”

4. Now, the learned Counsel for the assessee before us contended that the Revenue has carried out rectification of intimation issued under section 143(1) of the Act by CPC Bangalore and finally determined the total income at ₹ 1,65,911/-. But charged income tax on total income declared by assessee at ₹ 1,65,911/- and created the demand at ₹ 88,693/- again. The learned Counsel explained that the assessee is a charitable trust registered under section 12A of the Act and thereby for its return of income claiming deduction application under section 11(1) and 11(1)(a) of the Act, exercised the option available under clause 2 of the explanation to section 11(1) of the Act. The assessee claimed that as per return of income filed there was unspent surplus of ₹ 1,65,911/- and this is within the basic limit prescribed for taxable income at ₹ 2.50 lacs. It was



claimed that no tax was payable by the assessee after considering the fact that the assessee was to be assessed as charitable trust under the provisions of section 164(2) of the Act. The learned Counsel explained that the rate of tax applicable to a charitable trust for the purpose of assessment under the Act which is applicable to AOP. If the income of the trust is not exempt under section 11 of the Act it will have to pay tax as per the provision sub section of section 164 of the Act. It was claimed before us that unspent surplus of the assessee is to be taxed at the rates applicable to AOP and not that of domestic company. The learned Counsel only urged that the benefit of basic exemption limit of Rs. 2.50 lakhs be made available to the assessee and tax cannot be levied at a flat rate of 30%. On the other hand, the learned Sr. Departmental Representative urged that the directions can be given to the CIT(A) accordingly.

5. We have heard rival contentions and gone through the facts and circumstances of the case. We find that the assessee's trust has a unspent surplus of ₹ 1,65,911/-, which is below the taxable limit of ₹ 2.50 lac in term of section 11 read with section 164(2) of the Act. In view of the provisions of section 164(2) of the Act, which provides that the portion of income derived from property held under trust either wholly or partly for charitable or religious purposes, voluntary contributions received as contemplated under section 2(24)(iia) of the Act or the business income as contemplated under section 11(4A) of the Act to the extent not exempt under section 11 or 12 of the Act or exceeding the minimum threshold limit liable to tax shall be chargeable to tax, at the rate applicable to the income of the AOP. Hence, we direct the CIT(A) to consider the above provisions



and decide the issue accordingly. The matter restores back to the file of the CIT(A).

6. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 04.02.2019.

आदेश की घोषणा खुले मे दिनांक 04.02.2019 को की गई ।

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 04.02.2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai