

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH 'B', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND  
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.347/Lkw/2018  
Assessment Year:2012-13

Income Tax Officer (Exemption) Lucknow.	Vs.	Dargah Syed Salar Masood Gazi Rahmatullah Alliah, Dargah Road, Bahraich. PAN:AAAAD 8771 A
(Appellant)		(Respondent)

Appellant by	Shri C. K. Singh, D.R.
Respondent by	Shri P. K. Kapoor, C. A.
Date of hearing	12/02/2019
Date of pronouncement	22/02/2019

**ORDER**

**PER T. S. KAPOOR, A.M.**

This is an appeal filed by the Revenue against the order of learned CIT(A), Lucknow dated 13/03/2018 pertaining to assessment year 2012-2013. In this appeal the Revenue has taken the following grounds of appeal:

- "1. *The Ld. CIT(Appeal)-4, Lucknow has erred on facts and law in allowing the exemption u/s12A of the Income Tax Act, 1961 as the assessee had not produced certificate u/s 12AA of the Income Tax Act, 1961 during the assessment proceedings u/s 143(3) of the Income Tax Act, 1961, consequently the assessment was completed at total income of Rs.1,18,80,950/- in the status of AOP after disallowing the assessee's claim for exemption u/s 11 of the Income Tax Act, 1961 and surplus income of Rs.1,03,32,771/- was also taxed rightly by the AO. The assessment u/s 143(3) of the Income Tax Act, 1961 was*

*completed on 26.03.2015 whereas order u/s 12A of the Income Tax Act, 1961 was passed on 29.05.2015 after completion of assessment u/s 143(3) of the Income Tax Act, 1961 was completed on 26.03.2015.*

2. *The Ld. CIT(Appeal)-4, Lucknow has erred on facts and law in deleting the addition made by the AO on account of Administrative Expenses, Office Contingent expenses, Generator & Tubewell Expenses and Misc. Expenses of Rs.15,48,178/-."*

2. Learned D. R., at the outset, heavily placed his reliance on the order of Assessing Officer and submitted that since at the time of assessment the assessee did not submit copy of registration u/s 12A of the Act, the Assessing Officer had rightly held the assessee to be not eligible for exemption u/s 11 which the learned CIT(A) has wrongly allowed. Learned D. R. further argued that in the absence of vouchers the Assessing Officer had rightly made the addition to the extent of 20% of expenses which learned CIT(A) has wrongly allowed.

3. Learned A. R., on the other hand, placed his reliance on the order of learned CIT(A) and submitted that the order of registration u/s 12AA dated 29/05/2015 was filed, according to which the assessee was granted registration u/s 12A with effect from 01/04/2011 and the Assessing Officer, vide remand report dated 15/12/2016, had also acknowledged the same and therefore, the learned CIT(A) has rightly granted the exemption u/s 11 of the Act.

3.1 As regards the other issue of disallowance to the extent of 20% of expenses, Learned A. R. submitted that the Assessing Officer has not specified as to which expenses could not be verified and not even a single voucher has been identified by the Assessing Officer whereas the assessee has submitted all the information and therefore, learned CIT(A), relying on a number of case laws, has rightly deleted the addition.

4. We have heard the rival parties and have gone through the material placed on record. We find that the only reason for not granting exemption u/s 11 is that the copy of registration certificate u/s 12A was not traceable with the assessee which was filed before CIT(A) and CIT(A) obtained remand report from the Assessing Officer with respect to the certificate of registration and Assessing Officer, vide remand report dated 15/12/2016, has also acknowledged the same therefore, learned CIT(A) has rightly allowed exemption to the assessee and we do not find any infirmity in the same. The contention of Revenue, which has been taken in ground No. 1 that the assessment was completed on 26/03/2015 and the order u/s 12A was passed on 29/05/2015 i.e. after completion of assessment u/s 143(3), do not hold much force in view of the fact that the registration was granted to the assessee vide order dated 29/05/2015 with effect from 01/04/2011. This fact has been noted by learned CIT(A) in his order at page 2 and the said order was also confronted to the Assessing Officer which, vide remand report dated 15/12/2016, had also acknowledged the same. Therefore, we do not find any infirmity in the order of learned CIT(A) in this respect.

4.1 As regards the issue of disallowance on ad hoc basis, we find that learned CIT(A) has deleted the addition by holding that the Assessing Officer has not pointed out any particular voucher which was not verifiable and CIT(A), relying on a number of case laws, has rightly deleted the addition. The findings of learned CIT(A) in this respect are reproduced below:

*"The issue of ad hoc disallowance of expenditure has been decided upon by Hon'ble jurisdictional I.T.A.T. in the below mentioned judgments.*

*The Hon'ble I.T.A.T., Lucknow Bench in U.P. Corporative Federation vs. Deptt. Of Income Tax in I.T.A. No.33/Lkw/2011*

*dated 22/03/2011 held that there was no justification in suspecting the correctness of entire claim and resorting to estimated disallowance. The Assessing Officer has not given any reason for estimating the disallowance at 5% of the claim. The AO has not doubted the correctness of books of accounts regularly maintained by the assessee. None of the auditors have given any adverse comment in the report. The disallowance was made for sake of disallowance without giving any cogent reasons. The adhoc addition made by AO has been rightly deleted by Ld. CIT(A).*

*The Hon'ble ITAT, Lucknow Bench in judgement dated 13.07.2011 in case of Raj mat a Devi, Basti Held that AO has not pointed out single instance of expenditure which is not supported by voucher. It seems that AO has made the disallowance without bringing any supporting evidence to justify his action. Considering the entire facts and circumstances of the present case, we deleted the disallowance.*

*In the present case also the AO has disallowed expenses without pin pointing any specific defect in bill/voucher produced. Due to the reasons outlined above and the judgments of Hon'ble Jurisdictional ITAT as outlined above, the disallowance made by the AO cannot be sustained."*

Moreover, we find that even if disallowance is sustained, the increased income of the assessee being its exempt income u/s 11, will not make any effect in the tax liability of the assessee. Therefore also we do not find any infirmity and dismiss ground No. 2.

5. In the result, the appeal of the Revenue stands dismissed.

(Order pronounced in the open court on 22/02/2019)

**Sd/.**  
**( A. D. JAIN )**  
**Vice President**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:22/02/2019  
\*Singh