

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, 'SMC', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.578/Chd/2018

Assessment Year: 2013-14

Shiv Shakti Education Society
C/o Bhaskar International School
Manna Majra V& PO Kairana

Vs. The ITO Exemptions
Aayakar Bhawan
2nd Floor, Room No. 208B.C
Bazar, Ambala Cantt.,

PAN No. AAHAS9930R

(Appellant)

(Respondent)

Assessee By : Sh. K.C. Aneja, ITP
Revenue By : Smt. Chandrakanta, Sr. DR

Date of hearing : 19/02/2019
Date of Pronouncement : 19/02/2019

ORDER

This is an appeal by the Assessee against the order dt. 06/02/2018 of Ld. CIT(A), Karnal.

2. Following grounds have been raised in this appeal:

1 That on the facts & in the circumstances of the case learned CIT(A) erred in not assigning the status of AOP trust.

2 That the predominant object of the appellant society is imparting education and is existing solely for educational purposes as the society is registered with the registrar of societies and affiliated with C.B.S.E. Delhi & Kurukshetra University Haryana.

3 That entire receipt of the year have been spent on construction of the school building approved by the district Executive officer B&R Shamli.

4. That the learned CIT(A) erred in not allowing exemptions u/s 11 of the IT Act 1961 being not registered u/s 12 AA of the IT Act 1961 which is not precondition for allowing exemptions u/s 11 of the IT Act 1961.

5. The appellant craves for leave to add or amend any grounds of appeal before the hearings.

3. Facts of the case in brief are that the assessee filed its return of income on 30/09/2013 declaring an income of Rs. 11,662/-, later on the case was selected for scrutiny. The Assessing Officer during the course of assessment proceedings noticed that the assessee had received donation and contribution from Members of the Society to the tune of Rs. 1,86,24,176/- which was claimed to be the capital receipts out of which the assessee purchased land for Rs. 1,58,10,200/- and spent Rs. 21,22,230/- on the construction of building. The

Assessing Officer observed that the assessee was not registered under section 12AA of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), and the application was filed on 07/03/2016 in Form No. 10A for the registration under section 12AA of the Act. The Assessing Officer also observed that the assessee could not furnish the details of the bills of construction of building. He, therefore brought to tax the surplus of Rs. 28,25,638/- out of the total receipt of Rs. 1,86,35,638/- along with interest income of Rs. 11,662/-.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

1. The Appellant, Society came in to existence in terms of Memorandum & Rules, duly registered under Society Registration Act 1860, Punjab r.w. Punjab Amendment Adhinyam 1968 on 09.06.2012 at S.No.32/2012-13 with Zila Registrar Firms & Societies, Panipat and later again registered at S.No. 00382/2014 on 06.03.2014. The A.O. has accepted the aims & objects of the society when he reproduced the main objects in Para(2) of Assessment order dt. 23.03.2016 passed u/s 143(3) of the I T Act. Society is also affiliated with Central Board of School Education Delhi vide affiliation code allotted to school is 2132186 Dt. 22.03.2016 copies of certificate & affiliation attached.

2. The main objects of the society are to run educational institutes, schools colleges and to provide free or concessional facilities to the poor & needy students, which are in conformity within the meaning of "Charity" defined u/s 2(15) of the act.

3. The Appellant Society had received donations/contributions from the members of society to the tune of Rs. 1,86,24,176/- and claimed the same to be "Capital Receipts" as the same were received for purpose of acquisition of lands and construction of building there on, which is essential precondition to run school, building and provide education towards objects of the Society. The said receipts were invested in the followings:

Purchase of land and change of land use from agriculture to

Non Agriculture purposes.	15810200
Amount invested in construction of school Building in the F.Y. 2012-13 relevant to A.Y. 13-14 (Construction still in progress)	<u>2122230</u> <u>17932430</u>

Apart from above application of contributions, certain investments were made towards purchase of library books and security deposits with Education Department etc., as the charitable activities were not commenced in the previous year relevant to A. Y. 2013-14 (under appeal).

Copies of library books and security paid attached and preliminary expenses attached

4. Return u/s 139(1) was filed in the status of A.O.P. under misconception of facts, where in "interest income" earned from fixed deposits kept in Bank for temporary period were offered as income but in the course of assessment proceedings u/s 143(2) the appellant vide letter dt. 22.02.2016 claimed that voluntary contributions received for the specific purpose are not taxable and taxfree receipts following part of receipts as defined u/s 2(45) of the act & the same could not be brought to tax. The donations were with specific purposes u/s 2(24)(IIa) of the Act and do not attract tax liability. Reliance was placed on a decision from Hon'ble IT AT Bangalore Bench in the case of ITO Ward 2, Hassan v/s M/s Vokkaligara Sangha Balur Distt. Hasan

5. The appellant in continuation of the above, also placed reliance in support of his contention vide letter dt. 18.03.2016 on a decision from Hon'ble ITAT Chandigarh Bench in ITO Dharmashala v/s Chi ma Gatsal Ling Monastery Sidhbari, Dharamshala in ITANos.216to219/CHD/2012 for the A.Y.2005-06 to2008-09 and claimed exemption in respect of voluntary contributions received in the amount of Rs. 1,86,24,176/- which stood invested in acquisition of land & construction of building there on besides other incidental.

6. The A.O.in the order passed u/s 143(3) Dt.23.03.2016 stated that the corpus donation are exempt u/s11(d) of the Act and subject to precondition, for the application of the section 11 of the Act, the institution must be registered u/s 12AA of the Act. The A.O. however stated that appellant Society is not registered u/s 12AA as on date, but has led evidence to the effect that the necessary application in Form 10A has been filed on15.03.2016 and is yet pending with CIT(Exemption).

7. The A.O. noting the above position of law and taking in to consideration the Tribunal decision referred to above has granted exemption in respect of Rs. 15810200/- ,the sum spent in acquisition of land, but wrongly declined exemptions in respect of balance amount of Rs.2825638/-which comprises of Rs. 21,22,230/- utilized in construction of school building for want production of bills/vouchers in support (despite there is no doubt that school building was constructed and otherwise verifiable) Rs.619946/- utilized for incidental matters and in addition 11662/-being the interest earned and wrongly offered towards income in the return filed.

Judgments references :-

Hon'ble High Court of Madras in the Case of Commissioner of Income Tax V/s working Women's Forum 2014, 365 ITR 352 (Madras) have held that the denial of exemptions should only be to the extent of the Income which is violative of section 13(1) (d) and not the total denial of exemption under section 11 of the IT Act 1961.

From the facts & circumstances it is visible that no violation has been made by the appellant C.B.D.T circular No. 387 dated 06.07.1984 Para 86.6 also supported this view.

Hon'ble Orissa High Court having reliance over various High Court & Supreme Court Judgments in the Case of CIT V/s Silicon Institute of technology 2015, 370 ITR 567 (Orissa held).

Capital expenditure incurred by a trust for acquiring/constructing capital asset would be application of money and the assessee would be entitled to exemption u/s 11 of the Act.

Therefore respectfully it is prayed that the appellant being educational Charitable Society is liable to full exemptions of Donations received for the object and same may very kindly be granted.

5. Ld. CIT(A) after considering the submission of the assessee confirmed the action of the Assessing Officer by observing as under:

I have examined the facts of the case and the materials on record. It is seen that the objects of the appellant society is to run education institutes, schools and colleges and to provide free or concessional facilities to poor and needy students. The main thrust of the appellant's agreements relate to the fact that exemption should be allowed on the entire sum invested in construction of school building, purchase of books, deposits of security with the education department and that the society should be treated as a Trust instead of AOP.

A perusal of the assessment order reveals that the AO has taxed only Rs. 28,25,638/- out of total receipts of Rs. 1,86,35,638/- due to non-production of bills. The remaining amount has been allowed. The action of the AO is correct given the fact that necessary evidences were not submitted. Interest income of Rs. 11,662/- has also been correctly taxed. Taxing at the maximum marginal rate

is in keeping with the fact that the appellant is not registered u/s 12AA which has not been granted till date. Hence, the provisions of Section 11 and 12 of the I.T. Act cannot be applied. In my opinion, the facts of the case cannot be related to the case laws cited in the absence of registration under Section 12A of the I.T. Act. I, therefore, confirm the said additions.

6. Now the assessee in appeal.

7. The Ld. Counsel for the Assessee reiterated the submissions made before the authorities below and further submitted that the assessee utilized the total amount received for the construction of building and maintained, the complete details along with vouchers for the same were furnished, therefore the addition made by the Assessing Officer and sustained by the Ld. CIT(A) was not justified.

8. In her rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below.

9. I have considered the submissions of both the parties and perused the material available on record. In the present case, it appears that the Assessing Officer made the impugned addition by observing that the assessee failed to produce the bills and vouchers for the construction of building. On the contrary the claim of the Ld. Counsel for the Assessee was that all the bills and vouchers were properly maintained and the amount received from the contribution as well as donation from the Members of the Society was utilized for the purchase of land and construction of the building. Since the claim of both the parties are contradictory to each other, I therefore, in the absence of clear facts on record deem it appropriate to set aside this case back to the file of the Assessing Officer to be adjudicated afresh, in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

10. In the result appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 19/02/2019.)

**Sd/-
(N.K. SAINI)
VICE PRESIDENT**

Place: Chandigarh

Dated : 19/02/2019

AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR