

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI
BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER**

ITA Nos.7528 & 7529/Del/2018
Assessment Years: 2012-13 & 2014-15

Srishti Resident Welfare Association,
T-6/803, Parsvanath Prestige-II,
Plot No.2, Sector 93A,
Ghaziabad,
Uttar Pradesh.
PAN: AAEAS2644D

Vs. ITO, Exemption Ward,
Ghaziabad.

(Appellant)

(Respondent)

Assessee by	:	Shri S. Krishna, Advocate
Revenue by	:	Shri S.L. Anuragi, Sr.DR
Date of Hearing	:	19.02.2019
Date of Pronouncement	:	27.02.2019

ORDER

The above two appeals by the assessee are directed against the common order dated 30th August, 2018 of the CIT(A)-1, Noida, relating to Assessment Year 2012-13 and 2014-15, respectively. For the sake of convenience, both the appeals were heard together and are being disposed of by this common order.

2. In both the appeals, the assessee has challenged the order of the CIT(A) in levying penalty u/s 271(1)(c) of the IT Act on the income enhanced by him.

3. Facts of the case, in brief, are that the assessee is a Resident Welfare Association and registered under the Registrar of Societies, Meerut vide certificate No.1573 dated 25th February, 2009. The assessee is also registered u/s 12AA by

Commissioner of Income Tax, Ghaziabad vide C.No.57(03)/Regn.12A/CIT-GZB/2010-11/2545 dated 26.10.2010. It filed its return of income on 3rd October, 2012 declaring nil income in the status of charitable society. The Assessing Officer, in the order passed u/s 143(3) on 27th February, 2015, determined the total income at Rs.6,36,590/-. While doing so, he observed on perusal of the Income & Expenditure Account that the gross receipts includes surplus amount of Rs.6,39,591/- which was earned from commercial activities. He examined the objects of the society as per its bye-laws and noted that none of the objectives as narrated in the bye-laws of the society are charitable in nature. Relying on the amended definition of 'charitable purposes' u/s 2(15) of the IT Act w.e.f. 01.04.1999, he held that the assessee has not carried out any charitable activity as provided u/s 2(15) of the Act and, therefore, cannot be given benefit of exemption u/s 11 and 12 as claimed by the assessee in its return of income. He accordingly, determined the total income at Rs.6,36,590/-. Similarly, for assessment year 2014-15, he determined the total income of the assessee at Rs.33,88,780/-.

4. The assessee filed appeal before the CIT(A) and the Id.CIT(A) instead of giving any relief to the assessee issued enhancement notice. The Id.CIT(A) was of the opinion that the assessee has wrongly claimed registration u/s 12AA of the Act and, therefore, the entire receipt of the assessee society should be treated as income of the assessee. He further observed that the assessee is not entitled for the benefit of the doctrine of mutuality. Since, according to him, the entire expenditure of the assessee society is for the benefit of the members of the association or persons and their

relatives, therefore, the assessee has violated the provisions of section 13 of the Income-tax Act. He accordingly enhanced the income of the assessee society.

5. Subsequently, the Id.CIT(A) initiated penalty proceedings u/s 271(1)(c) of the IT Act. Rejecting the various explanations given by the assessee and observing that the assessee has deliberately and willfully furnished inaccurate particulars of its income and has deliberately and willfully concealed the particulars of its income with the intention of evading tax on its full and correct income liable to be taxed, he directed the Assessing Officer to levy penalty @ 200% of the tax sought to be evaded by the assessee on the quantum of income which was enhanced by him over and above the income assessed by the Assessing Officer against the income returned by the assessee in its return for both the assessment years.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising various grounds wherein it has challenged the direction of the CIT(A) levying penalty u/s 271(1)(c) of the Act.

7. The Id. counsel for the assessee, at the outset, filed a copy of the order of the Tribunal in assessee's own case for assessment year 2012-13 and 2014-15 vide ITA No.3028 & 3029/Del/2018, order dated 06.11.2018. Referring to the order of the Tribunal, the Id. counsel for the assessee drew the attention of the Bench to para 10 of the order wherein the Tribunal has set aside the order of the CIT(A) in enhancing the income of the assessee. So far as the addition made by the Assessing Officer is concerned, the issue has been set aside to the file of the Assessing Officer. He

accordingly submitted that so far as the impugned penalty appeals are concerned, it has no legs to stand since the Tribunal has already set aside the order of the CIT(A).

8. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

9. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the order of the Tribunal in assessee's own case for the impugned assessment years for the quantum proceedings. I find, after the income of the assessee was enhanced by the CIT(A) for the impugned assessment years, the assessee had filed appeal before the Tribunal and the Tribunal vide ITA Nos.3028 & 3029/Del/2018, order dated 06.11.2018 for assessment years 2012-13 and 2014-15 had set aside the order of the CIT(A) by observing as under:-

“10. I have given thoughtful consideration to the orders of the authorities below. I have also gone through the contents of the affidavit filed by the Secretary of the appellant-society. The undisputed fact is that the appellant society was enjoying the registration granted to it by the CIT(E), Ghaziabad u/s 12AA of the Act. I fail to understand how can the CIT(A) question the authority of the CIT(Exemptions) for granting registration u/s 12AA of the Act. It is for the CIT(Exemptions) to decide the allowability or otherwise of the registration u/s 12A of the Act. In my considered opinion, the CIT(A) should not have made any observation on that aspect and should have restricted himself to the issues raised before him. At the most, the CIT(A) could have enhanced the addition made by the Assessing Officer, which is within his powers. But by no stretch of imagination it can be accepted that the first appellate authority is making enhancement while commenting on the powers of the CIT(Exemptions). In my humble opinion, the first appellate authority has crossed his powers in deciding the appeal and, therefore, his findings have to be set aside. I direct accordingly.

11. Coming to the action of the Assessing Officer, I find that the Assessing Officer has doubted the surplus Rs. 6,36,591/-without examining each and every item of income. I, therefore, restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to examine each and every item of income and decide the issues afresh after allowing reasonable opportunity of being heard to the assessee. Accordingly, the enhancement is set aside and the order of the Assessing Officer is restored back to his file.”

10. Admittedly, the order of the Tribunal came after the penalty was levied by the CIT(A) u/s 271(1)(c) of the IT Act for both the years. Since the Tribunal has set aside the order of the CIT(A), therefore, the very basis on which the penalty was levied by the CIT(A) does not survive. Therefore, the penalty levied by the CIT(A) is directed to be deleted. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed.

11. In the result, both the appeals filed by the assessee are allowed.

The decision was pronounced in the open court on 27.02.2019.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 27th February, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi