

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

I.T.A. No.2547/DEL/2018
Assessment Year: 2014-15

Janhit Institute of Education and Information, Bulandshahr.	v.	DCIT (Exemption) Ghaziabad.
TAN/PAN: AAATJ 4962A		
(Appellant)		(Respondent)

Appellant by:	Shri Somil Aggarwal, Advocate		
Respondent by:	Shri S.L. Anuragi, Sr.D.R.		
Date of hearing:	19	12	2018
Date of pronouncement:	26	02	2019

ORDER

The aforesaid appeal has been filed by the assessee against the impugned order dated 31.01.2018 passed by Ld. CIT(A), Ghaziabad for the quantum of assessment passed u/s. 143(3) for the Assessment Year 2014-15. In the grounds of appeal, the assessee has challenged the following grounds:-

"1 That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in holding that there was short fall in application of income of Rs.18,61,772/- and that too by not considering the submissions placed on record by the assessee and in violation of principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in holding that there was short fall in application of income of Rs.18,61,772/-, is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not considering/appreciating the additional evidences filed by the assessee.”

2. The brief facts of the case are that assessee is a society which is engaged in running of educational institution and looking to its objects, it was granted registration u/s.12A vide certificate/order dated 16.12.1991 by ld. CIT, Uttrakhand. During the relevant assessment year, assessee had shown total receipt of Rs.5,29,97,324/- in the income and expenditure account which also included fees received, interest earned, etc. Ld. Assessing Officer though accepted the receipts, however held that assessee was required to spend 85% of the total receipts which works out to Rs.4,50,47,725/- which included revenue expenditure of Rs.3,86,68,364/- and capital expenditure of Rs.45,17,590/- which is less than 85% and accordingly, he computed the income at Rs.48,02,908/-.

3. Before the ld. CIT (A), assessee submitted the working of receipts and expenditure to demonstrate that it has utilized more than 85% of the receipts under the year which is as under:-

INCOME FROM SOCIETY:		
		AMOUNT(RS.)
DEEMED INCOME U/S 11		
TOTAL INCOME AS PER INCOME &		52,997,324
EXPENDITURES A/C ENCLOSED		
LESS: 15% OF RS. 52,997,324		7,949,599

Balance		450,47,725
LESS: AMOUNT SPENT DURING F.Y.2013-14		
1. REVENUE EXPENDITURES	35,727,228	
2 PURCHASE OF FIXED ASSETS	4,517,590	
3. ADVANCE TO JANHIT CHARITABLE TRUST FOR EDUCATIONAL PURPOSE	8,655,420	
		48,900,238
(EDUCATIONAL TRUST EXEMPT U/S 12AA)		
BALANCE		(3,852,512)

3.1 It was further submitted that Assessing Officer has not considered the amount given by the assessee in advance to M/s. Janhit Charitable Trust for Educational purpose which is also application of income out of total receipts. In any case, the Board Members of the Trust in the meeting held on 12.06.2014 had resolved that out of income of the society for the previous year relevant Assessment Year 2014-15 and subsequent previous year, an amount of Rs.55 lacs which is 10.38%, is available at the end of the previous year should be accumulated or set apart till the previous year ending 31.03.2019. Accordingly, copy of Form No.10 was filed along with balance sheet for the Assessment Year 2014-15. Further various documents were also filed before the ld. CIT (A), details of which are as under:

“PB 21 is copy of Form No 10 filed with the Balance Sheet for AY 2014-15.

PB 22-25 is copy of Form No 10B filed with Balance Sheet for AY 2014-15 of the assessee society.

PB 42 is details of FDRs made by the assessee society showing the application of fund during the year under consideration.

PB 43-44 is copy of the ledger account of the assessee in the books of M/s. Janhit Charitable Trust for the period 1.4.2013 to 31.3.2014 showing the advances given to the said trust by the assessee, which has the same objects as of the assessee Society which shows the application of funds by the assessee society.

PB 45 is copy of the resolution passed dated 12.06.2014 for accumulation of funds to be set apart for investment in movable and immovable property.

PB 46-47 is copy of the computation of income and copy of acknowledgement of Return of Income of M/s. Janhit Charitable Trust for Asstt. Year 2014-15 which shows the amount spent by him for the object for which the said trust has been formed.

PB 49 is copy of the registration certificate granted u/s 12A of the Income Tax Act, to M/s. Janhit Charitable Trust.

PB 51-54 is copy of the Memorandum of Association of the assessee Society which shows the object of the trust that is to impart education.

PB 55-59 is copy of the Trust Deed of M/s. Janhit Charitable Trust to whom advance was given by the assessee during the year”

3.2 Apart from that, it was submitted that assessee has made investment in FDR amounting to Rs.28,42,880/- with the scheduled banks as described in Section 11(5)(iii) of the Act, and therefore, it was contended that it has utilized more than 85% of the gross receipt, therefore, no tax was payable. Reliance was also placed upon catena of judgments which have been noted in the appellate order.

4. Ld. CIT (A) first of all accepted the assessee's contention that depreciation should be allowed in view of the judgment of Hon'ble Supreme Court in the case of **CIT vs. Rajasthan and**

Gujarati Charitable Trust, civil appeal no.7186 of 20014.

In so far as issue relating to short fall computed by the Assessing Officer regarding application of income in the assessment order, he upheld the action of the Assessing Officer without giving much finding.

5. After hearing both the parties, we find that assessee has filed catena of documents, not only showing that it has given advance to another charitable trust which has also been treated as application of income; and further as per the resolution passed by the Board Members of the Trust, it was decided that the sum available should be accumulated or set apart to be utilized upto 31st March, 2019; and once that is so, then there would be no case of under utilization of the receipts of less than 85%. Accordingly, matter is remanded back to the file of the ld. CIT (A) to accept the documents filed before him and decide the issue in accordance with the provision of law. Needless to say, ld. CIT (A) shall provide due and effective opportunity to the assessee of being heard.

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

Order pronounced in the open Court on 26th February, 2019.

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

DATED: 26th February, 2019

PKK