

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.1086/Bang/2018
(Assessment Year : 2014-15)

Income-tax officer (Exemptions),
Ward -1. Mangaluru .. Appellant

v.

M/s. Ursuline Tranciscan Congregation Generalate,
Somarpann, Deralakatte,
Mangaluru 575 018 .. Respondent
PAN : AAATU0491M

Assessee by : Shri. V. K. Gurunathan, Advocate
Revenue by : Shri. R. N. Siddappaji, Addl. CIT

Heard on : 12.03.2019
Pronounced on : 15.03.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the Revenue against the order of the CIT (A), Mangaluru, dt.30.01.2018, for the assessment year 2014-15, on the following grounds :

2. The learned CIT(A) failed to take cognizance of the fact to treat the Foreign Contribution and utilization thereof as Revenue receipts and revenue expenditure under the IT Act. The Foreign Contribution received should have been shown in combined receipts and payment account and a combined income and Expenditure account for the purpose of computing income of the assessee under Section 11 of the Act.
3. The learned CIT(A) erred that tied up funds/foreign contat tied up funds/foreign contributions is required to be treated as the revenue receipts of the trust and accordingly the inflow and outflow of the foreign donations is treated as revenue receipts and revenue expenditure
4. On the facts and circumstances of the case the learned CIT(A) erred in concluding that the assessee is only a trustee in respect of the amount of Foreign Contributin received.
5. The learned CIT(A) erred in deleting the receipts and payments in respect of foreign contributions for the purpose of computing income of the assessee under section 11 of the act.
6. The learned CIT(A) erred in holding that foreign contribution received is for specific purpose and same is not to be considered as income of the assessee trust.

02. It was the case of the Revenue that the CIT(A) without recording proper reasons had decided the issue in favour of the assessee by following the order passed by the CIT (A) for the earlier assessment year, namely, A. Y. 2012-13 and the finding of the CIT (A) as given in para 6.3, read as under :

6.3 Identical issue was discussed in detail and decided by me in the case of the appellant itself for AY 2012-13 in ITA No.56/MNG/CIT(A)MNG/15-16 vide order dated.28.02.2017. Identical issues are involved in this appeal for AY 2014-15 also. For the detailed reasons recorded in that order, I hereby direct the AO to delete the receipts and payments in respect of foreign contributions for the purpose of computing income of the appellant under section 11 of the Act. The grounds on the issue are allowed.

03. It was submitted by the Ld. DR that the finding recorded by the CIT (A) is required to be based on the material and no document was filed by the assessee before AO , nothing was discussed by the authorities , the documents are now filed at pages 54 to 61 of the paper book before Tribunal , which were required to be examined from the prospective of violation under section 11 and 13 of Act whether the foreign contribution received by the assessee were towards the corpus or on account of voluntary contribution. The Ld. DR had also relied upon the SMC decision of the Tribunal in ITA.1027/Bang/2017, dt.04.08.2017, wherein at para 3 & 4, it was held as under :

3. *I have considered the rival submissions. I find that the revenue*

Has raised as many as 8 grounds but the only grievance of the revenue is that the learned CIT (A) has erred in accepting the claim of the assessee that the amount of foreign contribution received by the assessee of Rs. 176,54,741/- and interest levied of Rs. 40,70,332/- on deposit made from such foreign contribution funds is not forming part of income of the assessee. I find that after adding back, these two amounts total Rs. 217,25,914/-, the A.O. allowed deduction on account of utilization of foreign contribution to the extent of Rs. 139,94,030/-, general expenses Rs. 7,495/- and accumulation to the extent of Rs.32,58,887/- (15% of Rs. 217,25,914/-) and assessed the income of the assessee at Rs. 44,65,502/-. But neither before the A.O., nor before CIT (A) and nor before the tribunal, any evidence has been filed about the stated directions of the donors. Hence, under these facts and in the interest of justice, I feel it proper that the matter should go back to CIT (A) for a fresh decision. Hence, I set aside the order of CIT (A) and restore the matter back to his file for a fresh decision with the direction that the assessee should, produce the stated Directions received from the donors as being claimed and thereafter, the CIT (A) may obtain remand report from the A.O. and thereafter, the matter should be decided by CIT (A) by way of a speaking and

reasoned order in the light of the provisions of section 11(1) (d) and the judgment of Hon'ble Karnataka High Court rendered in the case of CIT vs. Canara Organization. for Development and Peace (Supra) after providing adequate opportunity of being heard to both sides.

4. In the result, the appeal of the revenue is allowed for statistical purposes.

The Ld. DR submitted that the matter is required to be remanded back to the file of CIT (A) to examine afresh in the light of the observation of the Tribunal (supra).

04. Per contra the Ld. AR for the assessee has submitted that the contribution received by the assessee from foreign countries was for the corpus and sufficient evidence was filed before the CIT (A) at pages 54 to 61 of the paper book, which goes to show the nature of contribution received by the assessee. It was submitted that documents were filled before CIT(A) but he had not considered documents had granted relief to the assessee without considering the documents. Hence matter can be restored back for examining this aspect.

05. We have heard the rival contentions and perused the record. As the parties before us had agreed that the matter may be remanded to the file of CIT (A) by issuing similar directions as issued in ITA.1027/Bang/2017 (supra). Hence following the earlier SMC decision of the Tribunal in ITA.1027/Bang/2017 (supra), we restore the matter to the file of the CIT (A) for fresh decision, after examining the documents filed before us / CIT(A) at pages 54 to 61 and any other document as may be filed by the

assessee. Thereafter the CIT (A) may obtain a remand report from the AO and thereafter pass a reasoned and speaking order by following the law laid down by the Hon'ble High Court of Karnataka in the matter of CIT v. Canara Organisation for Development & Peace [ITRC No.221/1982, dt.28.06.1988] and any other judgment of High Court as applicable .

05. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 15th day of March, 2019.

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 15.03.2019

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.