



IN THE INCOME TAX APPELLATE TRIBUNAL
VARANASI CIRCUIT BENCH, VARANASI

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

ITA No.204 & 205/ALLD/2017
Assessment Year: 2011-12 & 2012-13

ITO (Exemption) Varanasi	v.	M/s Smt. Banarasi Devi Educational Society Soyepur, Lamahi Pandeypur, Varanasi
		TAN/PAN:AABAS7026G
(Appellant)		(Respondent)

Appellant by:	Shri Virendra Ojha, CIT(DR)		
Respondent by:	Shri D. K. Singh, C.A.		
Date of hearing:	09	05	2019
Date of pronouncement:	10	05	2019

ORDER

PER A. D. JAIN, V.P.:

These are Revenue's appeals against the orders of the Id. CIT(A), Varanasi, both dated 28/7/2017 for the assessment years 2011-12 and 2012-13.

2. In both the appeals, the sole issue raised by the Revenue is against the order of the Id. CIT(A), deleting the addition of Rs.76,13,000/- (for the assessment year 2011-12), and Rs.1,36,28,265/- (for the assessment year 2012-13), on account of excess of income over expenditure, denying the benefit of section 11 of the Act.

3. For assessment year 2011-12, the assessee had filed its return of income on 29/3/2012, declaring the income at Nil. The A.O. completed the assessment under section 143(3) of the Act, computing the income of the assessee at Rs.83,82,600/-. The A.O. while

computing the income of the assessee, had added a sum of Rs.76,13,000/- being the excess income over the expenditure.

4. Aggrieved, the assessee preferred an appeal before the Id. CIT(A) and made submissions, as below:

2. The return of the assessee has been selected for scrutiny, first time for the A.Y. 2010-11 and the assessee has fully cooperated with the Ld. A.O. and provided all the information & explanation asked for by the Ld. A.O. However the A.O. has not complied with his quasi judicial duties and has passed the order on the basis of conjecture and surmises and the registration 12A of the society has been withdrawn by the Hon'ble CIT, Varanasi on recommendation of the A.O., therefore aggrieved from such order the assessee has filed appeal before the Hon'ble ITAT, Allahabad and also the case of the above named assessee is selected for the scrutiny in consecutive next years i.e. 2011-12& 2012-13 and assessee has filed appeal against order passed in that years.

3. That on 16/03/2016 Hon'ble ITAT has passed order in the case of A.Y.2010-11 directing the Hon'ble CIT to restore the registration u/s 12A of the above named assessee. Copy of the order has already been submitted before goodself.

4. Since assessment made in these years are made on assumption that status of the assessee is AOP, instead of charitable trust/institution, because registration u/s 12A was withdrawn, but after order of the Hon'ble ITAT the status of the charitable institution has been restored by Hon'ble CIT(Exemption) Lucknow hence the assessment should be made accordingly. Copy of restoration order is enclosed herewith for your kind consideration.

5. That as regards ad-hoc additions made by the A.O., the assessee above named submits point to point to explanation:

a. That Rs. 4,01,000.00 has been added on account of donation, but Sir! If consider the wording of the order which is reiterated here "In this contention, assessee filed a reply alongwith name and address of the persons. In some of the cases, AR of the assessee filed copy of ITRs and PAN of the persons who contributed towards corpus fund and general

donation. But, after giving an ample opportunities, assessee could not produce/file the details in respect of the following persons...Sir! donation has been provided by well-wishers of the institution and it is not possible for collect the PAN/ITR of each person at the time of receiving donation, hence the addition made is not justified,

b. That assessee above named is a society running welfare activities in the society and organized the Healthcare camp and food for hunger, which called "narayan sewa i.e. Bhandara, but all the expenses has been disallowed by the A.O. How can be it is justifiable? These are additions on the basis of conjecture and not supported by legal facts."

5. The Id. CIT(A), on considering the submissions of the assessee, held that since the CIT (Exemption) has granted registration under section 154/12AA of the Act to the assessee, vide his order dated 15/12/2016, the addition of Rs.76,13,000/- made by the A.O., treating the excess income over the expenditure as taxable income of the assessee, is deleted.

6. Now, the Revenue is in appeal before us against the deletion of addition of Rs.76,13,000/-. The Id. D.R. submitted that the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.76,13,000/- mad on account of excess income over the expenditure, denying the benefit of section 11 of the Act. He, therefore, prayed that the order of the Id. CIT(A) may be cancelled and that of the A.O. may be restored.

7. The Id. A.R. of the assessee, on the other hand, has placed reliance on the order of the Id. CIT(A) and submitted that since the CIT (Exemption) has granted registration under section 12AA of the Act to the assessee, the addition of Rs.76,13,000/- made by the A.O., treating the excess income over the expenditure as taxable income of the

assessee, is not justified and hence the order of the Id. CIT(A), deleting such addition is not to be interfered with.

8. Having heard the rival contentions and from a perusal of the orders of the authorities below, we find that the A.O. had made the addition on account of excess income over the expenditure, as the assessee's income was not exempt under section 11 of the Act, because the assessee was not having registration under section 12AA of the Act, which was withdrawn by the CIT vide his order dated 31/3/2013. The A.O., accordingly, treated the status of the assessee as AOP instead of charitable society and assessed its income accordingly. Against the withdrawal of registration under section 12AA of the Act by the CIT, Varanasi, the assessee filed an appeal before the Tribunal and the Tribunal vide its order dated 16/3/2016 in ITA No.116/Alld/2015, directed the Department to restore the registration of the assessee. Accordingly, the CIT passed an order, dated 15/12/2016 under section 154/12AA of the Act, withdrawing order passed by the CIT, cancelling the registration of the assessee society under section 12AA of the Act. Since the CIT had withdrawn the order, cancelling registration under section 12AA of the Act, the assessee was entitled for exemption under section 11 of the Act. We are, therefore, of the view that the Id. CIT(A) has rightly deleted the addition made by the A.O. Accordingly, the ground of appeal of the Revenue is dismissed.

9. For assessment year 2012-13, the facts are identical and in the same way, as in assessment year 2011-12, the A.O. had made the addition of Rs.1,36,28,265/- on account of excess income over the expenditure. The Id. CIT(A), observing that since the CIT (Exemption), vide his order dated 15/12/2016, has allowed registration to the assessee under section 12A of the Act, had deleted the addition.

10. Since the facts are identical, following the same view as we have taken in ITA No.204/Alld/2017, in para No.8 above, we confirm the order of the Id. CIT(A) deleting the addition. Accordingly, the ground of appeal taken by the Revenue is dismissed.

11. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open Court on 10/05/2019.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:10/05/2019

JJ:0905

Copy forwarded to:

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

By order

Assistant Registrar