

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

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|---------------------------|
| ITA No. 488/Bang/2019     |
| Assessment Year : 2014-15 |

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| M/s. Gopalaka Trust (R),<br>No. 16, 'Nagasimha', SF-2,<br>6 <sup>th</sup> Cross, 6 <sup>th</sup> Block,<br>Nagarbhavi 2 <sup>nd</sup> Stage,<br>Bangalore – 560 072.<br><b>PAN: AABTG7280K</b> | Vs. | The Assistant<br>Commissioner of<br>Income-tax,<br>Trust Circle W-17 (1),<br>Bangalore. |
| APPELLANT  |     | RESPONDENT  |

|             |   |                              |
|-------------|---|------------------------------|
| Assessee by | : | Shri Ganesh Rao, Advocate    |
| Revenue by  | : | Shri Pradeep Kumar, CIT (DR) |

|                       |   |            |
|-----------------------|---|------------|
| Date of hearing       | : | 03.07.2019 |
| Date of Pronouncement | : | 05.07.2019 |

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-14, Bangalore dated 15.02.2019 for Assessment Year 2014-15.

2. The grounds raised by the assessee are as under.

*“1. The CPC erred in taxing the entire Gross receipts of Rs. 2,08,704/- without allowing the expenses as in Income & Exp Account amounting to Rs. 2,05,603/-.*

*2. The learned CIT(Appeal) erred in not allowing the expenses of Rs. 2,08,704/- despite admitting the Addl. ground to that effect.*

*3. It is prayed that the Hon’ble Tribunal may direct the AO allow the expenditure of Rs. 2,05,603/- and tax only the net income of Rs. 3,101/- at the maximum rate u/s 164 of the Act.”*

3. It was submitted by Id. AR of assessee that an additional ground was raised by the assessee before CIT(A) which is reproduced by CIT(A) in para 2.3 of his order and as per this additional ground raised before CIT(A), this was the

issue raised by assessee that the AO/CPC erred in taxing the gross receipts of Rs. 2,08,704/- being the donation received by the Trust during the year ended on 31.03.2014 without allowing the expenses of Rs. 2,05,603/- as per Income & Expenditure Account enclosed with the return of income. He submitted that as per para 2.4 of his order, Id. CIT(A) has stated that he has kept in view the additional grounds and submissions but still he decided only this aspect that the assessee is not eligible for exemption u/s. 11 of the IT Act because in the present year, the assessee was not registered u/s. 12A of the IT Act and there is no decision of CIT(A) on this aspect of the matter raised by assessee by way of additional ground that gross receipts cannot be taxed by the AO and deduction regarding expenditure should be allowed. He submitted that the matter may be restored back to the file of CIT(A) for a decision on this aspect of the matter. The Id. DR of revenue supported the order of CIT(A).

4. We have considered the rival submissions. For ready reference, we reproduce para nos. 2.3 to 2.5 of the order of CIT(A). These paras are as under.

*“2.3 In the course of appellate proceedings, the assessee has also filed additional grounds as follows:*

*Addl. Ground:*

*"The learned AO/CPC erred in taxing the gross receipts of Rs.2,08,704/- being the donation received by the Trust during the year ended on 31.03.2014, without allowing the expenses of Rs.2,05,603/- as per Income & Expenditure Account enclosed to the return of income"*

*1. The Trust was granted Registration u/ s 12A and 80-G approval on 22.06.2015 by the CIT (Exemptions) Sir. Hence the activities of the Trust continues to be charitable i.e., protecting COWS and running GOSHALAS.*

*2. The Addl. Grounds may kindly be admitted and reliance is placed on the following decisions in support of the claim for admission of addl. Grounds/ addl. Evidence Sir:*

*i. Gujarat High Court's decision in the case of CIT Vs. Mitesh Implex - 367 - ITR-- Page 85*

*ii. Telangana and Andhra Pradesh High Court's decision in the case of CIT Vs. Unique Plastics P. Ltd. 373-ITR-page*

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*In both the decisions, the Honourable High Courts have referred to various decisions of the Supreme Court, and held it is always open and permissible for the CIT (Appeals) to admit new or Addl. Grounds or additional or new claim at the stage of appeal.*

3. *The following are the items of expenditure claimed in the 'Income & Expenditure Account' against the Gross Donation receipts of Rs. 2,06,041/-*

|  |                       |
|--|-----------------------|
| <i>i. Fodder Expenses</i>                    | <i>Rs. 35,000/-</i>   |
| <i>ii. Medicines</i>                         | <i>Rs. 1,02,009/-</i> |
| <i>iii. Salary &amp; Allowances</i>          | <i>Rs. 20,000/-</i>   |
| <i>iv. Cattle rescue expenses</i>            | <i>Rs. 19,000/-</i>   |
| <i>v. Publicity &amp; Awareness expenses</i> | <i>Rs. 29,494/-</i>   |

4. *Hence, after allowing the above expenses, the net income of the Trust for the year ended 31.03.2014 was only Rs. 3,101/- and this income may be taxed at the 'maximum rate', but the CPC, has erroneously and wrongly taxed the gross receipts.*

5. *Copies of Return, of Income together with the Income and Expenditure account and Balance sheet for the Asst. Year 2014-15 are enclosed for the Hon'ble CIT (A)' kind perusal and in proof of the expenses claimed and in fact in the return of income filed the net Income shown was 'NIL' and without giving an opportunity of hearing the CPC erred in taxing the gross receipts as against the net income Sir.*

6. *It is prayed that the Hon'ble Commissioner may kindly admit the Addl. Ground arid direct the AO to tax only the net income of Rs.3,101/- as against the gross receipts of Rs.2,08,704/- Sir.*

2.4 *Upon careful examination of the case and keeping in view the additional grounds and submissions, it is noticed that the assessee is not found to be recognised as a charitable organisation falling within the meaning of Section 2(15) of the Act by obtaining registration u/s 12A of the Act. Thus, the basic requirement of recognition and registration from the IT Department u/s 12A/ 12AA of not satisfied for claiming exemption u/s 11 of the Act. However, as seen from the record as filed by the appellant, the AOP has obtained registration u/s 12A and 80G (5) of the Act on 22.06.2016, which will have effect from the A.Y.'s 2016-17 onwards. Thus, for the under consideration the institution is not recognised u/s 12A of the Act. Further, in my considered view that unless the trust obtains registration from the concerned authority u/s 12A the provisions of Section 11(1)(a) or 11(2) of the Act are not applicable and consequently, the income cannot be brought under exemption category. Even the case laws relied upon by the appellant are found inapplicable to the facts of the present case and are distinguishable .*

*2.5 In view of the facts and circumstances of the case, I find that the assessee's argument of allowance of accumulation u/s 11(2) and consequential exemption is not acceptable and therefore, the Grounds of appeal and additional grounds of appeal are dismissed As a result, the appeal is hereby dismissed."*

5. From the above paras reproduced from the order of CIT(A), it is seen that this issue was raised by assessee before CIT(A) by way of additional ground that deduction should be allowed in respect of expenses but on this aspect, there is no decision of Id. CIT(A) and we therefore, set aside the order of CIT(A) and restore the matter back to his file for a decision on additional ground of the assessee raised before CIT(A).
6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(PAVAN KUMAR GADALE)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 05<sup>th</sup> July, 2019.  
/MS/

Copy to:  
1. Appellant  
2. Respondent  
3. CIT  
4. CIT(A)  
5. DR, ITAT, Bangalore  
6. Guard file

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.