

आयकरअपीलीयअधिकरणन्यायपीठरायपुरमें।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.124/NAG/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Satna Diocesan Society,
PB No.22, Bishop House,
Rewa Road, Satna (M.P.)

PAN: AABTS2540L

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income-tax (Exemption),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri S.R. Rao

Revenue by :ShriG.N. Singh

सुनवाई की तारीख / Date of Hearing :08.11.2019

घोषणा की तारीख / Date of Pronouncement :08.11.2019

आदेश / ORDER**PERANIL CHATURVEDI, AM:**

This appeal preferred by the assessee emanates from the order of the Ld. CIT(A)-1, Raipur, dated 28.03.2018, for the assessment year 2014-15.

2. The assessee is a charitable institution stated to be engaged in offering education, medical relief and relief of rural poor and is registered u/s 12A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee filed its return of income electronically for A.Y. 2014-15 declaring total income at nil. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 31.12.2016 and the total income was assessed at Rs.1,09,00,000/- .Aggrieved by the order of Assessing Officer, assessee carried the matter before Ld.CIT(A), who vide order dated 28.03.2018 (in appeal No.1031/16-17) apart from dismissing the appeal of assessee also made an enhancement. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

- “1. *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the ground of appeal assailing failure on the part of the Ld. Assessing Officer to consider that payment of*

Rs.1,09,00,000/- was made as advance for purchase of land for furtherance of infrastructure facilities of society's school.

- 2. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the ground of appeal assailing the failure on the part of the Ld. Assessing Officer to consider the fact that the land was neither registered nor possession thereof was received by the appellant.*
- 3. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the ground of appeal assailing the failure on the part of the Ld. Assessing Officer to consider the fact that the amount advanced for purchase of land is lying in the Balance sheet under the head "Loans and Advances" (as in the preceding year) and was not capitalized due to non-culmination of purchase transaction.*
- 4. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the ground of appeal assailing the failure on the part of the Ld. Assessing Officer to consider the fact that the amount advanced for purchase of land was not claimed in the computation of income as "application of income towards its objects".*
- 5. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in dismissing the ground of appeal assailing incorrect treatment of advance for purchase of land given by the Ld. Assessing Officer as investment u/s.13(1)(d) and wrongly holding that it was made in contravention to the modes specified in Section 11(5) of the Income Tax Act, 1961.*
- 6. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in dismissing the ground of appeal challenging validity of impugned order due to denial of opportunity by Ld. Assessing Officer before rejection of appellant's submissions.*
- 7. The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in making enhancement of Rs.1,13,65,809/- to the total income on account of purported double claim of exemption u/s.11(1)(a) of the Act by mis-constructing the fact and traveling beyond the scope of assessment order which is not permissible.*

8. *The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in making enhancement without giving proper opportunity mandated u/s.251(2) of the Income Tax Act, 1961.*
9. *The impugned order is bad in law and on facts.*
10. *The appellant reserves right to add, alter, amend omit any of the grounds of appeal.”*

3. Before us, at the outset, the Ld. AR submitted that he does not wish to press ground No.8. In view of the aforesaid submission of Ld. AR, the same is dismissed as not pressed. He thereafter, submitted that ground No.1 to 6 are inter-connected and are with respect to payment of Rs.1,09,00,000/-.

During the course of assessment proceedings the Assessing Officer noticed that there was an advance for land amounting to Rs.4,24,00,000/- with opening balance of Rs.3,15,00,000/- and Rs.1,09,00,000/- was paid during the year to one Shri Mr. Shakir Khan. The assessee was asked to explain the transaction and furnish necessary documents. The assessee furnished the details which were not found acceptable to the Assessing Officer. The Assessing Officer was of the view that as per section 11(5) of the Act, which restricts the investments of the trust money in accordance with the provisions of the Act. He was further of the view that one resolution speaks about the advance payment for purchase of land. He was therefore, of the view that payment of Rs.1,09,00,000/- was squarely

covered u/s. 13(1)(d)(i) of the Act and he accordingly, brought it to tax. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A), who upheld the order of Assessing Officer by observing as under:-

“2.3 Appellant has contended that the amount was advanced for purchase of land. As per KabjaPatra the rate of land is Rs.40 Lakhs per acre whereas as per the minutes of meeting and resolution the rate is Rs.70 Lakhs per acre. As per KabjaPatra Rs.2.2 Crores has been paid to alleged seller whereas the amount shown in the books and added in the assessment order is Rs.1.90 Crores. There are contradictions in the facts brought on record by the assessee.

It has been stated that the advance was given for purchase of land. As per ledger advance was Rs.2.15 Cr in FY 2011-12, Rs.3.15 Cr in FY 2012-13 and Rs.4.24 Cr in FY 2013-14 to the assessment year under consideration. During the year fresh amount of Rs.1,09,00,000/- has been made. The advance has been made ostensibly for purchase of land for which there is neither any reliable evidence nor any land has been purchased even on this date of writing this order even after lapse of 7 years when the first amount was given. It has been stated that land in question was own by one lady KuntiBai. However, the advance has been given to her only partly. Out of Rs.4.24 Cr shown as advance, Rs.2.15 Cr has been shown to be paid to KuntiBai and Rs.2.09 Cr has been shown to paid to certain Md. Sakir. When the land is owned by KuntiBai, for what purpose Rs.2.09 Cr has been paid to Md. Sakir. In any case the whole affair is very merky as no registration has been made so far. Thus, the investment is not only not as per the provisions of Section 11(5) but is also a violation of Section 13(1)(d). The amount will therefore be treated as income by the AO and the same is sustained.”

4. Aggrieved by the order of CIT(A), the assessee is now before us.

5. Before us, Ld. AR reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that advance was for the purchase of land and substantial part of the advance has been paid by the assessee in earlier years and in subsequent years. The Revenue has not disputed the payments made by the assessee in earlier and subsequent years and only has made the addition in the year under consideration. He therefore submitted that when the issue is with respect to the advance of the same land, the view in isolation cannot be taken by the Revenue. He further pointed to the copies of agreement which are placed in the Paper Book and submitted that payment was for the purchase of land which was evident from the registered documents. He further relying on certain decisions submitted that the advance for purchase of land cannot be considered for the purpose of disallowance u/s. 13(1)(d) of the Act.

6. The Ld. DR on the other hand supported the orders of lower authorities.

7. We have heard the rival submissions and perused the material on record. The issue in the ground No.1 to 6 is with respect to the addition of Rs.1,09,00,000/- by invoking the provisions of section 13(1)(d) of the Act. Before us, it is assessee's contention that the advance for purchase of land

was given in earlier years i.e. 2011-12, 2012-13 and 2013-14 and in the assessment framed u/s. 143(3) of the Act, the same has been accepted by the Revenue. It is further contention of assessee that for subsequent years also, advance paid by the assessee towards purchase of land has been accepted. The aforesaid contention of assessee has not been controverted by Revenue. Further, before us, the Ld. AR has also relied on the decision cited hereinabove in support of the contention that the advance paid towards purchase of land cannot be considered within the purview of section 13(1)(d) of the Act. These contentions of Ld. AR have not been controverted by Revenue. Considering the totality of the aforesaid facts and more so, when the payment for land has been accepted by the Revenue in earlier years and in subsequent years, a different view in isolation is not called for. Following the principle of consistency, we are of the view that invocation of provisions of section 13(1)(d) of the Act is not called for. We therefore allow the ground No.1 to 6 raised by assessee. Thus, **the ground No.1 to 6 are allowed.**

8. The ground No.7 is with respect to enhancement of income.

9. The CIT(A) noticed that the assessee has made a claim of Rs.1,13,65,809/- towards repayment of Term Loan. He was of the view that the Term Loan obtained by the assessee was for the purpose of

acquiring assets and the acquisition of assets has already been allowed as application of income and in such situation the repayment of Term Loan for the same assets would amount to double claim by the assessee. The submissions made by the assessee *inter-alia*, that the assets acquired out of Term Loan were never considered as application of income was not found acceptable to the CIT(A). He accordingly, held that the claim is double claim and thereby disallowed and directed the Assessing Officer to enhance income by Rs.1,13,65,809/-. Aggrieved by the order of CIT(A), the assessee is now before us.

10. The Ld. AR reiterated the submissions made before the Assessing Officer and CIT(A) and further submitted that as per regular practice, the assessee credited the amounts paid to seller into the account "Advance for Purchase of Land A/c" but did not made any claim as 'application of income'. Only the 'repayment of loan' was claimed as application of income and for which reliance was placed on the following decisions:

- (a) *CIT Vs. Maharana of Mewar Charitable Trust* [164 ITR 0439]
- (b) *Janambhumi Press Trust* [242 ITR 457] and 703 (Kar.)
- (c) *DDIT (E) Vs. GovinduNaikar Estate (Mad.)*, 227 ITR 283 and
- (d) *CBDT Circular No.100 dated 24/01/1973* 88 ITR (SC) 66

He therefore submitted that enhancement is uncalled for.

11. The Ld. DR on the other hand, supported the order of CIT(A).

12. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to enhancement made by the CIT(A). It is the contention of Revenue that the Term Loan which was obtained by the assessee in earlier years was claimed as application of money and therefore the claim of repayment of Term Loan as application of income would amount to double claim. Before us, the assessee submitted that the Term Loans were restricted as application of income and in support of which he also pointed to the comparative chart placed on record at pages 86 and 87 of Paper Book. The chart placed by the assessee in the Paper Book reveals that the assessee has not claimed the purchase of land from the loans as application of income. Before us, the Revenue has not controverted the submissions made by the assessee. We further find that CBDT in Circular No.100 dated 24.01.1973 has held that repayment of loan originally taken to fulfill one of the objects was amount to application of income for charitable and religious purposes. Considering the totality of the facts, we are of the view that the CIT(A) was not justified in enhancing the income. We therefore, set aside the order of

CIT(A) on this ground. Thus, **the ground No.7 raised by assessee is allowed.**

13. In the result, **appeal of assessee is allowed as indicated above.**

Order pronounced on 8th day of November, 2019.

Sd/-
PARTHASARATHI CHAUDHURY
JUDICIAL MEMBER

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated :8thNovember, 2019.
GCVSR

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. TheCIT(A)-1, Raipur, (C.G.)
4. The Pr.CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

//True Copy//

Senior Private Secretary
आयकरअपीलीयअधिकरण, रायपुर/ ITAT, Raipur.

| | | Date | |
|----|--|------------|----------|
| 1 | Draft dictated on | 08.11.2019 | Sr.PS/PS |
| 2 | Draft placed before author | 08.11.2019 | Sr.PS/PS |
| 3 | Draft proposed and placed before the second Member | | JM/AM |
| 4 | Draft discussed/approved by second Member | | AM/JM |
| 5 | Approved draft comes to the Sr. PS/PS | | Sr.PS/PS |
| 6 | Kept for pronouncement on | | Sr.PS/PS |
| 7 | Date of uploading of order | | Sr.PS/PS |
| 8 | File sent to Bench Clerk | | Sr.PS/PS |
| 9 | Date on which the file goes to the Head Clerk | | |
| 10 | Date on which file goes to the A.R | | |
| 11 | Date of dispatch of order | | |