

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, "बी" चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT &
SHRI SANJAY GARG, JUDICIAL MEMBER

आयकरअपीलसं./ITA No. 1422/CHD/2017

निर्धारणवर्ष / Assessment Year : 2014-15

DCIT, Circle-1 (Exemptions), Chandigarh	Vs. बनाम	Om Prakash Bansal Charitable Trust, C/o G.D. Goenka Public School, Akhnoor Road, Jammu
स्थायीलेखासं./PAN NO: AAATO1533A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे/Assessee by : Sh. P.N. Arora, Advocate

राजस्वकीओरसे/ Revenue by : Sh. Amit Shukla, Sr.DR

सुनवाईकीतारीख/Date of Hearing : 18.09.2019

उदघोषणाकीतारीख/Date of Pronouncement : 21.10.2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 30.05.2017 of the Commissioner of Income Tax (Appeals)- J&K, Jammu [hereinafter referred to as CIT(A)].

2. The Revenue in this appeal has taken following grounds of appeal:-

1. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not considering the evidence/material available on record and facts of the case.*

2. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not considering the fact that the agreement with the assessee was a method for diverting the receipts to M/s. G.D. Goenka Pvt. Ltd by paying 10% of receipt in the name of royalty.*
3. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not considering the fact that conditions of agreement between the assessee and M/s. G.D. Goenka Pvt. Ltd clearly show that the agreement is business in nature and is a profit sharing agreement showing the profit motive of the parties with the assessee diverting all its powers and obligations to a limited company.*
4. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in holding that the provisions of section 11(4)(A) do not apply to the assessee.*
5. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not appreciating the fact that the assessee has violated the basic principles of exemption and is not doing any charity as per section 2(15) of the Act by carrying out activities on a commercial basis.*
6. *That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 11,23,122/- on account of unreasonable rent paid to a specified person without giving any finding on the issue even as the assessing officer had clearly established the violation of provisions of section 13(l)(c) of the Act.*
7. *That the appellant craves to leave, add or amend the grounds of appeal on or before the appeal heard and disposed off.*

3. The brief facts of the case are that the assessee Society is registered u/s 12AA of the Income tax Act, 1961 with the CIT, J&K, vide order no. IT/J&K/JMU/ITO (TECH)/06-07/3112, dated 29/08/2006. The assessee society was imparting and providing educational direction

and expert guidance to establish, manage and develop progressive schools to meet the needs and demand. During the assessment proceedings, it was noticed by the AO that the assessee was not fulfilling conditions as provided under section 11 r.w.s. 2(15) of the Income tax Act. It was noted by the AO that the assessee Trust was imparting education on commercial principles and earning huge profits, generating large scale surplus and not being ploughed back into the stated objects of the Trust, diverting the receipts of the Trust to a private Ltd. Company in the name of business services provided by the company to the Trusts, paying huge amounts to M/S. G.D. Goenka Pvt. Ltd. under the head 'Royalty' by making a profit sharing agreement, paying lease rent to Smt. Suman Bansal, who was covered under specific person u/s 13(3) of the Act. The AO, therefore, issued show cause notice to the assessee society dated 9.12.2006 asking the assessee to explain as to why the claim of exemption u/s 11 should not be disallowed and surplus be taxed as AOP as the assessee is not following the objects of the Trust for which it was established.

In response to the show cause notice, the assessee filed its written reply on 22/12/2016 stating therein that CBDT vide its circular No. 14/2015 dated 17th August 2015 has clarified that the generation of surplus out of gross receipts would not necessarily be breach of the threshold condition that the educational institutions should exist slowly for educational purpose and for the purpose of the profit and some

generation of surplus cannot be the basis for rejection of the exemption on the ground that it amounts to an activity of the nature of profit making subject to the condition that such amount was applied wholly and exclusively to the object for which it was established. Further the allegation, that the assessee was recovering certain amounts from the students as admission fee etc. was wholly baseless and there was no justification for treating the said amount as profit making activity unless the amount was in the nature of capitation fee directly or indirectly. The assessee also placed reliance on a number of judgments, wherein, it has been held that the generation of surplus by the assessee is no ground to deny exemption under Section 80-G of the Income Tax Act.

The reply given by the assessee was duly considered by the AO but he did not accept its contention and held that the perusal of the nature of receipts and percentage of profit clearly revealed that the assessee was involved in commercial activity. He, therefore, denied the deduction to the assessee, claimed u/s 11 of the Income Tax Act, 1961.

4. Being aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Ld. CIT(A). However, the Ld. CIT(A) relying upon the various case laws wherein it has been held that mere generation of sum surpluses was not a ground to deny the

exemption, allowed the appeal of the assessee. The Revenue, thus, has come in appeal before us.

5. We have heard the rival contentions and have gone through the file. The Ld. Counsel for the assessee, at the outset, has submitted that the findings of the Assessing Officer that the assessee was involved in large scale commercial activity was wrong. That the Assessing Officer has taken into consideration some of the figures mentioned of next year not belonging to the financial year under consideration to arrive at such an erroneous conclusion.

The Ld. DR, on the other hand, has invited our attention to the impugned order of the CIT(A) to submit that even the Ld. CIT(A) has not considered the relevant figures of income of the assessee, rather, the Ld. CIT(A) has straightway relied upon certain case laws and allowed the appeal of the assessee without discussing as to how those case laws were applicable to the facts of the case of the assessee especially to the quantum of income earned by the assessee or the generation of huge surplus.

Both the Ld. representatives of the parties, therefore, submitted that since the matter has not been properly examined either by the Assessing Officer or by the CIT(A), hence, the same be restored to the file of the Assessing Officer for proper appreciation of the facts and the decision in accordance with law.

6. In view of the above submissions of the Ld. representatives of the parties, the order of the lower authorities are set aside and the matter is restored to the file of the Assessing Officer for decision afresh in the accordance with law. Needless to say that the Assessing Officer will provide proper opportunity to the assessee to present its case. The assessee is also directed to promptly appear before the Assessing Officer, as and when called for, and will not contribute in delaying the proceedings.

The appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the Open Court on 21.10.2019.

Sd/-
(एन. के. सैनी / N.K. SAINI)
उपाध्यक्ष /Vice President
Dated : 21.10. 2019
"आर.के."

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिकसदस्य/ Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar