

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

[Before Sri S. S. Godara, Judicial Member]

आयकर अपीलसं./I.T.A No.1442/Kol/2019

(निर्धारण वर्ष / Assessment Year: 2013-14)

Ganapathi Jana Seva Bhandar 31, Shakespeare Sarani, 4 th Floor, Room No.405A & B, Kolkata	Vs.	ITO(Exemption), Ward-1(1), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAATG2294E		
(Appellant)	..	(Respondent)

Appellant by : Shri Parash Nath Keshari, FCA

Respondent by : Shri Dhruvajyoti Ray, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 11/11/2019

घोषणा की तारीख/Date of Pronouncement : 22/11/2019

आदेश / O R D E R

Per Shri S. S. Godara:

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income Tax (A) - 25, Kolkata order dated 25.04.2019 passed in case No.121/CIT(A)-25/Kol/2015-16 involving proceedings u/s 154 of the Income Tax Act, 1961 (in short 'the Act').

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance in the instant appeal is that both the lower authorities have erred in law as well facts in disallowing section 10(34) exemption in respect of dividend received amounting to Rs.10,57,484/-. Learned counsel's case during the hearing is that the impugned exemption has been wrongly denied to the taxpayer. The Revenue's case on the other hand rests on section 11(7) of the Act which reads as under:

“(7) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) of section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)] and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.]”

3. Learned counsel’s case in rebuttal is that the tribunal’s coordinate bench’s order in ITA No.2112/Kol/2007 ADIT vs. Mayank Welfare Trust has already decided the issue against the department. I have give my thoughtful consideration to the rival contentions. I find no merit in assessee’s grievance seeking to delete the impugned disallowance of section 10(34) exemption of dividend income to the trust section 11(7) of the Act makes it clear that a trust or an institution; enjoying section 12AA registration or section 12A (as it stood before its amendment) by the Finance Act (2) of 1996 is not eligible for any of the exemption benefits other than section 10(23C) of the Act. This tribunal’s coordinate bench’s decision (supra) does not take note of the same as in evident from the operative para 6 of the order. The same is treated as per incuriam as per the case law (1993) 202 ITR 222 (AP). I conclude in these facts both the lower authorities have rightly disallowed the impugned exemption to the assessee trust. The assessee fails in its sole substantive grievance.

4. The assessee’s appeal is dismissed.

Order is pronounced in the open court on 22.11.2019.

Sd/-
(S. S. Godara)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date:22/11/2019

(RS, Sr.PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant - Ganapathi Jana Seva Bhandar
2. The Respondent- ITO(Exemption), Ward-1(1), Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.