

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.3573/Del/2019
Assessment Year: 2015-16

Arya Kanya Mahavidyalaya, Vs ITO (E),
Near Singla Dharamshala, Rohtak.
Patel Nagar,
Narwana,
Haryana.

PAN: AACAA4153D

(Appellant)

(Respondent)

Assessee by : Shri Gurjeet Singh, CA
Revenue by : Ms Shashi Kajli, Sr. DR
Date of Hearing : 03.03.2020
Date of Pronouncement : 03.03.2020

ORDER

This appeal filed by the assessee is directed against the ex parte order dated 22nd February, 2019 of the CIT(A), Hisar relating to the A.Y. 2015-16.

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

1. Because the action is being challenged on facts & law by having dismissed the appeal ex-parte while none notice received and assessee can file affidavit to this fact.

2. Because the action is being challenged on facts & law in framing assessment u/s 143(3) of the I.T. Act, 1961 at Rs. 41,87,560/- against the returned Nil income and treating it as income of AOP.

3. Because the action is being challenged on facts & law in not allowing the statutory exemption of Rs 14,98,371/- u/s 10(23C)(iiiab) of the I.T. Act.

4. Because the action is being challenged on facts & law by declining exemption u/s 10(23C)(iiiab) and by giving narrow interpretation of notification No. 79 dt. 12.12.2014. Thus assessment framed is totally wrong, illegal and excessive in nature.

5. Because the action is being challenged for making addition of Rs. 14,98,371/- towards surplus while the assessee is fulfilling the test of predominant object pursuant to judgment (1980) 121 ITR 1 (SC).

6. Because the action is being challenged on facts & law as having wrongly considered the CBDT notification dated 12.12.2014 which prescribed the Govt, grant which is 50% of the total receipts while prior to this there, is no such limit was prescribed under I.T. Act. That the above notification is not applicable on the assessee. Thus assessment finalized on basis of notification is totally wrong, illegal and excessive in nature.

7. Because the action is being challenged on facts & law by making addition of Govt, grant amounting to Rs. 26,89,187/- as the income of the assessee ignoring all evidence & material that said amount has been utilized in the next year and the same cannot be treated as the income of the assessee.

Alternatively & without prejudice to the above, addition of Rs. 26,89,187/ has been made without any basis which is illegal, wrong and against the principal of nature justice.

8. Because the action is being challenged on facts & law in treating Rs. 26,89,187/- as income which is received by the assessee while it is liability of the assessee to be paid to employees. In any case grant of Rs. 26,89,187/ is not the income of the assessee and it is not liable for taxation.

9. Because the assessee craves leave to add, amend, alter, modify or delete the grounds of this appeal before the disposal of the appeal.ö

3. Facts of the case, in brief, are that the assessee society filed its return of income on 29th March, 2017 declaring nil income. During the course of assessment proceedings, the AO noted that the assessee society has claimed exemption u/s 10(23C)(iiiab) of the IT Act, 1961. On being asked by the AO, it was submitted that said exemption has been claimed since the assessee society runs the educational institute that exists solely for the educational purpose and not for

the purpose of profit and it is substantially financed by the government. However, the AO noted that the gross receipt of the assessee society (school + government grants) are amounted to Rs.1,65,52,099/- out of which the Government grant is only Rs.64,12,134/- which amounts to 38.74% of the aggregate gross receipts. Since the assessee did not furnish the requisite registration certificate u/s 12AA for claiming exemption u/s 11 and 12 of the IT Act or necessary approval u/s 10(23)(vi) of the Act, the AO noting that there is surplus of Rs.14,98,371/- in the Income & Expenditure Account and Rs.26,89,187/- as surplus in respect of government grant, the AO completed the assessment determining the total income at Rs.41,87,558/-.

4. Since none appeared on behalf of the assessee, the Id.CIT(A), in the *ex parte* order passed by him, dismissed the appeal of the assessee.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. Counsel for the assessee, at the outset, submitted that the Id.CIT(A) has decided the appeal *ex parte* since none appeared on behalf of the assessee as no notice has been received. He submitted that in the interest of justice, this matter should be restored to the file of the CIT(A) with a direction to give one final opportunity to the assessee to substantiate its case.

7. The Id. DR, on the other hand, opposed the arguments advanced by the assessee and submitted that despite number of opportunities granted by the

CIT(A), the assessee did not appear before him for which he has passed an ex parte order, therefore, the same should be upheld and the grounds raised by the assessee should be dismissed.

8. I have considered the rival arguments perused the record. I find the ld.CIT(A), in the instant case, has passed an ex parte order dismissing the appeal of the assessee since none appeared before him despite a number of opportunities granted. Considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the CIT(A) with a direction to grant one final opportunity to the assessee to substantiate its case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) on the date of hearing without seeking any adjournment under any pretext, failing which, the ld.CIT(A) is at liberty to decide the issue as per law. I hold and direct accordingly. The grounds raised by the assessee is allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 03.03.2020.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 03rd March, 2020.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi