

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE
BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

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| ITA 1736/Bang/2016 |
| Assessment Year : 2009 - 10 |

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| M/s. Benny Hinn Ministries, No. 2, Prestige Sigma, F - 3, Vittal Mallya Road, Bengaluru - 560 001. Presently at : Tulip, New Minaal Residency, J.K Road, Govindpura, Bhopal-462 023 [M.P] PAN NO : AAATB 8988 J | Vs. | Asst. Director of Income - Tax, (Exemptions), Circle - 17 (1), Bengaluru. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Smt. Sheetal Borkar, Advocate |
| Respondent by | : | Ms. Nishi Padma, JCIT - DR |

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| Date of Hearing | : | 10-01-2020 |
| Date of Pronouncement | : | 12-03-2020 |

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 28/05/2016 passed by Ld. CIT(A)-14, Bangalore for assessment years 2009-10 on following grounds of appeal:

1. The impugned order of CIT(A) is bad and unsustainable in the eye of law as the same is passed without proper application of mind to the facts urged.
2. The CIT(A) seriously fell in error in not appreciating that the payments made, in Indian Currency, to an Indian entity was towards application and hence there was no violation of provisions of S.11.
3. CIT(A) erred not applying his mind to the fact that the programme telecast over the television for which expenditure was incurred, was nothing but preaching which was also one of the objects of the appellant trust and that itself was a charitable activity and therefore, the disallowance as made by the AO was bad.
4. The CIT(A) erred in not deleting interest under s.234B of the Act.
5. For these and such other grounds that are urged during the hearing, the appellant prays that the appeal be allowed and the disallowance may be deleted.

2. Brief facts of the case are as under:

Assessee is a wholly religious trust registered under section 12 A (a) of the Act, vide No. TRUST/718/10 A/VOL.I/B-660/2000-2001/CIT-II dated 02/11/2000 w.e.f. 29/09/2000. For year under consideration assessee filed its return of income on 16/09/2009 declaring “nil” income. The return was processed under section 143 (1) and was selected for scrutiny. Statutory notices were issued in response to which representative of assessee appeared and produced all documents as called for.

3. Ld. AO observed that, assessee debited airtime expenses amounting to Rs.1,74,00,459/- and video duplication expenses amounting to Rs. 58,14,509/-. On perusal of details called for, Ld. AO observed that, the concern being, Miraclenet broadcasted programmes against which payments were made for showing

programme and broadcasting videos for contribution which were agreed in dollars. Ld. AO observed that, assessee has to apply the income only for charitable purposes in India, and if any income of trust is applied outside India, then such income shall be taxable unless the activity undertaken is with the approval of CBDT. Since assessee could not establish by way of any documents/evidences that payments made outside India was approved by CBDT, Ld. AO disallowed the same.

Aggrieved by addition made by Ld. AO, assessee preferred appeal before Ld. CIT(A).

4. Ld. CIT(A) justified action of Ld. AO by observing that, assessee nowhere categorically proved that, payment made resulted for charitable activities in India. Ld. CIT(A) rejected argument of assessee that, programs are shown through television media and viewers are Indian residents. It is observed by Ld. CIT(A), on examination of contentions of assessee and categorically opined that Miraclenet, in their receipts confirms payment is mainly to Benny Hinn Ministries in USA and that these payments have gone abroad and are incurred outside India. Ld. CIT (A) thus confirmed the addition made by Ld. AO.

Aggrieved by order of Ld. CIT(A) assessee is in appeal before us now.

5. At the outset Ld. AR submitted that, there is a delay of 35 days in filing present appeal before this *Tribunal*. In affidavit dated 03/01/2020 filed by accountant of assessee Shri. Raghunath. H, it has been stated that, due to extensive outstation travel authorised representative of appeal could not be filed on time which was unintentional.

6. Ld. DR strongly opposed condonation of delay, as it has not been filed by authorised representative of assessee and that, the person whose affidavit has been placed on record is an accountant, who does not carry any authority to file any such affidavits. She further submitted that, sufficient opportunity was granted to assessee to rectify the same. She submitted that, appeal should be dismissed at the threshold for being defective. We have perused submissions advanced by both sides in light of records placed before us.

7. Before us Ld.AR filed letter dated 18/12/2019, wherein it has been submitted by the accountant of assessee that, communication regarding defect memo was received recently by assessee and they were unaware about the same. It has been submitted therein that, trustee was handling the matter for trust in Bangalore office has resigned and communication about defective notice must have been received by the said trustee. It was in accordance to that the accountant filed an affidavit explaining the delay in filing the appeal.

8. We note that there is 35 days delay in filing present appeal which cannot be considered to be unreasonable as there existed genuine reason for met able to file appeal on time. Also considering submission in 18/12/2019, along with reason for not filing appeal on time as mentioned in affidavit, we are of the opinion that, delay is condonable.

Accordingly, we condoned the delay and proceed to decide on merits.

9. The only issue alleged by assessee is for not granting exemption under section 11 on expenditure incurred towards

airtime expenses and video duplication expenses, for the reason that payments have been made outside India. Ld.AR submitted that, expenses have been incurred in Indian currency and payments have been made through Indian bank accounts maintained in India to the broadcasting company. She submitted that, copy of payment instruction letters issued by bankers for purposes have been submitted in evidence of payment in Indian rupees, which has not been verified by authorities below. She further submitted that, these payments have been made to Miraclenet for telecasting programs in India in various languages.

10. On the contrary, Ld. DR submitted that, agreements are entered for making payments in U.S. dollars, as has been observed by Ld. CIT(A). Further, she submitted that, charges paid by assessee to M/s. Miraclenet, cannot be concluded as applied in India, as there is no permission/approval, obtained by assessee from CBDT.

We have perused submissions advanced by both sides in light of records placed before us.

11. Ld. CIT(A) proceeded on the footing that shows telecasted through television is not for exclusive viewers in India, and that payment was routed to foreign concern abroad, after converting the same in Indian rupees. It is also observed that, Ld. CIT(A) records a finding that payment ultimately reaches Benny Hinn Ministries, USA cannot be considered as application of trust funds. These are receipts issued by Miraclenet, (placed at page 17-30 of paper book) to assessee in India and also a copy to assessee in USA. It is observed that, Ld. CIT(A) has not considered certain evidences filed by assessee regarding

payments made to M/s. Miraclenet. In our view this issue needs to be revisited by Ld. CIT(A) having regards to all documents filed by assessee in accordance with law. Necessary verification can be carried out to ascertain the application of funds is in accordance with the objects of the Trust. In the event the expenditure incurred by assessee towards airtime charges and video duplication charges are application of Trust, fund, deduction claimed by assessee u/s. 11 may be granted.

We therefore set aside this issue back to Ld. CIT(A) to decide claim u/s. 11 in light of evidences filed. Needless to say, that proper opportunity of being represented shall be provided to assessee in accordance with law.

Accordingly, the grounds raised by assessee stands allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 12th March, 2020.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 12th March, 2020.
/MK/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore