

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-2+SMC', NEW DELHI**

Before Ms. Suchitra Kamble, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6896/Del/2017 : Asstt. Year : 2014-15

Samvardhan, 56, Chatta Mohalla, Delhi Gate, Ghaziabad	Vs	Income Tax Officer, Exemption Ward, Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AAKTS6545E		

Assessee by : Ms. Vanshika Taneja, Adv.

Revenue by : Sh. Pradeep Singh Gautam, Sr. DR

Date of Hearing: 27.02.2020

Date of Pronouncement: 06.05.2020

ORDER

Per Dr. B.R.R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A), Ghaziabad dated 31.08.2017.

2. Following grounds have been raised by the assessee:

"1. That the order of the Id. CIT (A) dated 31.08.2017 is bad in law and on facts.

2. That the Id. Assessing Officer has erred in law in not issuing any show cause notice before making addition.

3. That the Id. CIT (A) has erred in upholding the addition of Rs.1,55,480/- by merely relying on the order of Ld. AO and without recording his own satisfaction in relation to rejection of the claim of the appellant.

4. The Id. CIT (A) has erred in applying the provisions of Section 167B(2) of the Act regarding applicability of maximum marginal rate of tax despite the fact that appellant trust is covered under clause (I) of the First schedule of the Finance Act."

3. During the year, the assessee trust received donation of Rs.1,26,200/- and life membership fee of Rs.29,280/- has been added to the income of the assessee on the grounds that the assessee is not eligible for the deduction as the application for registration u/s 12AA of the Income Tax Act, 1961 has been rejected by the Id. CIT(Exemption), Lucknow on 22.06.2015. Having rejected the AO taxed the amount at the maximum marginal rate applicable to AOP. The Id. CIT (A) confirmed the action of the Assessing Officer on the grounds that the benefits of the provisions of Section 167B(2) are not applicable to the assessee. The provisions of Section 167B reads as under:

"167B. (1) Where the individual shares of the members of an association of persons or body of individuals (other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :

Provided that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)],—

(i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;

(ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that

portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

Explanation.—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.]”

4. Having heard the arguments of both the parties and on perusal of the record, we find that in the absence of registration u/s 12AA, the Id. CIT (A) has rightly treated the amount to maximum marginal rate in accordance with the provisions of Section 167B(2) of the IT Act.

5. In the result, the appeal of the assessee is dismissed.

Order Pronounced in the Open Court on 06/05/2020.

Sd/-

(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-

(Dr. B.R.R. Kumar)
ACCOUNTANT MEMBER

Dated: 06/05/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR