

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

ITA No.2111/Del./2017
Assessment Year: 2013-14

ACIT, Circle-1(1), New Delhi	Vs.	Dr. Ambedkar Foundation, 15, Janpath, New Delhi
PAN :AAATD5850B		
(Appellant)		(Respondent)

AND

C.O. No.134/Del./2017
[In ITA No.2111/Del./2017]
Assessment Year: 2013-14

Dr. Ambedkar Foundation, 15, Janpath, New Delhi	Vs.	ACIT, Circle-1(1), New Delhi
PAN :AAATD5850B		
(Appellant)		(Respondent)

Assessee by	Shri Saurav Sood, Adv. & Shri Mahesh Kumar, CA
Department by	Ms. Nidhi Srivastava, CIT(DR)

Date of hearing	24.12.2020
Date of pronouncement	12.01.2021

ORDER**PER O.P. KANT, AM:**

This appeal by the Revenue and cross objection by the assessee are directed against order dated 31/01/2017 passed by the Ld. Commissioner of Income-tax (Appeals)-40, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14.

ITA No.2111/Del./2017 (Revenue's Appeal)

2. First, we take up the appeal of the Revenue for adjudication.

The grounds raised by the Revenue are reproduced as under:

- (i) *On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in granting the exemption u/s. 10(26B) to the assessee since as per ITR-7 (other details, Para-B) of the e-filed return, the assessee has himself denied the claim of exemption u/s. 10 of the I.T. Act and therefore, Ld. CIT(A) has erroneously allowed exemption to the assessee, which was never claimed by the assessee.*
- (ii) *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.*

3. Briefly stated facts of the case are that the assessee society was setup on 24/03/1992 and started functioning under control of Ministry of Social Justice and Empowerment, Government of India. The assessee has been registered under section 12A of the Income-tax Act, 1961 (in short 'the Act') vide order of competent authority dated 17/03/2004. In earlier years, the income of the foundation was exempted under section 10(26B) of the Act for

promoting the interest of members of the Scheduled Caste (SC) and Scheduled Tribe (ST).

3.1 For the year under consideration, the assessee filed return of income on 31/03/2015, declaring nil income. The case was selected for scrutiny and statutory notices under the Act were issued. The Assessing Officer sought certain information in respect of expenses claimed in the income and expenditure account, however, the assessee sought further time for submitting the information. As the information was not received in time and the assessment was approaching towards limitation period, the Assessing Officer disallowed the entire expenses of ₹ 22,95,29,908/- in terms of section 11 of the Act and assessed accordingly, at total income of ₹ 22,95,29,908/- in assessment order under section 143(3) of the Act, dated 28/03/2016.

3.2 Aggrieved, the assessee filed appeal before the Ld. CIT(A) and filed additional evidences in terms of Rule 46A of Income-tax Rules, 1962 (in short 'the Rules'). The Ld. CIT(A) forwarded those additional evidences to the Assessing Officer for his comment. The Assessing Officer sent remand report, in which he objected to admission of the additional evidences. The Ld. CIT(A), after taking into consideration the additional evidences, the remand report, the rejoinder of the assessee and assessment records of past and subsequent years, held as under:

“6.8 In view of the discussion above, it is held that the Assessing Officer’s action in denying exemption under section 11 and disallowing the entire expenditure for want of furnishing the requisite details was not correct since a claim for exemption was never made under section 11, a fact which could have been verified from the income tax return for the year under consideration.”

6.9 In view of discussion above and since the assessee has been allowed exemption under section 10(26B) in the past in assessment years and also for the next assessment year, i.e., assessment year 2014-15, the Assessing Officer is directed to allow exemption under section 10(26B)."

3.3 Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before us raising the grounds as reproduced above.

4. Before us, the parties appeared through videoconferencing facility. In this case, a paper-book containing pages 1 to 149 was filed by the Counsel of assessee on 27/12/2019.

5. The learned DR referred to page 128 of the paper-book, which is the first page of the return of income filed by the assessee for the instant assessment year in prescribed form i.e. ITR-7 and submitted that, in row "B", in relation to the information as to whether any exemption was claimed under section 10 of the Act, the assessee replied in "No". Thus, according to her, when no exemption under section 10(26B) of the Act was claimed by the assessee, the Ld. CIT(A) is not justified in granting the said exemption to the assessee. She further submitted that Ld. CIT(A) has not appreciated the finding of the Assessing Officer.

6. On the contrary, the learned Counsel of the assessee referred to page 129 of the paper-book, which is second page of the return of income filed by the assessee in the prescribed form for the instant assessment year and submitted that under the schedule PB-TI (statement of income for the period ended 31/03/2013) the assessee in row 6(viii) duly declared the income claimed exempt under section 10 amounting to ₹ 9,37,91,677/- and thus merely a typographical error on front page of the return

of income, the assessee cannot be denied exemption under section 10 of the Act. He referred to para-6.5 of the order of the Ld. CIT(A) and submitted that in earlier years the assessee has been granted exemption under section 10(26B) and in the instant assessment year also no exemption has been claimed under section 11 of the Act, and thus action of the Learned CIT(A) is justified.

7. We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute raised before us in grounds of appeal is whether the Ld. CIT(A) is justified in granting exemption under section 10(26B) of the Act, without making any claim by the assessee. Both the parties has referred to the return of income filed in prescribed form. On perusal of the said form (page 128 and 129 of the paper-book), it is evident that the assessee has duly claimed the exemption under section 10 of the Act in schedule Part B-TI (statement of income for the period ended on 31/03/2013) in row serial No. 6(viii) amounting to ₹ 9,37,91,677/-. The Learned DR is harping on the contention that on front page of the return of income, against the information whether any exemption was claimed under section 10, the assessee has filled as 'NO'. The assessee is claiming that same is by way of typographical error only. We are of the opinion that when in the main schedule, the amount claimed under section 10 has been duly mentioned, the error while typing on front page of the return of income should be ignored. The assessee cannot be penalized merely for unintentional typographical error while filling information in the return of income. We are of the opinion, that substance should be preferred over the form while exercising the

quasi judicial function by the Assessing Officer. The Ld. CIT(A) has duly forwarded the additional evidences to the Assessing Officer and after taking into consideration his comments and rejoinder of the assessee and the history of past and subsequent years, has allowed the appeal of the assessee observing as under:

“6.6 In the case of Telelinks vs. Commissioner of Income-tax [(2015) 377 ITR 158 (P&H)], the Hon'ble Punjab & Haryana High Court have held that although in a situation that books are not produced or where the books are rejected, the Assessing Officer has jurisdiction to assess income by applying a fictional net profit rate, the same must be based on a rational analysis of facts. Various factors have also been mentioned by the Hon'ble Court which could be utilized for the purpose, one of which is the past tax history. The High Court relied upon the decision of the Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd. (26 ITR 775) to state that a best judgement assessment cannot be made on pure guess work and without any reference to any material at all. Hence, going by the principle laid down, even while doing ex- parte assessment, the past history and other relevant details need to be seen.

6.7 It is a fact that the assessee has been allowed exemption under section 10(26B) in the past on same facts as those in the year under consideration. In the next year also, i.e., assessment year 2014-15, exemption under section 10 (26B) has been allowed on similar facts. It is seen from the annual reports of the past years which are available on the record for assessment year 2014- 15 and also the annual report of the year under consideration that the aims and objectives and activities of the assessee are the same. These are also same for assessment year 2014-15 wherein exemptions has been allowed under section 10 (26B). Further, it is apparent from the accounts published in the annual report for the financial year 2012-13 which had been submitted during the assessment proceedings and for other financial year which are available on the record for the assessment year 2014-15, the organization is financed by the Central Government. In fact the accounts of the assessee are also subject to audit by the Comptroller and Auditor General of India and the Annual Report and audited accounts have to be laid on the Table of Parliament as is evident from the grant letter from Ministry of Social Justice and Empowerment for financial year 2012-13 submitted during appellate proceedings and that for financial year 2013-14 which is available in the assessment record for the assessment year 2014-15.”

7.1. In our opinion, there is no infirmity in the order of the Ld. CIT(A) on the issue in dispute and we, accordingly, we uphold the same. The ground No. 1 of the appeal of the Revenue is accordingly dismissed.

8. The ground No. 2 of the appeal, being general in nature, same is dismissed as infructuous.

C.O. No. 134/Del./2017

9. In cross objection following grounds been raised:

1. *That in view of the facts and circumstances of the case the CIT(A) has rightly allowed the deduction u/s 10(26B) of the Income Tax Act, 1961 to the assessee after considering the facts and the case, submission of the assessee, remand report of the AO, rejoinder of the assessee and past history of the case.*
2. *That it is not correct to say that the assessee has not claimed the deduction u/s.10(26B) in the return of income for the A.Y. 2013-14, from the perusal of the entire return, it shall be clear that the assessee has claimed deduction u/s 10 (which includes section 10(26B) of the Act and only after considering the same, the CIT(A) has allowed the said deduction to the assessee.*
3. *The assessee/appellant craves leave to add, alter or modify the aforesaid ground and craves leave to the file of additional grounds.*
4. *The aforesaid grounds are taken to each other.*

10. At the time of the arguments, the Learned Counsel admitted that when Learned CIT(A) had already granted deduction under section 10(26B) of the Act, raising of those grounds before the Tribunal in cross objection was not justified and, accordingly, he

did not press those grounds and submitted to withdraw the cross objections.

11. In view of above, the cross objections of the assessee are dismissed as withdrawn.

12. In the result, both the appeal of the Revenue and the cross objection of the assessee are dismissed.

Order pronounced in the open court on 12th January, 2021.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 12th January, 2021.

RK/-(D.T.D.S.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi