

आयकर अपीलिय अधीकरण, न्यायपीठ –“A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Hon’ble Vice-President and Shri A.T. Varkey, Hon’ble Judicial Member]

I.T.A. No. 109/Kol/2021
Assessment Year: 2017-18

M/s. Sasha Association For Craft Producers [PAN: AABTS 5580 N]	Vs.	ITO (Exemptions), Ward - 1(3), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	30.11.2021
Date of Pronouncement	15.12.2021
For the Appellant	Shri S.M. Surana, Advocate
For the Respondent	Shri Devi Sharan Singh, CIT (DR)

ORDER

Per Shri A.T. Varkey, JM:

This is an appeal preferred by the assessee against the order of Ld. CIT(Exemptions), Kolkata dated 12.03.2021 for assessment year 2017-18.

2. The assessee has raised the legal issue that the Ld.CIT(E) Kolkata does not have the revisionary jurisdiction u/s 263 of the Act, since the order of the AO cannot be termed as erroneous as well as prejudicial to the revenue.

3. For adjudicating this issue let us look at the fault pointed out by the Ld.CIT(E) to interfere with the action of AO while passing the assessment order u/s 143(3) of the Act dated 30.12.2019 which is discernable from the Show Cause Notice (SCN) issued by Ld.CIT(E) dated 22.01.2021 which reads as under:

“Verification of assessment folder for the A.Y. 2017-18, revealed that the assessee has filed the return of income on 31.10.2017 declaring total income of Rs. Nil. Scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 was completed on 30.12.2019 determining total income at Rs. 34,81,240/-. On further verification of assessment records, it has been found that the following exemption was allowed by the Assessing Officer beyond the permissible scope as per Income Tax Act:

(i) ITR-7 (Schedule-I) and the computation sheet for the A.Y. 2017-18 furnished by the assessee revealed that the assessee had claimed application of Rs. 2,76,18,535/- during the

year. Out of which Rs. 4,50,172/- was spent on acquisition of fixed asset, out of the past accumulation u/s 11(2). As per the provision of the act, said amount has already been treated as deemed application in the year of its receipt, when the assessee had opted for its accumulation u/s 11(2). Subsequent claim of the said amount as application in the F.Y. 2016-17 resulted in double exemption on the same amount. As such application of Rs. 4,50,172/- for the A.Y. 2017-18 was not admissible to the assessee. However, the Assessing Officer overlooked the issue in assessment.”

4. Pursuant to the aforesaid Show Cause Notice, the assessee filed the reply before the Ld.CIT(E), the relevant part is reproduced:

“In connection with the Schedule I submitted in the return of income, it is submitted that the said Schedule is incorrectly filled in and the revised Schedule 1 for the above asst year is enclosed herewith. The application towards capital expenditure i.e. acquisition of fixed assets of Rs 4,50,172 are made from the receipts of the same year i.e Asst Year 2017-18. No amount was spent out of the accumulation u/s 11(2) of earlier years. Hence, the claim of application should not be denied.

Further, from the analysis of the Schedule I, it can easily be proved that the said Schedule is incorrect. In the Schedule, it is submitted that Rs 8,53,939 is surplus and has been set apart u/s 11(2). However, in column no. 4, it is submitted that out of the amount set apart (i.e. Rs 8,53,939/-), Rs 4,50,172/- has been applied before the beginning of the Financial year i.e. before 01.04.2016. How an amount can be applied for an year before its beginning when there is no deficit in preceding years? In fact, Rs 8,53,939/- is derived at after deducting the purchase of fixed assets of Rs 4,50,172/-. The amount of purchase of fixed assets (Rs 4,50,172/-) has wrongly been entered in column no. 4. Hence, the purchase of Rs 4,50,172/- is the application made in FY 2016-17 only and the same is claimed in the said year. No other application for the said amount has been claimed in the past years amounting to double exemption on the same amount. Copies of Computation of income and I&E account and Balance Sheet for the past 5 years are enclosed herewith for your ready reference. Your honour may refer to the same and would find our submissions in order.

The above fact of incorrect Schedule-I can also be proved from the analysis of the Balance Sheet and the audit report for the relevant year. There is nowhere mentioned in the balance sheet or in the audit report (copy enclosed) by the auditor that the acquisition of fixed assets of Rs. 4,50,172/- were made from the funds accumulated in earlier years.”

5. However, the Ld.CIT(E) did not agree with the aforesaid reply of the assessee and ordered as under:

“Reply of the assessee was perused carefully and found not plausible. Scheduled I in the ITR had been filled by the assessee every year and amount of accumulation and expenses therein, were being shown in the said scheduled regularly. If the amount was wrongly entered in Schedule I in ITR, then on which basis accumulated amount were being claimed in subsequent years, when applicable. The claim in schedule I in ITR and revised schedule I, submitted during proceedings is totally different. Hence, the explanation of the assessee is not acceptable. The issue is therefore, set aside to the assessing officer to verify the set apart amount in schedule I of ITR, in respect of application of Rs. 4,50,172/- claimed from such set apart amount during the year under consideration, and compute the income accordingly.”

6. Aggrieved the assessee is before us.

7. We have heard both the parties. According to Ld. AR there was a mistake while filling up the Schedule-I submitted along with Return of Income (RoI) and after rectifying the same, a copy was filed before the Ld.CIT(E). However, it has been ignored by the Ld.CIT(E) while passing the impugned order. The Ld. AR drew our attention to page 26 (PB) which is Schedule-I to RoI, column 4, where the mistake happened wherein the assessee had entered under column 4 which reads "*Amount applied for charitable/religious purposes upto the beginning of the previous year*". The assessee inadvertently entered Rs. 4,50,172/-. {(Schedule-I is the details of amount accumulated/ set apart within the meaning of Section 11(2)}.

8. The Ld. AR drew our attention to page 31 (PB) which is Schedule EC which is [*Amount applied to charitable or religious purposes in India during the previous year- Capital Account (excluding application from borrowed funds and amount exempt u/s 11(1A)*] and took us to column 2 which reads {(*Acquisition of capital asset (not claimed earlier as application of income and for which exemption u/s 11(1A) has not been claimed*)} wherein the amount applied to charity on Capital Account is Rs. 4,50,172/- and Total is Rs. 4,50,172/-.

9. Thereafter, the Ld. AR drew our attention to page 45 (PB) which is the computation of income for the year ended 31.03.2017 which reads as under:

COMPUTATION OF INCOME FOR THE YEAR ENDED 31ST MARCH, 2017.

1.	Income (As per Income & Expenditure Account)		₹3,34,97,028
2.	Expenditure :		
	(a) Administrative Expenses attributable to pr Development for Artisian Groups	2,36,27,293	
	(b) Training, Research & Development Expenses	35,41,070	
	(c) Capital Expenditure	<u>4,50,172</u>	
			<u>2,76,18,535</u>
			58,78,493
Less :	Statutory Deduction @15% on Rs.3,34,97,028		50,24,554
	Available Surplus subject to Option to be Initiated U/S 11(2)		8,53,939

10. So, from a perusal of the aforesaid facts it is discerned that assessee had applied Rs. 4,50,172/- this year as part of application of amount to the tune of Rs. 2,76,18,535/-. And it had filed the revised schedule rectifying the Schedule-I (page 26 PB) which created the confusion. We note that the assessee has shown surplus to the tune of Rs. 8,53,939/- and has been set apart u/s 11(2) of the Act. So the fault pointed out by the Ld.CIT(E) based on the mistake of fact which crept into while filing column 4 of Schedule-I cannot change the fact that assessee had set apart Rs. 8,53,939/- as surplus u/s 11(2) of the Act. The question of assessee applying Rs. 4,50,172/- before the beginning of F.Y. i.e. before 01.04.2016, when there is no deficit in preceding year has not been answered by the Ld. CIT(E)/DR. So the apprehension of Ld.CIT(E) that assessee has thus claimed double deduction is erroneous and on wrong assumption of fact. So taking note of the relevant contents of page 31 PB (supra) and page 45 PB (supra), we do not find any omission on the part of AO while framing the assessment order on this issue. Therefore, the AO rightly did not draw any adverse inference on the issue which was pointed out as a fault by the Ld.CIT(E). Therefore, in the facts & circumstances discussed (supra), we find that the Ld. CIT(E) has erroneously usurped the revisional jurisdiction u/s 263 of the Act and resultantly the same is quashed.

11. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 15 December, 2021.

Sd/-

(P.M. Jagtap)
Vice-President

Sd/-

(A. T. Varkey)
Judicial Member

Dated: December, 2021

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Sasha Association For Craft Producers, 1C, Chatu Babu Lane, CIT Road, Kolkata – 700 014.
2. Respondent – ITO (Exemptions), Ward- 1(3), Kolkata.
3. The CIT(E)- Kolkata (sent through e-mail)
4. CIT- Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
