

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B”BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.3272/Bang/2018
Assessment Year: 2015-16

ITO (Exemptions), Ward-1 Mangalore	Vs.	M/s. Stella Maris Church Malpe, Kalmady Post Udupi 576 118 PAN NO : ABVFS1096C
APPELLANT		RESPONDENT

Appellant by	:	Capt. Pradeep Shoury Arya, D.R.
Respondent by	:	N O N E

Date of Hearing	:	23.12.2021
Date of Pronouncement	:	29.12.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The revenue has filed this appeal challenging the order dated 28.9.2018 passed by Ld. CIT(A), Mangalore and it relates to the assessment year 2015-16. None appeared on behalf of the assessee even though the adjournment was granted on last occasion at the request of the assessee. Hence, we proceed to dispose of the appeal ex-parte, without presence of the assessee.

2. In this appeal, the revenue is assailing the decision of Ld. CIT(A) in granting exemption u/s 11 of the Income-tax Act,1961 [‘the Act’ for short] and allowing deduction u/s 11(1)(d) of the Act.

3. We heard Ld. D.R. and perused the record. The assessee is a trust running a church. It filed its return of income on 26.8.2015 for assessment year 2015-16 with PAN No.ABVFS1096C as a charitable trust. Accordingly, in the return of income, the assessee claimed exemption u/s 11 of the Act. The A.O. noticed that there is one more entity with the same name M/s. Stella Maris Church assessed in PAN No.AADTS6161K. Hence the AO asked the assessee to furnish the details of registration granted to it u/s 12AA of the Act. The A.O noticed that the registration u/s 12AA of the Act was granted to the entity having PAN No.AADTS6161K. Accordingly, the AO took the view that the assessee herein has used the registration granted u/s 12AA of the Act to another entity. Accordingly, the A.O. took the view that the assessee is not entitled for deduction u/s 11 of the Act in the absence of registration u/s 12AA of the Act.

4. Before the A.O, the assessee submitted there is no two different entities as presumed by him. It was explained that it has originally obtained PAN No.AADTS6161K. When it wanted to open another bank account, the bankers asked for a copy of PAN number. It was noticed then that PAN card bearing no. AADTS6161K has been misplaced. Hence, the assessee tried to obtain a duplicate PAN card. However, the assessee could not exactly remember the date of formation of Trust. In the absence of the said date, duplicate PAN could not be obtained. Accordingly, the assessee was advised to obtain a new PAN number. Accordingly, the assessee applied for a new PAN number with the support of letter obtained from the bank and also bank pass book. On the basis of the said application, new PAN number ABVFS1096C was allotted and accordingly, the assessee filed return of income with the new PAN Number. Accordingly, it was submitted that both the PAN numbers belong to the very same

assessee only and hence exemption u/s 11 of the Act should be allowed. For the purpose of this order, we shall refer PAN number AADTS6161K as Old PAN number and the other number ABVFS1096C as New PAN number.

5. The A.O. also noticed that the assessee has filed audit report in form No.10B of the old PAN No. as well as new PAN No. Form No.10B for Old PAN number was also revised once. It was also noticed that return of income has also been filed under old PAN number also. He observed that the assessee has filed revised returns of income on 07.12.2017 in the name of both entities, i.e., beyond the due date prescribed for filing revised return of income. Accordingly, the AO did not take cognizance of revised return of income. Accordingly, the A.O. took the view that the assessee is trying to avail the benefit u/s 11 in every possible way, though it is not entitled for the same.

6. The assessee had claimed exemption u/s 11(1)(d) of the Act to the tune of Rs.1,80,00,000/- in the original return of income under new PAN number. Subsequently, it enhanced the claim to Rs.2,38,34,654/- in the revised return of income filed on 02-03-2017. The assessee had collected the above said amount under the head "Building Fund". The assessee claimed the same as "Corpus donation" and accordingly claimed deduction u/s 11(1)(d) of the Act. The A.O. noticed that the building fund is not reflected in the financial statements. The AO also extracted the Balance Sheet of the assessee as on 31.3.2015 at page 7 of the order to prove that the assessee has not shown the "Building Fund" in the Balance sheet. The assessee submitted that it has maintained separate books of accounts for Building Fund and separate statement has been prepared. The assessee also furnished separate audited statement for building fund before AO on 07.11.2017.

However, the AO did not the said explanations and held that the assessee has kept the collection of building fund and the related bank account outside the regular books of account. He also observed that it has incorporated the same in the computation of income only. Accordingly, the A.O. took the view that the assessee has not actually credited the donations to the corpus of the trust in books of account. Hence, the AO held that the assessee is not entitled to exemption u/s 11(1)(d) of the Act in respect of corpus donation collected in the name of building fund. Accordingly, the A.O. determined the total income of the assessee at Rs.2,46,87,092/- after rejecting exemption u/s 11 & 11(1)(d) of the Act.

7. During the course of appellate proceedings, the Ld. CIT(A) deputed his inspector of income tax to the field to examine verify the claim of the assessee that both the PAN numbers pertain to same entity (Church), i.e., to examine whether two separate entities (church) are existing or not. The inspector submitted his report on 13.3.2018, wherein he reported that there exists only one entity (church). Further the priest available in the Church and also office staffs have stated that two PAN numbers have been obtained for the very same entity. Accordingly, the Ld. CIT(A) took the view that both the PAN numbers belong to the same entity only. The findings given by Ld. CIT(A) in this regard are extracted below:-

5.4.3 The following undisputed facts emerge from the careful reading of the assessment order, grounds of the Appellant, affidavit dated 22.09.2008 of the Managing Trustee, enquiry report of the Inspector of income tax and submissions of the AR.

(i) The Stella Maris Church was brought into existence by a decree of the Bishop dated 20th December 1990. which was later on evidenced by the memorandum dated 23.11.2000.

(ii) The Appellant, Stella Maris Church was registered u/s 12 AA of the IT Act with PAN: AADTS6161K and filed its returns manually from 2000 with the PAN: AADTS6161K upto AY 2013-14. Although, the date of formation was not

mentioned in the returns for earlier AYs, the returns of income were accepted by the Department. The date of formation in the era of manual returns was not insisted upon by the Department.

(iii) In 2010, the Church wanted to open a new Bank A/c. The bank required the Church to produce the PAN card for AADTS 6161K and the Appellant could not locate the PAN card. The Appellant could not apply for duplicate PAN for want of date of formation (on the original PAN card). The Appellant approached the local TIN facilitation Centre, who applied for a new PAN card using the letter issued by State Bank of India as proof of identity.

(iv) The Appellant was allotted new PAN: ABVFS1096C, although the document required for obtaining a new PAN in the case of a Trust is 'Copy of the Trust Deed or Copy of the Certificate of Registration issued by the Charity Commissioner'.

(v) There is no dispute with regard to the document used to obtained new PAN – letter from Bank. It is not the case of the assessing officer that the Appellant applied for new PAN using a new Trust Deed to make it a separate entity.

vi) From AY 2014-15, e-filing of returns was made compulsory for trusts. The date of formation of the trust was necessary to register with the e-filing website. In AY 2014-15, the then Auditor of the Church, Late CA. C.T.J. Gonsalves, in order to ensure that the return was filed before the due date to avoid the penalty u/s.272(A)(2)(e) used the PAN ABVFS1096C for which date of formation was available.

vii) Field inquiries by the Inspector of income tax revealed that there is only one church in existence and there are no two churches. There is only one entity with two PANs.

viii) The Appellant received interest income of Rs.14,20,189/- on the FDRs as per 26AS under PAN: AADTS6161K. The Appellant approached Sri C.B. Suresh Kumar, the then Assistant Commissioner of Income Tax (Exemptions), Mangalore, who verified the Departmental System and provided the date of formation of the trust as per old PAN: AADTS6161. Thereafter, the Appellant filed the return with the old PAN on 03.03.2017 to claim the refund of TDS.”

8. The Ld. CIT(A) also noticed that the assessee has filed returns of income under both PAN numbers separately. It has been tabulated as under by Ld CIT(A).

<i>PAN</i>	<i>Ori. Return filed</i>	<i>Return in reply to 139(9)</i>	<i>Rev. return filed</i>
<i>ABVFS1096C(new)</i>	<i>26.08.2015</i>	<i>---</i>	<i>02.03.2017</i>
<i>AADTS6161(old)</i>	<i>03.03.2017</i>	<i>10.04.2017</i>	<i>07.12.2017</i>

The Ld CIT(A) noticed that the revised return of income under New PAN number has been filed on 02-03-2017, i.e., within the due date prescribed u/s 139(5) of the Act. Accordingly, he held that the revised return of income is valid.

9. The assessee explained before Ld. CIT(A) about the necessity of filing return of income under the old PAN No. i.e. it was submitted that the assessee had made deposits mentioning old PAN number earlier and hence it received interest income of Rs.14,20,189/- under old PAN No. and TDS of Rs.1,42,050/- was deducted thereon. The same was also reflected in Form 26AS. (It was submitted that the assessee had declared interest income of Rs.16,32,938/- in the return of income filed under new PAN number and it included above said interest income of Rs.14,20,189/-). Since the TDS amount was deducted mentioning old PAN number, in order to claim refund of TDS amount, the assessee initially filed original return of income under old PAN No. on 3.3.2017 declaring NIL income after claiming entire amount of Rs.14,20,189/- as deduction. However, the said return was treated as defective by CPC with the noting "No income details, i.e., Sl. No. 1 to 4 have been provided in the return of income. However, TDS/TCS has been claimed". Hence the assessee was constrained to file another return of income u/s 139(9) in order to remove the defect in order to comply with the requirements of CPC. It was submitted that the assessee offered to tax a sum of Rs.2,70,189/- after deducting a sum of Rs.11,50,000/- from the interest income of Rs.14,20,189/-. It was submitted that it could not have got refund without offering some amount as income. Accordingly it was submitted that the above said returns of income

were filed in order to obtain refund of TDS amount, since the interest income of Rs.14,20,189/- had already been offered in the original return of income filed with new PAN number. The Ld. CIT(A) accepted the above explanations after examining fixed deposits held by the assessee. The assessee also offered some explanation with regard to the difference in application of income mentioned in original and revised Form No.10B.

10. With regard to the corpus donations claimed as exempt u/s 11(1)(d) of the Act, it was submitted by the assessee that it has maintained separate receipts and payment account for new church building and hence the same was not brought to the balance sheet of the Trust. However, the corpus donations were disclosed in the revised return of income filed by the assessee. The Ld. CIT(A) accepted the above explanations of the assessee also. Accordingly, he directed the A.O. to allow exemption u/s 11 of the Act as well as u/s 11(1)(d) of the Act. Aggrieved, the revenue has filed this appeal before us.

11. We heard Ld D.R and perused the record. The Ld D.R submitted that the assessee did not furnish full information before the AO. Further the Ld. CIT(A) has decided all the issues by considering fresh materials and explanations. In fact, the Ld CIT(A) has also conducted field enquiries. He submitted that the first appellate authority did not confront those materials with the A.O. nor did he call for remand report from the A.O. Accordingly, he submitted that the AO should be given an opportunity to examine all these details. Without getting report from the AO, the Ld CIT(A) should not have come to the conclusion that both the PAN numbers belong to the same trust. He further submitted that the assessee has filed several returns of income, but no direction has been given by Ld CIT(A) as to how to aggregate the income declared in various

returns of income. Accordingly, he submitted that all the matters may be restored to the file of AO with suitable directions.

12. We notice that the assessee has explained in detail about its compulsion to obtain new PAN number and also the compulsion to file two separate returns of income both under old PAN No. and new PAN No. It has also given explanations regarding maintenance of separate set of books for corpus donations under the head "Building Fund". We also notice that the Ld. CIT(A) has accepted the submission of the assessee that there exist only one entity (Church) after carrying out field verification. All these points were fresh facts that were not available before AO.

13. In respect of building fund, it appears that assessee has maintained separate books of account and hence the building fund account was not brought to the balance sheet of the Church. Though the Ld. CIT(A) has accepted the explanation with regard to the maintenance of separate books for building account, in our view, it is imperative for the assessee to furnish the financial statements of building fund also along with the return of income.

14. We notice that the assessee has furnished following documents before the Ld CIT(A):-

- (a) Receipts & Payments Account of trust
- (b) Income and Expenditure account of trust.
- (c) Balance sheet of trust
- (d) New Church building (Receipts & Payments) account
- (e) Copies of returns of income, computation of income filed with the returns of income (original and revised) under both the PAN numbers.

All these details furnished in a combined manner were not available before the AO and hence there was no occasion for the AO to

examine various explanations given by the assessee before Ld CIT(A). In our view, in the interest of natural justice, the first appellate authority should have confronted the explanations and documents furnished by the assessee with the Assessing Officer and should have called for a remand report. In the absence of such an exercise, in our view, both the issues urged by the assessee require fresh examination at the end of the A.O.

15. We notice that the Ld CIT(A) has observed at page 28 of his order as under with regard to new PAN number:-

“(vii) The Appellant, vide its letter dated 6th December 2017 (before completion of assessment) surrendered new PAN card ABVFS1096C and requested the assessing officer to treat the return filed (with ABVFS1096C) as return filed under old PAN: AADTS6161K.”

However, we notice that the present appeal has also been filed by the revenue under new PAN number only. However, it is the case of the assessee that it has surrendered new PAN number before the completion of assessment. Since the AO did not accept the explanations that both PAN numbers belong to same entity (Church), he has passed the assessment order under new PAN number and the present appeal has also been filed under new PAN number. Under these facts, we are of the view that the following action needs to be carried out in order to resolve this controversy.

(a) Since the explanations offered by the assessee before Ld CIT(A) as to the necessity of obtaining new PAN number has been accepted by the first appellate authority after carrying out field verification and since the AO has not brought any material on record to controvert the said findings, we are of the view that the AO should accept the fact that both PAN numbers belong to the same assessee.

- (b) The assessee has claimed that it has surrendered new PAN number. The AO should verify this fact and ensure that the new PAN number is cancelled in the system also.
- (c) Since the assessee has been granted registration u/s 12AA of the Act under the old PAN number and since the new PAN number has been claimed to have been surrendered, it is appropriate to pass the assessment order under Old PAN number only. Accordingly, the AO may regularize the return filed under new PAN number substituting old PAN number in accordance with the procedure prescribed for dealing with such kind of situation.
- (d) We have noticed earlier that the assessee has filed three returns of income under Old PAN number also. It has filed two returns of income under New PAN number also. Thus, there are five returns in total for the same assessee for the same assessment year. Since all income belonging to the assessee and arising for the same year has to be assessed in a single assessment order, it is necessary for the AO to take cognizance of returns of income filed under Old PAN number also and accordingly pass a single assessment order incorporating income declared in all the returns of income.
- (e) We noticed earlier that the assessee has explained that it was constrained to file returns of income under old PAN number in order to get refund of TDS amount. It was also submitted that the relevant interest income has already been offered in the return of income filed under new PAN number. Accordingly, while combining the income declared in all the returns, it has to be ensured that the double assessment of same income should be avoided.
- (f) The assessee has made adhoc deduction of Rs.11,50,000/- in the return of income filed to rectify the

defect u/s 139(9) of the Act. This adhoc deduction cannot be allowed, since the same is not backed by any material.

- (g) With regard to building fund, it is the claim of the assessee that it has maintained separate receipts and payments account. In the normal course, it is advisable to incorporate building fund also in the common Balance Sheet. In any case, it is imperative for the assessee to furnish Income and expenditure account and Balance sheet for Building fund along with the return of income, if it has been decided to keep this account in separate books of account. Accordingly, we direct the assessee to furnish the I & E a/c and Balance Sheet of Building Fund books to the AO along with audit report relating to the same.

We direct the assessee and the AO to carry out above said exercise in order to settle the disputes of the year under consideration.

16. In view of the foregoing discussions, we set aside the order passed by the Ld. CIT(A) and restore both the issues to the file of the A.O with the direction to examine the above said documents and explanations furnished by the assessee before Ld CIT(A) in the light of discussions made supra. The assessee should be provided adequate opportunity of being heard. After providing adequate opportunity of being heard, the AO may take appropriate decision in accordance with law.

17. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 29th Dec, 2021

Sd/-
(George George K.)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 29th Dec, 2021.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.