

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.2875/Bang/2018 : Asst.Year 2009-2010

M/s.Shahshib Minority Welfare and educational Society No.38-39, Prestige Enclave Bettahalasur Cross, NH 7, B.B.Road, Bangalore North Bengaluru – 562 157. PAN : AAGTS3002C.	v.	The Income Tax Officer Ward (3) (Exemption Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Gangadhar Saastry, ITP
Respondent by : Sri.Ananda H., Addl.CIT-DR

Date of Hearing : 30.12.2021	Date of Pronouncement : 03.01.2022
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 30.01.2017. The relevant assessment year is 2009-2010.

2. The revised grounds raised read as follows:-

“1. CIT(A)'s order is opposed to the law and facts of the case.

2. CIT(A) erred in passing order without giving notice to appellant u/s 251(2) and appellant was prevented to explain the exact position and appellant has not violated section 13(2)(a) and section 13(2)(b). Hon'ble ITAT may kindly examine the facts and allow the appeal and render justice to the appellant.

3. In the order passed by CIT(A) has not examine the facts properly and on surmise concluded that trustees have gained benefit by violation of section 13(2)(a) and 13(2)(b). Appellant

has not violated condition hence Hon'ble ITAT may kindly allow the appeal and render justice to the appellant.

4. *CIT(A) erred in directing the Assessing Officer to cancel registration of the trust u/s 12AA (3). Appellant was deprived of opportunity as required under section 251(2) hence CIT(A) order is violation of natural justice considering the facts Hon'ble ITAT may kindly allow registration to the trust and render justice to the appellant.*

5. *Appellant craves to add any fresh ground or delete any ground at the time of hearing."*

3. Brief facts of the case are as follows:

The assessee is a society registered u/s 12AA of the I.T.Act vide order dated 26.08.2008. The primary object of the assessee is imparting education. The assessee is running various educational institutions. For the assessment year 2009-2010, the return of income was filed on 18.01.2010 declaring taxable income at `NIL'. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 26.12.2011 on a total income of Rs.6,04,96,750, by denying the claim of exemption u/s 11 of the I.T.Act primarily for the reason that the assessee was running educational institutions in commercial lines. The various reasons for denying the benefit of exemption u/s 11 of the I.T.Act in a nutshell reads as follows:-

- (i) *The assessee runs the activities in a commercial manner, giving commission to various agent to procure students for higher annual of fee of Rs.5,41,000/- per annum to each student.*
- (ii) *The assessee objectives as coaching classes not as a school or college or an education cannot be considered for exemption relied on the case laws referred above and therefore the assessee will not be considered as a charitable institution for exemption.*

- (iii) *Relied on the various case laws referred above the assessee is not practically engaged in formal schooling but only coaching of technical courses.*
- (iv) *The trustee cum secretary engaged in to personal transactions and the same has not brought to the report of the Chartered Accountant under section 13(3).*
- (v) *As required in proviso 12A of the IT Act, the assessee fails to file the audit report. Hence exemption u/s 11 need to be denied in the assessee case.*

4. Aggrieved by the order of the Assessing Officer denying the benefit of exemption u/s 11 of the I.T.Act, the assessee preferred an appeal before the first appellate authority. The CIT(A) held that the findings of the A.O. that the assessee is running educational institutions on commercial lines is very weak (para 8 to 10 of the CIT(A)'s order). The CIT(A), however, held that the assessee is not entitled to exemption u/s 11 of the I.T.Act for the reason that the assessee has violated section 13(2)(a) and 13(2)(b) of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has preferred this appeal to the Tribunal. The learned AR relied on the grounds raised. It was submitted that the CIT(A) without giving notice to the assessee to explain that it has not violated section 13(2)(a) and 13(2)(b) of the I.T.Act, upheld the A.O.'s order of denial of exemption u/s 11 of the I.T.Act, on a totally different reason. It was submitted that the CIT(A)'s order has violated the principles of natural justice and in the interest of justice and equity the case may be restored to the A.O. for the assessee to properly explain that it had complied with all the

provisions of the Act for granting benefit of exemption u/s 11 of the I.T.Act.

6. The learned Departmental Representative strongly supported the orders of the Income Tax Authorities. However, the learned DR did not have serious objection for the case to be remanded to the Assessing Officer.

7. We have heard rival submissions and perused the material on record. The A.O. had denied the benefit of exemption u/s 11 of the I.T.Act primarily for the reason that the assessee was running educational institutions in a commercial line. As regards the sale of land by the Secretary to the assessee, the A.O. remarks that the land was purchased in Gudi Bande for Rs.1,52,78,538 and cost was shown as application of income u/s 11 of the I.T.Act. Further, the A.O. states that it is not clear as regards the price of land for which the Secretary of the assessee had purchased the property. Therefore, the A.O. is not in a position to determine the benefit earned by the Secretary in absence of audit report filed u/s 10B of the I.T.Act.

7.1 It is the contention of the assessee that the society had intended to purchase land for college building, however, in view of Karnataka Land Reforms Act, agricultural land cannot be directly register in the name of the assessee-society . Therefore, according to AR, the agricultural land was purchased first in the name of the Secretary and after conversion to non-agricultural land, the same was transferred

to the assessee-society. It was further stated that the Secretary of the assessee-society has not derived any benefit out of the transaction and he was only an intermediary in the land conversion process. Therefore, the contention of the learned AR is that there was no violation of provisions of section 13(2)(b) of the I.T.Act.

7.2 The CIT(A), admittedly, considered audit report in Form No.10B. The audit report in Form No.10B does not mention any violation of section 13 of the I.T.Act. The relevant portion of the audit report is extracted at para 17 of the impugned order of the CIT(A).

7.3 When the CIT(A) rests his case on violation of section 13(2)(a) and 13(2)(b) of the I.T.Act, he ought to have called for explanation from the assessee before passing the impugned order (the A.O. has not mentioned any violation of section 13(2)(a) of the I.T.Act by the assessee). In the instant case, no such opportunity was provided to the assessee, though several hearings were given. In the interest of justice and equity, the assessee being deprived of an opportunity to explain its case that it has not violated the provisions of section 13(2)(a) and 13(2)(b) of the I.T.Act, we deem it appropriate to restore the case to the files of the A.O. for *de novo* consideration. The A.O. is directed to grant reasonable opportunity of hearing to the assessee before a decision is taken in this matter. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 03rd day of January, 2022.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 03rd January, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-14, Bengaluru.
4. The Pr.CIT (Exemption), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore