



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.116/CTK/2021

Assessment Year : 2016-17

Abhisek Educational and Charitable Trust, MIG-b-18, Ground floor, Brit Colony, Nayapali, Bhubaneswar	Vs.	ITO (Exemption Ward), Bhubaneswar.
PAN/GIR No.AACTA 5203 D		
(Appellant)	..	(Respondent)

Assessee by : Shri K.C.Jena, AR
Revenue by : Shri S.C.Mohanty, Addl. CIT (DR)

Date of Hearing : 5 /4/ 2022
Date of Pronouncement : 6 /4/2022

ORDER

Per C.M.Garg, JM

This is an appeal filed by the assessee against the order of the CIT(A),NFAC, Delhi dated 26.8.2021 for the assessment year 2016-17.

2. The sole grievance of the assessee in this appeal is that the Id CIT(A), National Faceless Appeal Centre is not justified in rejecting rectification petition u/s.154 of the Act and confirming application of maximum marginal rating ignoring the facts that it is an educational institution registered by virtue of trust deed and in the absence of

registration u/s.12AA, it is taxable as AOP as it is a non-profit making organization.

3. Ld A.R. of the assessee submitted that the assessee filed return of income for A.Y. 2016-17 with total income of Rs.11,99,720/- and was assessed at maximum marginal rate of tax in absence of registration u/s.12AA and indeterminate of share income. The assessee filed rectification petition u/s.154 of the Act to rectify the order by applying normal rate of tax instead of maximum marginal rate, which was rejected by the AO. Aggrieved by this rejection, the assessee filed appeal before the Id CIT(A), who confirmed the maximum marginal rate without allowing any opportunity to the assessee. He referred to CBDT circular No.320 dt.11.1.1982 wherein, it is stated that the assessee could not be subjected to tax as AOP at the maximum marginal rate of tax. Ld A.R. submitted that the Id CIT(A) has passed order ex parte without considering the submissions and also the CBDT Circular. Hence, he prayed that the issue be restored to the file of the CIT(A) for fresh consideration.

4. On the other hand, Id DR objected to the restoration of the issue to the file of the Id CIT(A) again. He submitted that since the assessee is not registered u/s.12AA of the Act, exemption u/s.11 & 12 cannot be claimed and the tax will be levied in terms of section 164(2) of the Act as AOP as maximum marginal tax rate.

5. We have heard the rival submissions and perused the record of the case. It is not in dispute that the assessee is not registered u/s.12AA of the Act and, therefore, cannot claim any exemption u/s.11 & 12 of the Act. But as per circular of CBDT No.320 dt.11.1.1982, the assessee could not be subjected to tax as AOP at the maximum marginal rate of tax, has not been considered by the Id CIT(A). Further, the assessee has not been provided any opportunity of hearing. Ld A.R. prayed that one more opportunity be given to the assessee to submit its claim. In view of above and in order to impart substantial justice to the assessee, the matter needs to be restored to the file of the Id CIT(A) for taking into consideration the documentary evidence and CBDT circular and any other document in this regard.

6. We also direct the assessee to fully co-operate and get the appeal decided at an early date. The assessee is also directed to deposit Rs.2,500/- as cost before the Income tax Department and Xerox copy of challan be produced before the Id CIT(A) in compliance to this order. The Id CIT(A) is directed to dispose of the appeal within 15.5.2022 and the assessee is directed to appear alongwith proof of payment of cost of Rs.2500/- deposited in the Income tax Department. With these observations, the appeal is restored to the file of the Id CIT(A) for fresh consideration.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 6 /4/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 6 /04/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Abhisek Educational and Charitable Trust, MIG-b-18, Ground floor, Brit Colony, Nayapali, Bhubaneswar
2. The Respondent. ITO (Exemption Ward), Bhubaneswar
3. The CIT(A)-NFAC, Delhi
4. Pr.CIT-, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack