

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Pramod Kumar, Vice President
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 1732/Ahd/2019
Assessment Year 2010-11

Indian Redcross Society, Godhara, PAN: AAATI3644Q (Appellant)	Vs	The ITO(Exemption), Vadodara, (Respondent)
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Assessee by: Shri Parin Shah, A.R.
Revenue by: Shri S.S. Shukla, Sr. D.R.

Date of hearing : 12 -04-2022
Date of pronouncement : 31-05-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-5, Vadodara in Appeal no. CIT(A)-Vadodara-5/107072017-18 vide order dated 09/09/2019 passed for the assessment year 2010-11.

2. The assessee has raised following grounds of appeal:-

“(1) The learned Commissioner of Income Tax (Appeals) - 5 Vadodara has erred both in law and on facts of the case in passing an order u/s.250 of the IT. Act, 1961 on 09.09.2019 for AY 2010-11

(2) The learned CIT(A) -5 Vadodara has erred in law and on facts holding that notice issued u/s.148 of the IT. Act for AY 2010-11 by the learned ITO (Exemption) Vadodara is valid in the eye of law.

(3) The learned CIT(A) -5 Vadodara has erred in law and on facts confirming the addition of Rs. 23,41,940/- made by the ITO(Exemption) Vadodara u/s.10(23C) (iiiiae) of the IT. Act, although it has been accepted by the learned CIT(A) that appellant is recognized organization u/s. 10(22A) of the Act as notified by the CBDT.

(4) The levy of interest u/s.234A of the I.T. Act and u/s.234B of the I.T. Act. is not justified.

(5) Intimation of penalty proceeding u/s. 271(1)(c) of the I. T. Act. is not justified.

(6) Your appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal before the appeal is heard and decided.”

3. The brief facts of the case are that the assessee is a public trust running blood bank. The assessee is one of the branches of the Indian Red Cross Society situated in State of Gujarat at Godhara. The assessee conducts blood test in their laboratory for different diseases and supplies the same to hospital, both Government and private, against the letters from an authorized doctor at concessional rate. During the year, Ld. Assessing Officer noticed that the assessee had deposited a sum of Rs. 89,60,505/- in its saving bank account but it had not filed return of income for the impugned Assessment Year. The assessment was reopened u/s. 148 r.w.s. 143(2) of the Act, in response to which the assessee filed return of income on 05-06-2017 declaring a total income of Rs. Nil and claimed exemption on surplus of Rs. 29,20,936/- u/s. 10(23C)(iiiiae) of the Act. During the course of assessment, with regard to claim of exemption u/s. 10(23C)(iiiiae) of the Act, the assessee submitted that as per letter No. D.O.F No. 184/55-74-IT(A.I) issued by

Govt. of India, Central Board of Direct Taxes, New Delhi dated 05-05-1975, the income of Indian Red Cross Society is exempted u/s. 10 of the Income Tax Act. The Assessing Officer however did not accept the assessee's contentions and held that assessee is not entitled to exemption u/s 10(23C)(iii)ae) of the Act since exemption therein is available to either hospital or other institutions, whereas assessee is a blood bank not engaged in dispensing medical facilities but is only collecting, storing and supplying blood to the hospital. Further the Id. Assessing Officer held that since the assessee had not supplied a true copy of the aforesaid letter dated 05-05-1975, its genuineness was under doubt and claim of exemption cannot be accepted basis the above letter. Further, the Id. Assessing Officer also held that the assessee is not working for philanthropic purposes as claimed by the assessee, but is working for profit which is evident from the fact that during the captioned year, the assessee recorded a nearly 61% surplus of its total receipts. Accordingly, the Id. Assessing Officer denied the benefit of exemption u/s. 10(23C)(iii)ae) of the Act and added a sum of Rs. 23,41,938/- to the total income of assessee.

4. In appeal before Ld. CIT(A), the assessee reiterated that in view of letter dated 5th May 1975 issued by CBDT, the assessee is entitled to claim of exemption u/s 10 of the Act. Further, the assessee challenged the reopening of Assessment on the ground that the Id. Assessing Officer was factually incorrect in initiating re-assessment on the ground that there was a deposit of Rs. 89,60,505/- in saving account with the Bank of India, whereas in fact, the total cash deposit was Rs. 29,85,834/-. Therefore, reasons of reopening contain a factual error. Further, the assessee contended that **since no addition were made by the Assessing Officer** in respect of the ground

on which reopening of the assessment was made i.e. cash deposits of Rs. 89,60,505/- in saving account of the assessee, the Id. Assessing Officer is precluded from making additions on some other grounds which did not form part of the reasons recorded. The assessee submitted that since no cash of Rs. 89,60,505/- as alleged, was deposited in saving bank account with the Bank of India and no addition is made on this ground in the assessment order and addition was made by Ld. Assessing Officer on account of non-grant of exemption u/s. 10(23C)(iii), reopening of assessment proceedings are bad in law and deserves to be quashed. The Id. CIT(A) however rejected the assessee's arguments and upheld the additions made in the assessment order by observing that assessee could not demonstrate logic of high testing fee charged and as to how it was functioning for philanthropic purposes given the fact that the surplus during the impugned Assessment Year stood at 61% of total receipt. Ld. CIT(A) accordingly dismissed the assessee's appeal and upheld order of Ld. Assessing Officer.

5. Before us, Ld. Counsel for the assessee at the outset challenged reopening of assessment on the ground that reassessment was initiated on the basis of cash deposit of Rs. 89,60,505/- in the bank account of the assessee, but no addition on this count was made in the assessment order. The Ld. Counsel for the assessee relied on the case of **CIT v. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bombay)** and jurisdictional Gujarat High Court in the case **CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat)**, to contend that that when no addition was made by Assessing Officer on the ground on which reopening of assessment was based, he could not make additions on some other grounds which did not form part of

reasons recorded by him. The Ld. Counsel for the assessee also drew our attention to letter dated 21st July 1994 issued by CBDT at page 43 of Paper-Book in support of the contention that the assessee was not required to file separate return of income since vide the above letter, the Head Office of Indian Red Cross and Branches were not treated as separate entities, and there was no separate requirement for the assessee (being the branch of Indian Red Cross situated in the State of Gujarat at Godhara) to file a separate return of income. Further, Ld. Counsel for the assessee submitted that later on, in consultation with the Revenue, from AY 2012-13, the assessee has been filing separate return of income for all Branches. He drew our attention to page 81 of Paper-Book to the letter by Indian Red Cross (HO) regarding separate registration in respect of each branch. Accordingly, Ld. Counsel for the assessee submitted that there was no mala-fides on part of the assessee in not filing return of income for the captioned year in respect of the Godhara Branch and not claiming separate exemption u/s 10(23C)(iii)ae) of the Act. On merits, Ld. Counsel for the assessee submitted that in view of letter dated 5th May 1975 issued by CBDT, the assessee is entitled to claim of exemption u/s 10 of the Act. In response, Ld. Departmental Representative submitted that reopening was not bad in law since reasons recorded are general enough to cover addition u/s 10(23C)(iii)ae) of the Act. On merits, Ld. Departmental Representative relied upon the observations of the Ld. CIT(A) and Ld. Assessing Officer in their respective orders.

6. We have heard the rival contentions and perusal the material on record. Before going into merits of the case, we would like to first deal with

the challenge by Ld. Counsel for the assessee on the initiation of reassessment proceeding being bad in law and hence void *ab-initio*. The Courts on various occasions have held that when on the ground on which reopening of assessment was based, no addition was made by Assessing Officer, then Assessing Officer could not make additions on some other grounds which did not form part of reasons recorded by him. The Hon'ble Supreme Court in the case of **Pr. CIT v Lark Chemicals (P.) Ltd [2018] 99 taxmann.com 312 (SC)** held that where High Court having noticed that order passed consequent to reassessment, **had not confirmed addition attributable to reasonable belief of Assessing Officer while issuing reopening notice**, and set aside the said reassessment order, SLP filed against decision of High Court was to be dismissed. In the case of **CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat)**, the Hon'ble Gujarat High Court held that when on ground on which reopening of assessment was based, no addition was made by Assessing Officer, he could not make additions on some other grounds which did not form part of reasons recorded by him. In the case of **CIT v. Jet Airways (I) Ltd. [2010] 195 Taxman 117 (Bombay)**, the Bombay High Court held that if after issuing notice under section 148, Ld. Assessing Officer accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee. In the recent case of **Aishwarya Rai Bachchan v. Pr. CIT [2022] 135 taxmann.com 335 (Mumbai - Trib.)**, ITAT held that where AO

recorded reasons on basis of which reassessment was initiated, but did not make any addition in reassessment proceedings, in such case primary reason to believe that income had escaped assessment would fail and reassessment could not be treated as a valid order. Again in **ACIT v. Everest Education Society [2021] 126 taxmann.com 78 (Pune - Trib.)**, ITAT held that where reasons recorded and notice issued under section 147/148 was with respect to underutilization of income of assessee trust for which there had been no addition made, but Assessing Officer made addition on account of 'anonymous donation' under section 115BBC, Assessing Officer having acted beyond his jurisdiction, and therefore Commissioner (Appeals) had rightly directed Assessing Officer to delete addition so made.

6.1 Now, coming to specific facts of the instant case, we note that the reassessment proceedings were reopened by the Ld. Assessing Officer on the following basis:

"On examination of details available with this office, it is established that the assessee during the FY 2009-10 relevant to AY 2010-11 has made cash deposit of Rs. 89, 60,505/- in saving bank a/c maintained by them in Bank of India. However, on verification in ITD it is seen no return of income for AY 2010-11 is filed by the assessee. Hence, I have a reason to believe that an amount of Rs. 89,60,505/- has escaped assessment for the AY 2010-11 and this is a fit-case for reopening u/s 147 of the Act by Issuing notice u/s 148 of the Act. "

3. It is requested that objections to the above, if any, may be filed in this office within 60 days of this letter."

6.2 However, in the assessment order, we note that the Ld. Assessing Officer has not made any additions and nor even discussed the issue on the basis of which the reassessment proceedings were initiated. The assessee had pointed out that the Ld. Assessing Officer had committed a factual inaccuracy by stating that a sum of Rs. 89,60,505/- was deposited in the bank account, whereas total cash deposits in the bank account held by the assessee were to the tune of Rs. 29,85,834/-only and this fact has not been controverted either by the Ld. Assessing Officer or the Ld. CIT(A). In fact, we note that Ld. CIT(A) in the appeal proceedings disposed of the challenge on this issue with the remarks “*As per Ld. Assessing Officer, cash deposit was Rs.89,60,505/-whereas as per the appellant it has deposited Rs. 29,85,834/-only. Assessing Officer has accepted Appellant’s version. Hence, dispute on this aspect ends here*”. Hence, as noted above, no addition was made by Ld. Assessing Officer in respect of cash deposits made in the bank account of the assessee, which was the basis on which reassessment was initiated for the captioned year. Now, therefore once the Revenue has accepted the assessee’s contentions in respect of the cash deposits, and has not made any addition on the basis of which reassessment was re-opened, and have proceeded to make additions on entirely different set of issues not forming part of notice issued u/s 148 of the Act, the issue for consideration is whether additions made during reassessment proceedings can be sustained. In our considered view, in the light of Hon'ble Supreme Court’s decision in the case of **Pr. CIT v Lark Chemicals (P.) Ltd [2018] 99 taxmann.com 312 (SC)** and jurisdictional High Court in the case of **CIT v. Mohmed Juned Dadani [2013] 30 taxmann.com 1 (Gujarat)**, Ld. Assessing Officer is precluded from making the afore-said

additions made in reassessment proceedings. In our view, once having accepted the assessee's version regarding cash deposit of Rs. 89,60,505/-, wherein Ld. Assessing Officer did not make any addition on that count in reassessment proceedings (in fact, this aspect of cash deposit of Rs. 89,60,505/- does not even find mention in the entire reassessment order), the additions made by Ld. Assessing Officer on other grounds not finding part of reasons for reopening assessment, are liable to be set-aside. Having held that additions made during reassessment proceedings deserve to be set aside on grounds of jurisdiction, we are not going into the individual grounds with respect to merits of the case.

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

Order pronounced in the open court on 31-05-2022

Sd/-
(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Ahmedabad : Dated 31/05/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद