

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2119/PUN/2017
निर्धारण वर्ष / Assessment Year: 2014-15

ACIT, Exemption Circle, Aurangabad.	Vs.	M/s. The Nanded Sikhgurudwara Sachkhand Hazur Apchalnagar Sahib, Nanded-431601. PAN : AABTT2452Q
Appellant		Respondent

Revenue by : Shri Sardar Singh Meena
Assessee by : Shri Nikhil S. Pathak
Date of hearing : 26.05.2022
Date of pronouncement : 09.06.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 2, Aurangabad ['CIT(A)' for short] dated 06.06.2017 for the assessment year 2014-15.

2. The Revenue raised the following grounds of appeal :-

"1. The Ld. CIT(A), has erred in allowing exemption u/s 10(23C)(v) of the Act, in the given facts of the case, particularly the assessee failed to furnish Audit report in Form No. 10BB u/s 10(23C)(v) r.w.r. 16CC.

2. *The Ld. CIT(A), has erred in granting exemption u/s 11 of the Act by accepting Form No. 10 filed during the course of assessment proceedings, even though the Trust is not registered u/s 12A of the Act.”*

3. Briefly, the facts of the case are that the respondent-assessee is a religious and charitable trust engaged in the work of managing the administration and functioning of Sikh Gurdwara Sachkhand Shri Hazur Sahil, Nanded. It is to be noted that “The Nanded Sikh Gurudwara Sachkhand Hazur Apchchnagar Sahib” as anonymous body constituted by the Government under the Nanded Sikh Gurudwara Sachkhand Hazur Apchchnagar Sahib Act, 1956 by way of notification in the official Gazette of the Hyderabad Government vide Gazette Extraordinary No.216. It is registered under the Charitable and Religious Trusts Act, 1920 (Central Act XIV of 1920) and the Bombay Public Trusts Act, 1950. The respondent-assessee filed the return of income for the assessment year 2014-15 declaring Rs.Nil income after claiming exemption of income under the provisions of section 10(23C)(v) of the Income Tax Act, 1961 (‘the Act’). Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax, Exemption Circle, Aurangabad (‘the Assessing

Officer') vide order dated 30.12.2016 passed u/s 143(3) of the Act at total income of Rs.24,33,51,386/- denying the claim for exemption of income u/s 10(23C)(v) on the ground that the respondent-assessee trust generated surplus of 41% of the gross receipts indicating that the funds were not utilized for which the trust was formed. Secondly, the respondent-assessee trust does not enjoy the registration u/s 12AA of the Act. Also the fact that Form No.10 was not filed within the due date.

4. Being aggrieved by the above assessment of order, an appeal was preferred before the Id. CIT(A) contending that the submission of audit report before the competent authorities constitutes sufficient compliance and, therefore, there is no requirement under the law that in order to avail the exemption u/s 10(23C)(v) of the Act. The Trust should also enjoy the registration u/s 12AA of the Act and finally the mere fact that the respondent-assessee generated surplus does not lead to conclusion that the funds were not properly utilized by the respondent-assessee trust. The Id. CIT(A) considering the following decisions relied upon by the respondent-assessee (i) Hon'ble Supreme Court in the case of (i) CIT vs. Nagpur Hotel Owner's Association, 247 ITR 201 (SC), (ii) Hon'ble Gujarat High

Court in the case of ACIT vs. Stock Exchange Ahmedabad, 25 Taxmann.com 469 (Guj.) and (iii) Hon'ble Delhi High Court in the case of Association of Corporation & Apex Societies of Handlooms vs. ADIT, 351 ITR 287 (Delhi) held that furnishing of audit report before completion of the assessment proceedings would constitute sufficient compliance and claim for exemption u/s 10(23C)(v) cannot be denied. Similarly, the ld. CIT(A) also held that the findings of the Assessing Officer that the funds of the trust were not properly utilized is bald allegation as the respondent-assessee trust is supervised by the District Collector. The office of the Charity Commissioner also not found any irregularity in the functioning of the trust as well as funds utilized by the respondent-assessee trust. Accordingly, the ld. CIT(A) directed the Assessing Officer to grant the exemption u/s 10(23C)(v) and delete the addition of Rs.24,33,51,386/-.

5. Being aggrieved by the above decision of the ld. CIT(A), the Revenue is in appeal before us in the present appeal.

6. The ld. CIT-DR submits that mere fact that the respondent-assessee trust had generated surplus of 41% goes to prove that the funds were not properly utilized by the respondent-assessee trust.

He further submitted that the Id. CIT(A) ought not to have held that the filing of the audit report before completion of the assessment proceedings constitutes a sufficient compliance under the provisions of the Act, as it is contrary to the plain provisions of the Act which stipulates under second proviso and third proviso of section 10(23C)(v) of the Act the audit report should be filed within due date of filing return of income u/s 139 of the Act. He further contended that the Id. CIT(A) ought not to have held that the findings of the Assessing Officer that the funds were not properly utilized, administered and supervised is bald in the absence of any material on record controverting the findings of the Assessing Officer. He further submitted that the respondent-assessee trust was granted registration u/s 12AA only on 15.05.2017 which is applicable from financial year 2016-17 onwards. Thus, in the absence of any registration u/s 12AA, the respondent-assessee trust is not entitled for benefit of exemption under the provisions of section 10(23C)(v) of the Act.

7. On the other hand, Id. AR for the respondent-assessee trust submitted that the observation of the Id. CIT(A) that the finding of the Assessing Officer that the funds of trust were not properly

utilized and the affairs of the trust were not properly managed is bald, is correct, inasmuch as, the affairs of the trust were managed under the direction and control of the District Collector. He further submitted that the fact that audit report in the prescribed form was not submitted by the respondent-assessee trust within the due date for filing the return of income cannot come in the way of granting exemption u/s 10(23C)(v), inasmuch as, the requirement of filing the audit report in the prescribed form is only directory and it would be sufficient compliance if audit report is submitted before completion of the assessment proceedings. He further submitted that mere generation of surplus does not lead to conclusion that the trust is not existing only public religious and charitable purposes.

As regards to the registration u/s 12AA, he submitted that there is no requirement under the provisions of section 10(23C)(v) that the claim for exemption under this section can be allowed only if the registration u/s 12AA is granted.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the exemption under the provisions of section 10(23C)(v) of the Act. Admittedly, the respondent-assessee trust was granted approval u/s 10(23C)(v)

of the Act. However, the Assessing Officer had denied the claim for exemption u/s 10(23C)(v) primarily on the ground that :

- (i) The funds of the trust were not properly utilized/supervised.
- (ii) The respondent-assessee trust does not enjoy the registration under the provisions of section 12AA of the Act.
- (iii) The audit report in the prescribed form was not filed within the stipulated date i.e. along with return of income filed u/s 139(1) of the Act.

9. On appeal before the ld. CIT(A), the ld. CIT(A) was of the opinion that the Assessing Officer was not justified in observing that the funds of the trust were not properly utilized without bringing any material on record. Further, as regards to the filing of audit report in the prescribed form, the ld. CIT(A) placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owner's Association, 247 ITR 201 (SC) held that if the audit report was filed before the completion of the assessment proceedings, it would meet the requirement of law as the provision of Act is a directory in nature. Thus, the appeal of the respondent-assessee trust was allowed by the ld. CIT(A).

10. We find from material on record that the observation made by the Assessing Officer that the funds of the trust were not properly utilized, managed and supervised is mere bald observation as there was no material brought on record in support of the above allegation. Further, we find that the funds of the trust are managed by the member of the trustees headed by the District Collector, no mala-fide can be attributable to Government authorities in the absence of any evidence. The Assessing Officer holding the position of quasi judicial authority, should refrain from making bald allegation without bringing on record conclusive evidence in support of such allegation. From reading of the assessment order, it appears that the Assessing Officer is carried away by the fact that the respondent-assessee trust generated surplus of funds of 41% of gross receipts and inferred that the funds were not utilized for the object for which the respondent-assessee trust was formed. The Hon'ble Supreme Court in the case of Queen's Educational Society vs. CIT, 372 ITR 699 (SC) held that merely because a charitable trust had generated surplus does not lead to conclusion that the appellant trust is not charitable or religious existing for the purpose of profit. To the similar effect in the decision of the Hon'ble

Supreme Court in the case of Aditanar Educational Institution vs. Addl.CIT, 224 ITR 310 (SC). Therefore, the Assessing Officer cannot jump to the conclusion that the respondent-assessee trust is not religious and charitable trust merely because it generated surplus income.

11. We have carefully gone through the provisions of section 10(23C)(v) which does not prescribe any stipulation, which makes the registration u/s 12AA as a condition precedent for availing the exemption u/s 10(23C)(v) of the Act. In fact, the provisions of section 11 and section 10(23C)(v) are two parallel regimes and operate independently in their respective realms. This position was clarified by CBDT Circular No.14 of 2015 dated 17.08.2015. Further, it is well-known canon of construction of the Statute, no words can be added to in Act or a new stipulation which is not prescribed in the statute can be read into the Act as held by the Hon'ble Supreme Court in the case of CIT vs. Vadilal Lallubhai, 86 ITR 02 (SC).

As regards to the delay in filing the audit report in the prescribed form, the Courts have taken a consistent view that filing

of audit report in the prescribed form before completion of the assessment proceedings would constitute a sufficient compliance under the provisions of the Act as held by the Hon'ble Supreme Court in the case of Nagpur Hotel Owner's Association (supra), also by the Hon'ble Punjab & Haryana High Court in the case of National Horticulture Board vs. CIT, 319 ITR 74 (P&H) and the Hon'ble Delhi High Court in the case of Association of Corporation & Apex Societies of Handlooms vs. ADIT, 351 ITR 287 (Delhi). Even the CBDT Circular No.19 of 2020 w.e.f. 03.11.2020 as amended by the CBDT Circular No.6 of 2021 dated 26.03.2021 had authorized the Commissioner of Income Tax to entertain the application belatedly upto the assessment year 2018-19. Thus, in the light of the above discussions, we do not find any illegality and unreasonableness in the order of the Id. CIT(A) in reversing the findings of the Assessing Officer denying the exemption u/s 10(23C)(v) of the Act. In view of findings given by us supra, none of reasons assigned by Assessing Officer, while denying the claim of exemption u/s 10(23C)(v) can be sustained in the eyes of law. We do not find any merits in the grounds of appeal filed by the

Revenue. Accordingly, the grounds of appeal filed by the Revenue stand dismissed.

12. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 09th day of June, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09th June, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The CIT (Exemptions), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.