

THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1064/Mum/2022 (A.Y. 2015-16)

Larsen & Toubro Public Charitable Trust L&T House, N.M. Marg Ballard Estate, Fort Mumbai-400 001. PAN : AAATL4074F (Appellant)	Vs.	ITO, Exemption Circle-1 506, 5 th Floor Piramal Chambers Lal Baug, Parel Mumbai-400 012. (Respondent)
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Assessee by	Ms. Usha Gopalan
Department by	Shri Manoj Sinha
Date of Hearing	15.09.2022
Date of Pronouncement	16.09.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 18-03-2022 passed by Ld CIT(A), National Faceless Appeal Centre, New Delhi and it relates to the assessment year 2015-16. The assessee is aggrieved by the decision rendered by Ld CIT(A) on the following issues:-

- (a) Non-granting of exemption of 15% allowed u/s 11(1)(a) of the Act.
- (b) Non-granting of TDS of Rs.13,30,586/-

2. The assessee is a charitable trust registered u/s 12A of the Act. The return of income filed by the assessee for the year under consideration was processed u/s 143(1) by the AO, wherein the exemption of Rs.4,97,45,885/- claimed by the assessee u/s 11(1)(a) of the Act was not allowed. The said claim relates to the amount accumulated to the extent of 15% of income u/s 11(1)(a) of the Act. Hence the assessee filed a rectification application u/s 154 of the Act and the same was also rejected. The assessee had offered

certain income during the year under consideration and accordingly claimed corresponding TDS thereon. The said TDS credit was also not allowed.

3. Aggrieved, the assessee filed appeal before Ld CIT(A), who rejected the appeal of the assessee. Aggrieved, the assessee has filed this appeal before the Tribunal.

4. The first issue relates to the rejection of claim for exemption u/s 11(1)(a) of the Act. The argument of the counsel was that the provisions of sec.11(1)(a) allows exemption to the extent of 15% of the income and accordingly, the assessee claimed a sum of Rs.4,97,45,885/-. However, the CPC did not allow the said claim. The Ld CIT(A) also rejected the said claim on the reasoning that the assessee has not followed the conditions prescribed for making investments. The Ld A.R submitted that the said conditions are applicable to the amount accumulated u/s 11(2) of the Act and not the amount accumulated u/s 11(1)(a) of the Act. Accordingly she submitted that the order passed by Ld CIT(A) is liable to be set aside.

5. The Ld D.R, however, submitted that the amount applied by the assessee for charitable purposes during the year is more than the amount of income and hence there was no requirement to allow accumulation to the extent of 15% of income u/s 11(1)(a) of the Act. Accordingly, the Ld D.R submitted that the assessee would not eligible for exemption towards accumulation of 15% of income. He submitted that even though the Ld CIT(A) has rejected the claim on different reasoning, yet his final decision complies with the provisions of sec.11(1)(a) of the Act.

6. We have heard rival contentions and perused the record. The assessee has placed computation of income at page 57 of the paper book. A perusal of the same would show that the assessee has earned capital gains of Rs.22.75 crores and the same has been claimed as exempt u/s 11(1A) of the Act.

From the order passed by Ld CIT(A), we notice that the said claim has been accepted by the AO.

7. The remaining income earned from assets held for charitable purposes is Rs.26,85,36,700/-, which consisted of corpus donations of Rs.16,44,04,129/- and other income of Rs.10,41,32,571/-. The corpus donation is exempt u/s 11(1)(d) of the Act.

8. The other income earned from assets held for charitable purposes is Rs.10,41,32,571/-. The assessee has applied a sum of Rs.18,64,01,654/- for charitable purposes, meaning thereby, the amount applied by the assessee for charitable purposes has exceeded the amount of other income referred above. Hence, there was no necessity for the assessee to accumulate income to the extent of 15% u/s 11(1)(a) of the Act. It is pertinent to note that the exemption of 15% allowed u/s 11(1)(a) of the Act is not a standard deduction allowed. It only allows accumulation of income without any conditions, if there is any shortfall in application of income, i.e., if the application of income falls short of 85% of the income. In the instant case, we have seen that there is no shortfall in application of income. Hence the question of allowing accumulation of income to the extent of 15% of income does not arise.

9. The Ld A.R relied upon certain case laws. On a perusal of the same, we notice that those case laws deal with the issue as to whether the accumulation to the extent of 15% is required to be allowed on Gross income or Net income. Since the assessee is not eligible for accumulation granted u/s 11(1)(a) of the Act during this year, the question that the same is required to be allowed on gross income or net income will not arise. Hence those case laws are not applicable to the issue under consideration. Accordingly, we hold that the assessee is not eligible to claim accumulation of

income u/s 11(1)(a) of the Act and hence the AO was justified in rejecting the claim for accumulation of income u/s 11(1)(a) of the Act.

10. The next issue relates to the claim for credit of TDS amount. The Ld A.R submitted that certain income received by the assessee is split between two or more years under accounting principles. Accordingly, the TDS credit was also split between those years in proportion to the income offered in each of the year. The Ld A.R submitted such kind of split up is permitted under Rule 37BA of Income tax Rules. However, the AO has assessed income so offered by the assessee without allowing corresponding tax credit. The Ld CIT(A) also confirmed the same. The Ld A.R submitted that the claim of the assessee is in accordance with law and accordingly prayed that the AO may be directed to allow credit of proportionate TDS claimed during this year.

11. We heard Ld D.R on this issue and peruse the record. We notice that Rule 37BA(3)(ii) allows splitting up of TDS amount when the corresponding income is assessable over a number of years. It is stated that the credit for TDS shall be allowed across those years in the same proportion in which the income is assessable to tax. Accordingly, we restore this issue to the file of AO for allowing proportionate tax credit in terms of Rule 37BA(3)(ii) of I T Rules.

12. In the result, the appeal filed by the assessee is treated as partly allowed.

Order pronounced in the open court on 16.09.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/09/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai