

आयकर अपीलिय अधिकरण
मुंबई पीठ "सि"
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीतसिंह, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं.877/मुं/2022 (नि.व. 2018-19)
ITA NO.877/MUM/2022 (A.Y.2018-19)

Jt. Commissioner of Income Tax अपीलार्थी/Appellant
(ODS) Central Circle 1 (4), Mumbai
9thFlr., 902,Pratishtha Bhavan,
M.K. Road, Mumbai 400 020

बनाम Vs.

Podar Literacy & Education Trust,प्रतिवादी/Respondent
103/1 Basavanapura, Off.
Bannerghatta Road,
Bengaluru 560 083
Pan No. AAATP9197P

अपीलार्थीद्वारा/ Appellant by :Mr. Manoj Kumar, CIT DR
प्रतिवादी द्वारा/Respondent by :Mr. Rushabh Mehta

सुनवाई की तिथि/ Date of hearing : 12/09/2022
घोषणा की तिथि/ Date of pronouncement : 28/09/2022

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the department is directed against the order of Commissioner of Income Tax Appeal 47- Mumbai [in short "the CIT(A)] dated 10.02.2022 for the assessment year 2018-19.

2. The solitary ground raised by the Revenue in appeal reads as under:

“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred, in deleting the disallowance of Rs. 1,84,54,652/- on account of provision for gratuity and leave encashment, without appreciating the fact that such provision was merely in the nature of enhanced provision of employees’ for post – retirement benefits and such deduction and all utilization/set apart is allowable only on actual basis as per sections 11 & 12 of the Income Tax Act, 1961.

3. Shri. Manoj Kumar representing the department vehemently supporting assessment order submitted that the CIT(A) has erred in deleting addition of Rs.1.84 crores without appreciating the fact that the assessee has merely made provision for gratuity and leave encashment and has not made actual payment. Such expenditure is allowable only on actual basis as per provisions of Sections 11 and 12 of the Income Tax Act 1961 [in short “the Act”].

4. Shri. Rushabh Mehta appearing on behalf of the assessee/respondent supported the order of CIT(A) and reiterated the submissions made before the First Appellate Authority. The learned Authorised Representative submitted that the CIT(A) has allowed relief to the assessee with respect to provision for gratuity and leave encashment by following the order of Tribunal in the case of assessee’s group concern, M/s. Anandilal and Ganesh Podar Society in ITA No. 5962/M/2019 dated 03.08.2021.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee has claimed provision of gratuity and leave encashment aggregating to Rs.1,84,54,652/-. The assessee is a charitable trust. The AO held that the assessee’s claim cannot be accepted as it is not in the nature of utilisation but merely a provision. Since, the provisions of Sections 11

and 12 of the Act only provides for deduction on actual basis and not in the nature of provision. We find that the CIT(A) has granted relief to the assessee by following decision of Co-ordinate Bench in the case of Anandilal and Ganesh Podar Society (Supra). The Tribunal in the aforesaid case has held that in the case of trust, the meaning "applied" may not be construed as "spent". It includes the necessary provision required to be made as per statutory requirement. Therefore, the provision for gratuity and leave encashment satisfy the condition of Sections 11 and 12. No contrary decision has been brought to our notice by the Revenue. We find no infirmity in the order of CIT(A) hence, the same is upheld.

6. In the result, the appeal by Revenue is dismissed, sans merit.

Order pronounced in the open court on Wednesday the 28th day of September, 2022.

Sd/-

(AMARJIT SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Dated- 28/ 09/2022

M.R. Sonavane

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/The CIT(A)-
4. आयकर आयुक्तCIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/
Sr.Private Secretary **ITAT, Mumbai**