

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "A" : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI G.D. PADMASHALI, ACCOUNTANT MEMBER

ITA Nos.786 & 787/PUN/2019
Assessment Years 2012-13 & 2013-14

The DCIT (Exemptions), Room No.415, 4 th Floor, C-Wing, PMT Building, Shankarsheth Road, Swargate, Pune - 411 037	vs	Maharashtra Academy of Engineering and Educational Research, S.No.124, Paud Road, Kothrud, Pune-411038 Maharashtra.
Appellant		Respondent

Revenue by :	Shri Pankaj Kumar & Shri Ramnath P. Murkude
Assessee by :	Shri Nikhil S. Pathak
Date of hearing :	28.11.2022
Date of pronouncement :	28.12.2022

ORDER

PER SATBEER SINGH GODARA, J.M. :

These Revenue's twin appeals for Assessment Years 2012-13 and 2013-14 are directed against the Commissioner of Income Tax (Appeals), Pune-10, Pune's both order dated 12.03.2019 in case no.PN/CIT(A)10/ACIT(HQ)(Exemp.)/69/15-16 and in case no. PN/CIT(A)10/DCIT Cir.(Exemp.)/25/16-17, assessment year-wise, respectively, in proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

2. Heard both the parties. Case files perused.

3. The Revenue's former appeal ITA.No.786/PUN./2019 raises the following substantive grounds :

1. *The learned Assessing Officer has erred in determining the net taxable income of the appellant at Rs. 4,56,79,340/- as against the returned income of Rs. NIL/-. The addition of Rs.4,56,79,340/- made by the learned Assessing Officer on account denial of exemption u/s. 11 & 12 of the Act is patently illegal and unsustainable in law and the same may please be deleted.*

1.1. *The Ld. AO has erred in treating the assessee as 'Association of Persons' (AOP) without appreciating that the trust was having a valid registration u/s. 12A(a) as well as 10(23C)(vi) of the Act.*

2. *The Ld. AO failed to appreciate that the appellant was duly entitled to claim the benefit of exemption u/s. 11 & 12.*

2.1. *The learned Assessing Officer has failed to appreciate that-*

a. *the registration of the appellant u/s. 12A(a) which was cancelled by the CIT(central), Pune is now restored by the Hon'ble ITAT, Pune and therefore registration of the appellant holds good.*

b. *The fact that an appeal is filed before High Court by the department against the order of ITAT, is no reason to deny the exemption.*

c. *There were no so called violations u/s. 13 of the Act for year under consideration.*

3. *The Ld. AO is not justified in holding that the activities of 'World Peace Centre' were not charitable without examining the exact nature of said activities.*

3.1. *The Ld. AO has erred in holding that appellant is not eligible for exemption u/s. 11 & 12 as the object of 'World Peace Centre' was not communicated to authorities without appreciating that the said change in the object is very much in knowledge of the authorities.*

3.2. *The Ld. Assessing Officer ought to have considered the fact that he is not empowered to decide on the issue of validity of registration u/s.12A(1) of the Act at the assessment stage, once the appellant have valid registration.*

4. *The Ld. AO has erred in disallowing an amount of Rs.2,41,27,211/- being Provision for Gratuity u/s. 40A(7) of the Act without appreciating that the said provisions are not applicable to the assessee as its income is chargeable to tax under the head of 'Income from Other Sources'.*

5. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

4. The Revenue's pleadings are no different in its latter appeal ITA.No.787/PUN./2019 for assessment year 2013-14 wherein the only difference is that of the amount of sec.40A(7)(b)

disallowance of Rs.2,41,27,211/- and Rs.2,76,54,732/- appeal-wise, respectively.

5. We first of all come to the Revenue's identical pleadings in its grounds nos.1 to 4 and note with the able assistance coming from the both the parties that the Assessing Officer's twin corresponding assessments had only invoked sec.40A(7)(b) disallowance hereinabove. These Revenue's four identical substantive grounds, therefore, raise mere academic questions not germane to the sole issue before us. Coupled with this, Mr. Pathak has also filed before us the Assessing Officer's consequential assessments dated 10.05.2019 and 17.05.2019; respectively assessing the assessee's income at NIL only. We thus reject the Revenue's instant former identical four substantive grounds to these facts and circumstances.

6. Next comes the Revenue's sole substantive ground on merits seeking to revive sec.40A(7)(b) disallowance as stated in the preceding paragraphs. The CIT(A)'s detailed discussion reversing the assessment findings to this effect reads as follows :

07. In Ground no.4, the appellant has contested the disallowance on account of provision for gratuity u/s. 40A(7) of the Act of

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Rs.2,41,27,211/- by the AO without appreciating that the said provisions were not applicable to the assessee as its income was chargeable to tax under the head "Income from other sources". The facts of the case as apparent from para 6.1 of the assessment order are that the assessee made provision of Rs.2,41,27,211/- in the balance sheet and the same was claimed as expenditure in the Income & Expenditure account. The AO contended that, as per the provisions of section 40A(7)(b) of the Act, the assessee should have contributed the provisions done towards an approved gratuity fund. Admittedly, the same had not been done and therefore such provision for gratuity could not be allowed as expenditure u/s. 40A(7) of the Act. The AO, therefore, had added the same to the total income.

7.1 The appellant in the written submission dated 20/04/2018 in this connection, vide para 4, submitted as below :-

"4. Ground No. 4 - Disallowance of Provision for Gratuity u/s. 40A(7) of the Act:

4.1] For the year under consideration, the appellant has debited an amount of Rs. 2,41,27,211/- to Income & Expenditure A/c. on account of Provision for Gratuity to employees as per the accrual system of accounting. While completing the assessment, the Ld. AO has treated the assessee as an AOP and accordingly applied the provision of section 40A(7) of the act for disallowance of aforesaid provision amount. In this context it is submitted that the Ld. AO has erred in disallowing the said amount by applying the provisions of section 40A(7) of the Act in the case of the appellant whose income is governed by the provisions of section 11, 12 & 13. In this context, the Ld. AO has failed to appreciate that the appellant trust is not involved into any business activities and therefore its income cannot be charged to tax under head of 'Profits or Gain from Business or Profession'. The provision of section 28 - 44D cannot be applied in the case of the charitable trust registered u/s. 12A of the Act. In this context, we would like to rely upon



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*the decision of the ITAT Amritsar Bench in the case of **Baba Farid Vdyak Society, Bhatinda v. ACIT** in ITA No.180/ASR/2010 dated 31.01.2011 and decision of the ITAT Mumbai Bench in the case of **Mahatma Gandhi Seva Mandir vs. DDIT(Exemp)** in ITA No.4138/Mum/2011 dated 11.05.2012.*

*4.2] This issue was also discussed by the Hon'ble Pune ITAT in the case of appellant itself for earlier years i.e. AY 1999-2000 to 2010-2011. The ITAT in para 160-162 Page 116 of its order for AY 1999-2000 to 2004-2005 in ITA No. 915-920/PN/2012 dated 10.02.2017 has decided the issue in favour of the appellant. The ITAT relied upon the decision Hon'ble Madras High Court in the case of **CIT vs. Rao Bahadur Calavald Cunnan Chetty Charities 135 ITR 485** and held income for purposes of section 11(1)(a) has to be computed on commercial basis without reference to normal provisions of the Act. It is therefore prayed before your honour that the addition made u/s. 40A(7) of the Act may kindly be deleted as the assessee is eligible for exemption u/s. 11 and not to be treated as AOP."*

7.2 I have perused the assessment order, the submission of the appellant and the materials on record carefully. I find that the Hon' ble ITAT Pune vide order in ITA nos.921 to 923/PN/2012 dated 16/05/2017 for A.Ys. 2005-06 to 2007-08 in this regard vide paras 160 to 162 had allowed the assessee's appeal holding as below :-

"160. The next issue which is common for all the years is regarding disallowance u/s.43B, 40A(3) and 40A(7) etc.

161. Since in the instant case the Tribunal has restored the registration u/s.12A to the assessee trust, therefore, the income in our opinion has to be computed u/s.11. It has been held in various decisions that the income u/s.11 has to be computed in a commercial manner and not as per the provisions of I.T. Act. The various heads of income u/s.11 are not relevant in case of a charitable trust and therefore we find merit in the argument of the Ld. Counsel for the assessee that while computing the income u/s.11 the various disallowances/additions u/s.40A(3), 40A(7) and 43B etc. cannot be made u/s.28 to 43.



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162. We find the Hon'ble Madras High Court in the case of CIT Vs. Rao Bahadur Calavala Cunnan Chetty Charities reported in 135 ITR 0485 has held that income for purposes of section 11(1)(a) has to be computed on normal commercial basis without reference to provisions attracted by section 14. The ground raised by the assessee on this issue for the respective assessment years under appeal are accordingly allowed."

7.2.1 I further find that the Hon'ble Pune ITAT in its order for A.Ys. 2005-06 to 2007-08 in ITA Nos.921 to 923/Pun/2012 dated 16/05/2017 and further its orders in ITA nos. 2401 and 2402/Pun/2012 dated 23/05/2017 for A.Y.s 2008-09 and 2009-10 & ITA No.80/Pun/2014 for A.Y. 2010-11 had decided this issue vide paras 46 and 26 & 27 respectively of the said orders in favour of the appellant, thereby referring to the decisions as quoted above for A.Ys. 1999-2000 to 2004-05 dated 10/02/2017. Respectfully following the said decisions, I hold that while computing the total income of the appellant u/s. 11 of the Act, the claim of the appellant in regard to provision for gratuity should be allowed keeping parity with the decision of the Hon'ble ITAT as above. Ground no. 4 raised by the appellant is accordingly **allowed**.

7. Suffice to say, it has already on record that this tribunal's various coordinate bench's (supra) have already rejected Revenue's identical contentions in preceding assessment years in assessee's cases itself. There is no distinction on facts or law raised from the Revenue side before us. We thus adopt judicial consistency to uphold the CIT(A)'s above extracted findings deleting sec.40A(7)(b) disallowance in very terms. The Revenue fails in its sole substantive ground.

8. No other ground or argument has been pressed before us.

9. These Revenue's twin appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 28th December, 2022.

Sd/-
(GD PADMASHALI)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Pune, Dated 28th December, 2022

VBP/-

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. DR, ITAT, "A" Bench, Pune.
6. Guard File.

BY ORDER,

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.