

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 01/JP/2023
निर्धारण वर्ष / Assessment Years : 2017-18

M/s Credai Rajasthan 310-303, Pink City Tower, Shastri Nagar, Jaipur	बनाम Vs.	Income Tax Officer, Ward 4(5), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAR 1290 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R. K. Bhatra (C.A.)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 02/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 06/03/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 10/11/2022 [here in after (NFAC)] for assessment year 2017-18, which in turn arise from the order of the ITO Ward-4(5), Jaipur dated 10.12.2019.

2. The assessee has marched this appeal on following grounds:-

“1. That on the facts and in the circumstances of the case the Id. CIT(A) is wrong, unjust and has erred in law in confirming addition of Rs. 1902500/- made to the income of the appellant by the Id. assessing officer on the basis of alleged income appearing in Form No. 26AS on the ground that financial for next year F.Y 2017-18 (wherein such receipts are shown/declared by the appellant) were not found at ITBA portal ever though these documents/papers were duly uploaded by the appellant on 07-11-2022 vide Annexure- 3.

2. That on the facts and in the circumstances of the case the Id. CIT(A) is wrong, unjust and has erred in law in upholding action of the AO is not allowing deduction of Rs. 500000/- u/s 80G of the IT Act, 1961 in respect of donation given to CM Relief Fund allegedly on the ground that proof of such donation was not found at the ITBA portal even though appellant filed proof thereof during the appellant proceeding vide page no. 22 of Annexure 3 on 7-11-2022.

3. That the appellant craves the permission to add to or to amend to any of the above grounds of appeal or to withdraw any of them.”

3. The fact as culled out from the records is that the assessee is an association of persons (here in after referred as AOP) of builders to look after the interest and common cause of Builders and Promoters of Building in Rajasthan and representing their cause before various authorities. The assessee earns income from membership fees, interest on investment and income from other sources. In terms of the selection of the case the notices were issued from time to time. During assessment proceeding Id. AO added lumpsum disallowance of 20 % out of expenses so claimed. The Id. AO also observed that income to the extent of Rs. 19,02,500/- is shown in 26AS but the same is not shown in the

accounts of the assessee. Based on that observation the income of the assessee determined at Rs. 25,30,612/-. While computing the income the deduction of donation of Rs. 5 lac given to Chief Minister fund was also not granted.

4. Aggrieved from the said order of the Id. AO the assessee preferred an appeal before the Id. CIT(A)/NFAC. The Id. NFAC deleted the lumpsum 20 % addition of Rs. 6,28,112/- out of the expenses so claimed and in respect of the other two issue the relevant finding of the Id. CIT(A) is reiterated here in below:

“5. Ground No.2:

5.1 I have considered the submission of the appellant and perused the relevant assessment records. This ground related to addition of Rs.19,02,500/- on account of alleges income house property. The AO during the course of assessment proceedings, on verification of Form 26AS, observed that the appellant had received rental income of Rs.19,02,500/- but such income was not offered to tax. Hence, the AO has made the addition of Rs.19,02,500/- under the head income from house property. During the appellate proceedings, the appellant stated that also such income was shown in 26AS for the A.Y. 2017-18, such income actually offered to tax in the A.Y. 2018-19. The appellant in this regard, further stated that the appellant has organized an EXPO on 21.04.2016 for which a few persons books stall in March 2017 and make payment immediately after deducting TDS which appeared in 26AS amounting to Rs.19,02,500/-. As per the appellant explanation such rental income along with other income has been offered to tax in the A.Y. 2018-19 by following the matching concept as per accounting standard.

5.2 The appellant in its submission also stated that in support of such claim appellant enclosed copy of financial for the F.Y. 2017-18 showing such income. However, from the attachment record of ITBA Portal; it can be seen that no such attachment has been found. Therefore, verification of such claim of the appellant with relevant documents like financial statement, computation of income and ITR acknowledgment for the A.Y. 2018-19 is not possible. In

view of the above circumstances, I find no merit in the submission of the appellant and therefore, this addition made by the AO is sustained.

6. Ground No. 3:

6.1 I have considered the submission of the appellant and perused the relevant assessment records. This ground relates to disallowance of deduction claim u/s 80G of Rs.5,00,000/- given by the appellant to CM Relief Fund. From the verification of the assessment order, it can be seen due to non-production of receipt of Rs.5,00,000/- made by the appellant in CM Relief Fund, the AO has disallowed the deduction claim u/s 80G. During the appellate proceedings, the appellant claimed that it has enclosed contribution receipt of Rs.5,00,000/- in the CM Relief Fund in ITBA Portal for verification. However, from the attachment record of ITBA Portal, it can be seen that no such attachment has been found.

6.2 Therefore, verification of such claim of the appellant with contribution receipt of Rs. 5,00,000/- in CM Relief Fund is not possible. In view of the above circumstances, I find no merit in the submission of the appellant and therefore, this addition made by the AO is sustained.”

5. As the assessee did not get the relief has preferred this appeal before the Tribunal on the grounds as reproduced in para 2 above. To support the grounds so raised the Id. AR of the assessee submitted their detailed submission on the issue and the same is reproduced here in below;

The above appeal has been filed by assessee against the appeal order dated 10-11-2022 passed by Ld. CIT (A), NFAC, Delhi in appeal No. CIT(A)-2, Jaipur/11175/2019-20. The assessee has raised following grounds of appeal:

1. *That on the facts and in the circumstances of the case the Id. CIT (A) is wrong, unjust and has erred in law in confirming addition of Rs. 1902500/- made to the income of the appellant by the Id assessing officer on the basis of alleged income appearing in Form No. 26AS on the ground that financial for next year F.Y. 2017-18 (wherein such receipts are shown/declared by the*

appellant) were not found at ITBA portal ever though these documents/papers were duly uploaded by the appellant on 07-11-2022 vide Annexure 3.

2. That on the facts and in the circumstances of the case the Id. CIT (A) is wrong, unjust and has erred in law in upholding action of the AO is not allowing deduction of Rs. 500000/- u/s 80G of the IT Act, 1961 in respect of donation given to CM Relief Fund allegedly on the ground that proof of such donation was not found at the ITBA portal even though appellant filed proof thereof during the appellant proceeding vide page no. 22 of Annexure 3 on 7-11-2022.

3. That the appellant craves the permission to add to or to amend to any of the above grounds of appeal or to withdraw any of them.

Facts

The assessee is a registered association to look after the interests and common good of Builders & Promoters of Buildings in Rajasthan and representing to their cause before Government and local Authorities. It was earlier named as Rajasthan Builders Promoters Association and it's name later on changed to CREDAI, Rajasthan and same was changed in PAN also issued by Income Tax Department. The Association receives membership fees from its members and also organizes Expo(s) in which builders book stalls for giving information/booking of building spaces at one place and association receives rent of stalls from them and receipts as charges for advertisement for displays made by members in such Expo(s). The accounts of assessee association are audited by an Accountant as required by its bye-laws and those audited accounts were filed alongwith return. The receipts of assessee association after deducting expenses on activities undertaken was declared as income from other sources in return of income filed. The assessee for the year filed return of income declaring NIL income.

Action of Ld. A.O.

The case of assessee for this year was selected in scrutiny by issue of notice u/s 143 (2) / 142 (1) which assessee complied from time to time. The Ld. A.O. completed assessment u/s 143 (3) by making an addition of Rs. 6,28,112/- by disallowing 20% of its expenses debited in I & E A/c and made further addition of Rs. 19,02,500/- on the ground that as per 26AS the receipts of rent from house property by assessee (it was stall rent and not rent from house property as understood by A.O.) from which TDS u/s 194I (b) was deducted has not been shown in return of income filed and so made addition

of Rs. 19,02,500/- in declared income. The Ld. AO in the order further not allowed the deduction claimed by appellant u/s 80G of the IT Act amounting to Rs.5,00,000/- given into the CM Relief fund. The Ld. A.O. thus completed assessment of assessee on an income of Rs. 25,30,612/-.

Order of CIT (A)

The assessee filed appeal before CIT (A) who deleted the addition of Rs.628112/- but confirmed the addition of Rs.19,02,500/- on alleged ground that financials for next year F.Y. 2017-18 (wherein such receipts are shown/declared by the appellant) were not found at ITBA portal even though these documents/papers were duly uploaded by the appellant on 07-11-2022 vide Annexure 3. The Ld CIT(A) further also upheld action of the AO of not allowing deduction of Rs. 500000/- u/s 80G of the IT Act, 1961 in respect of donation given to CM Relief Fund allegedly on the ground that proof of such donation was not found at the ITBA portal even though appellant filed proof thereof during the appellant proceeding vide page no. 22 of Annexure 3 on 7-11-2022. The present appeal is against the said addition upheld by Ld. CIT(A).

Groundwise submissions

Ground No. (1)

The ground No. (2) of appeal is that on the facts and in the circumstances of the case the Id. CIT (A) is wrong, unjust and has erred in law in confirming addition of Rs. 1902500/- made to the income of the appellant by the Id assessing officer on the basis of alleged income appearing in Form No. 26AS on the ground that financial for next year F.Y. 2017-18 (wherein such receipts are shown/declared by the appellant) were not found at ITBA portal even though these documents/papers were duly uploaded by the appellant on 07-11-2022 vide Annexure 3.

As submitted above the assessee association organize EXPO in exhibition ground for the benefit of members and in Expo members of association participates by booking stalls / pavilions temporarily erected on exhibition ground on payment of stipulated stall rent. The stalls are booked by member in advance prior to date of Expo and stall rent become payable by members on its booking. The members deducts TDS u/s 194I (b) of I. T. Act, 1961 on said stall rent payable and deducts tax adjusting the stall rent payable in books of accounts or from payment made in advance to association which appears in 26AS of association. However assessee adjusts the same in its account as Expo/stall rent received on or after the date fixed for Expo and on its taking place as per bills issued. The stall rent is shown as income from other sources as it is received for temporary structure erected and not from

house property so it is not income falling under the head income from property as understood by A.O.

The Ld. A.O. gave finding in assessment order “करदाता AOP की ओर से प्रस्तुत जवाब में गृह सम्पत्ति से कोई आय प्राप्त नहीं होना दर्शाया गया है जबकि 26एस पर उपलब्ध जानकारी के आधार पर करदाता को विचाराधीन वर्ष में किराए से रु. 19,02,500/- की प्राप्तियां हुई हैं तथा प्राप्त आय को आयकर विवरणी में नहीं दर्शाया गया है जिससे प्रस्तुत जवाब स्वीकार करने योग्य नहीं है। अतः रु. 19,02,500/- को गृह सम्पत्ति से प्राप्त आय से जोड़ा जाता है।

In this connection it is submitted that association organized an EXPO on 21-24 April, 2017 (copy of brochure submitted) for which a few persons booked stall in March, 2017 made payment of stall rent immediately or after booking in March, 2017 made adjustment of rent payable in accounts and deducted due TDS under section 194I (b) which appeared in 26AS of assessee for F.Y. 2016-17 which amount of rent being Rs. 19,02,500/- from which TDS deducted is Rs. 1,90,250/- (details submitted). The assessee adjusted the said rent and rent received for remaining other stalls/pavilion booked in April, 2017 in its accounts on 26-04-2017 as expo stall rent received and thus total income from stall rent including that of said Rs. 19,02,500/- is accounted for in books of accounts for F.Y. 2017-18 and duly shown in audited accounts and in return of income for A.Y. 2017-18. In support of above contention, the assessee submits the copy of A/c(s) of the persons from whom said stall rent of Rs. 19,02,500/- received in F.Y. 2016-17 but adjusted in stall rent by assessee Association in F.Y. 2017-18 alongwith details of total stall rent received in F.Y. 2017-18 highlighting therein the name of persons of said stall rent of Rs. 19,02,500/- received in F.Y. 2016-17 is included in income of 2017-18 to which it belongs as per accounting principles.

The appellant filed the documentary evidence/proof of said receipts duly shown in the F.Y. 2017-18 highlighting the relevant entries vide annexure 3 of the reply dated 07-11-2022. However the Ld. CIT(A) without providing any opportunity passed the order by simply mentioned that above said details were not found on ITBA portal though assessee AOP mentioned in its letter.

It is, thus evident that said income of stall rent of Rs. 19,02,500/- was income of financial year 2017-18 (A.Y. 2018-19) and has been duly shown in return filed for A.Y. 2018-19 and, therefore its addition wrongly confirmed by Ld. CIT(A) in A.Y. 2017-18 is a double addition which is wrong and bad in law and the same deserves to be deleted.

Ground No. (2)

The ground No. (2) of appeal is that the Id. CIT (A) is wrong, unjust and has erred in law in upholding action of the AO is not allowing deduction of Rs. 500000/- u/s 80G of the IT Act, 1961 in respect of donation given to CM Relief Fund allegedly on the ground that proof of such donation was not found at the ITBA portal even though appellant filed proof thereof during the appellant proceeding vide page no. 22 of Annexure 3 on 7-11-2022.

The Ld. A.O. did not required assessee in assessment proceedings to produce receipt of contribution of Rs. 5,00,000/- made by Association in C.M. Relief Fund for which deduction u/s 80G was claimed in return filed. The said receipt is filed at page no. 22 of annexure 3 uploaded on ITBA portal on 07-11-2022. The said receipt is again enclosed herewith. It is therefore prayed that deduction u/s 80G may kindly be allowed.

Ground No. (4)

General ground.”

6. In addition to the above written submission the Id. AR of the assessee submitted that the assessee organised an EXPO for the benefit of the public at large and its members. The assessee has received the money in advance and the same was thus reported based on the advance payment made by various parties. Since, the EXPO income is duly offered based on the facts when the same is legally due to the assessee. Merely the advance receipt received does not become the income of the assessee and therefore, the same is offered to tax in the year under the same is due to the assessee. As regards the donation receipt the Id. AO and Id. CIT(A) not allowed the claim merely on the ground that the assessee has not furnished the receipt on the ITBA. Before us the

Id. AR of the assessee submitted that they have given the donation to the chief minister fund the receipt was placed on record.

7. Per contra, the Id. Sr. DR relied on the order of the Id. CIT(A) and upon the detailed finding recorded in the order. In addition the Id. DR also submitted that the assessee has not proved with sufficient evidence before the Id. CIT(A) on both the issue. So, considering the issue based on the evidence can be sent to the Id. AO for verification.

8. We have heard the rival contentions and perused the material placed on record. The bench has noted Id. CIT(A) on the both the grounds raised before us has not recorded his finding considering the fact that the relevant records were not produced in the appellate proceeding. Whereas the Id. AR of the assessee from the paper book page no. 23 and 24 submitted the acknowledgment of the submission to the appeal filed before Id. CIT(A). It is also evident from the written submission reproduced in the order of the Id. CIT(A) that the for the addition made based on 26AS the assessee contended that the said income is duly offered in the subsequent year and in respect of the donation in the assessment

proceeding the Id. AO has not raised any question and has not specifically asked for the proof. Thus, based on the arguments of both the parties that the contentions raised before us found acceptable. The deduction of donation is required to be given as the Id. AO has not asked and the Id. CIT(A) has not given any adverse finding we direct the assessee to file the proof of donation made to the file of the Id. AO. The Id. AO is directed to verify the receipt of the donation and allow the claim of the assessee in accordance with the law. As regards the addition based on the receipt reported in the year under consideration the Id. AO is directed to verify that whether the same is recorded in the receipt shown by the assessee in the subsequent year and after verification the receipt which has been shown in the accounts of the subsequent year then the Id. AO is directed to deleted the amount which has already been offered in the subsequent year. At same time assessee is directed to file the required documents within 30 days from the receipt of this order and the Id. AO is also directed to verify these aspects and passe the consequent relief to the assessee in a reasonable time after affording the opportunity to the assessee.

In terms of these observations the appeal of the assessee allowed statistical purpose.

Order pronounced in the open Court on 06/03/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 06/03/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Credai Rajasthan, Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward 4(5), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 01/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar