

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 943/मुं/2022 (नि.व 2016-17)
ITA NO.943/MUM/2022(A.Y 2016-17)

Vatsalya Trust,
Plot No.1285, Vatsalya Trust Mumbai,
Near Police Station, Kanjurmarg East,
Mumbai – 400 042.

PAN: AAATV-0345-H

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer-Exem, Ward 2(4),
Piramal Chamber, Lalbaug,
Mumbai – 400 012.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharan V. Gandhi

प्रतिवादी द्वारा/Respondent by : Shri Chetan M. Kacha

सुनवाई की तिथि/ Date of hearing : 09/12/2022

घोषणा की तिथि/ Date of pronouncement : 03/03/2023

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 30/03/2022 for the assessment year 2016-17.

2. The solitary ground assailing the findings of CIT(A) in the present appeal is with respect t to disallowance of provision for gratuity Rs.8,23,549/-.

3. Shri Dharan V. Gandhi appearing on behalf of the assessee submits that the assessee is a charitable trust registered u/s. 12A of the Income Tax Act,

1961 [in short 'the Act']. The Id. Authorized Representative for the assessee submits that the assessee has created provision of staff gratuity. The claim is made only once i.e. when the provision is made. No claim is made when actual payment is made to the staff. Assessee is regularly following this method of accounting since inception i.e. for more than twenty years back. The method of accounting followed by the assessee was never questioned by the Department. It is for the first time in Assessment Year 2015-16 that the claim of assessee was disturbed. Even in the subsequent Assessment Year no scrutiny assessment was made in the case of the assessee. The Id. Authorized Representative for the assessee submits that since the assessee has been regularly following this accounting practice, the claim of the assessee should be allowed.

3.1 Without prejudice to the primary submission, the Id. Authorized Representative for the assessee submits that Explanation to section 11(7) was inserted by the Finance Act, 2022 making it mandatory for the Trust to maintain books on cash basis. The said amendment does not apply retrospectively, hence, the Assessment Year under appeal would not fall within the purview of said amendment. The Id. Authorized Representative for the assessee in support of his submission placed reliance on the decision in the case of CIT vs. Rao Bahadur Calavala Cunnan Chetty Charities, 135 ITR 485 (Mad).

4. Per contra, Shri Chetan M. Kacha representing the Department vehemently supporting the impugned order submits that no actual payment was made by the assessee during the year towards staff gratuity. The expenditure actually incurred during the relevant period is only considered as

application of the fund for the purpose of section 11 in the case of charitable institutions. He further submitted that the case law on which the assessee has placed reliance was considered by the CIT(A) and were distinguished.

5. We have heard the submissions made by rival sides and have examined orders of authorities below. The Id. Authorized Representative for the assessee has stated at Bar that the claim is made with respect to staff gratuity only once that is when the provision is made, no claim is made when actual payment is made by the assessee to the staff. It is unrebutted that this method of accounting is followed by the assessee since long and was never objected by the Department in past. In the impugned assessment year we find that the assessee's claim was rejected by the Assessing Officer at the threshold. The Assessing Officer failed to examine as to whether the actual payment of staff gratuity was made by the assessee and that the claim is made only once.

6. The claim of the assessee is allowed in principle, however the issue is restored to the Assessing Officer for the limited purpose to verify that the claim of staff gratuity is made by the assessee only once. The appeal of the assessee is allowed, in the aforesaid terms.

Order pronounced in the open Court on Friday the 03rd day of March, 2023.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 03/03/2023.
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
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