

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.305/Hyd/2021		
Assessment Year: 2010-11		
Light Associates Ministry of St. Barnaba Society Khammam PAN:AAATL4330L (Appellant)	Vs.	Income Tax Officer (Exemptions)-3 Hyderabad (Respondent)
Assessee by:	Advocate B. Nishitha	
Revenue by:	Shri Rajendra Kumar, CIT(DR)	
Date of hearing:	17/03/2023	
Date of pronouncement:	27/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 2.12.2019 of the learned CIT (A)-9 Hyderabad, relating to A.Y.2010-11.

2. There is a delay of 490 days in filing of this appeal by the assessee for which the assessee has filed a condonation application explaining the reasons for such delay which is due to the prevailing covid situation. After hearing both the sides, the delay in filing of the appeal by the assessee is condoned and the appeal is admitted for adjudication.

2. Facts of the case, in brief, are that the assessee is a charitable trust and registered u/s 12A of the I.T. Act on 30.08.2006 vide letter F. No.HQRS.I(25)/VJA/06-07. It filed its return of income on 17.09.2010 admitting 'nil' income. Subsequently, notice u/s 148 of the I.T. Act was issued on 30.03.2017 and subsequent to the same, notices u/s 143(2) and 142(1) were issued and served on the assessee. However, the assessee did not comply with the statutory notices for which the Assessing Officer completed the assessment u/s 143(3) r.w.s. 147 of the I.T. Act determining the total income of the assessee at Rs.3,81,191/- which is the excess of income over the expenditure. While doing so, the Assessing Officer recorded the following reasons:

"The AR of the assessee was asked to produce the details of books along with ledgers and supporting evidence to substantiate the claim that the assessee trust is conducting the activities of charitable nature and not religious.

The AR vide letter dated 22.12.2017 expressed his inability to produce the details called for as the details are with respect to the assessment year 2010-11 which are not available with them. The AR provide only certificate of registration 12A copy agreement copy with Caruna bala vikas and minutes of meeting.

The above information provided by the AR of the assessee trust is not suffice to take any substantive stand and to establish the genuineness of the organization and hence the office of the undersigned vide letter dated 21.12.2017 given a final show cause as to why can't be completed u/s 144 based on the material evidence available. In response to the show cause the AR of the assessee vide letter dated 22.12.2017 replied that We need some additional time for submission of books and vouchers as the same were not available right now and since all the old books are kept some where"

The AR of the assessee has not chosen to attend the office to explain the case details and the AR was present once in the office on 05.12.2017 to submit power of attorney, later expressed scant regard to represent the case.

In view of the above the assessment is completed based on the material evidence available on record.

There is an agreement entered between CARUNA BALA VIKAS and LIGHT ASSOCIATION MINISTRY OF ST.BARNABAS SOCIETY on 15.06.2009 in Chennai the relevant extract is quoted as under

"Because of the common belief that GOD has called the church to minister to the needs of poor children and their St.Barnabas families. caruna Bal vikas and Light Associate Ministry of Society agree to use our joint financial and other resources in the churches projects with the aim of giving the children involved the opportunity to become spiritually mature and financially independent adults using methods agreed up on by both parties in this agreement and the individual project budgets"

Light Associate Ministry of ST. Barmabas agrees that the funds shall be used to meet the basic educational, physical, social and spiritual needs of the children in accordance with Caruna Bal Vikas policies and for the projects and items indicated in the individual budgets under no circumstance the funds be diverted for other uses."

From the above it is evident that the financial and other resources are used in the churches projects with the aim of giving the children involved the opportunity to become spiritually mature. It is to state that as discussed above, the assessee is not eligible for exemption claimed u/s 11 of the I.T. Act and hence the exemption claimed is denied and the income is totally brought to tax. Therefore, the assessee is treated as an AOP and taxed at Maximum Marginal Rates."

3. In appeal, the learned CIT (A) dismissed the appeal filed by the assessee both on account of delay and on a/c of merit. While deciding the appeal on merit, the learned CIT (A) not only confirmed the addition made by the Assessing Officer but also enhanced the income by observing as under:

"4.2 On plain reading of this agreement, I'm unable to agree with the Assessing Officer that the appellant is indulged in religious activities, however there was an information that appellant has received funds to the tune of Rs 17,83,716 from Caruna Bal Vikas Chennai which in turn has received funds from M/s Compassion International, which is a religious organisation, therefore there was a belief that appellant is also engaged in religious activities. However, the expenditure claimed has been allowed and only surplus has been taxed. The gross receipt of funds are mentioned at Rs. 17,83,716/- in the remand report, an amount of Rs. 3,81,191/- being excess over expenditure has been taxed, if the expenditure has been allowed, then it cannot be called that the expenses were not for the objects of the appellant. Further even in Remand proceedings, the Assessing Officer has not commented on merits. Therefore, legally in this circumstance, the exemption cannot be denied,

but before applying any law facts have to be established. However, the appellant has been reluctant in furnishing the requisite details before Assessing Officer as well as before me, the appellant has not filed even the income and expenditure account. There is a letter dated 22.12.2017, addressed to the Assessing Officer where the appellant has submitted that "we are unable to provide the bank statement for F.Y. 2009-10 as we are not getting it from the bank, since it is an old record. Further, we need some additional time for submission of book and vouchers as the same were not available right now, and since all the old books have been kept somewhere."

4.3 This is a case of exemption, where the onus is on the appellant to prove his case as has been held by the Hon'ble Supreme Court (five judge bench) in the case of Dilip Kumar and Co in CIVIL APPEAL NO. 3327 OF 2007 dated 30.07.2018 as under:

52.To sum up, we answer the reference holding as under

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/ assessee and it must be interpreted in favour of the revenue.

(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export Case (supra) stands overruled.

4.4 The appellant has failed to discharge the burden of claiming exemption in this case, therefore, on merits also, the appellant does not deserve any relief. Further; the Assessing Officer has erroneously allowed the expenditure claimed without verifying the expenses, therefore, in this case the entire receipts of Rs. the 19,39,823/- should have been taxed, accordingly, the Assessing Officer is directed to disallow exemption on Rs. 19,39,823/- instead of Rs. 3,81,191/, which results into enhancement of assessment. This enhancement is being done on the basis of remand report submitted by the Assessing Officer, where he has mentioned that appellant received funds not to the tune of Rs. 17,83,716/- which otherwise was not statement of fact or any document submitted by the appellant. available ascertainable either from the assessment order or from the in Further the Income expenditure account assessment record has been perused and the figure of Rs 19,39,823/(out of this amount of Rs 17,83,716 has been received from Caruna Bal Vikas Chennai) has been taken from record. In these circumstances, once the exemption is being denied it has to be on full amount and not part amount.

In the result, appeal 5. is dismissed on delay as well as on merits with enhancement."

4. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

“1. The Lower Appellate Authority failed to see that, the notices issued on 20.11.2017 and 21.12.2017 by the Assessing Authority were pertaining to the Assessment Year 2015-2016, but the Assessment was affected for the year 2010- 2011, denying the Appellants an opportunity to produce necessary books of accounts and violating the principles of natural justice and thus committed gross illegality in allowing the order of the Assessing Authority.

2. The Lower Appellate Authority failed to see that, the notices issued on 20.11.2017 and 21.12.2017 by the Assessing Authority were pertaining to the Assessment Year 2015-2016, thus not providing any opportunity of hearing Appellants, hence violating the principles of equity by not providing opportunity to present the case.

3. The Lower Appellate Authority, erred in recording that no income and . expenditure account was produced before the Assessing Authority and thus disallowed the entire receipt of Rs.17,83,716/- (Seventeen Lakhs Eighty Three Thousand Seven Hundred and Sixteen), without, even considering that the Income and Expenditure account was produced along with bills and receipts to the Assessing Authority on 22.12.2017.

4. The Lower Appellate Authority, erred in recording that the Appellant has not discharged the burden of claiming exemption, without considering that it is not the case of the Appellant that the exemption has been disallowed in totality, but that the capital expenditure has been disallowed and hence there is no burden of discharging that the petitioners are eligible for exemption under Section 11.

5. The Lower Appellate Authority erred in only allowing the Income receipts through Voluntary contributions without allowing the expenditure incurred in carrying out the charitable activities of the appellants. It is a well-established principle that if an Income Statement has been accepted by the Assessing Authority then the expenditure expended on that income also has to be accepted and the same cannot be denied partly.

6. The Lower Appellate Authority failed to see that, the petitioner is a charitable organisation involved in maintaining wellbeing of children registered under Section 12A of the Income Tax Act, 1961 and any activity carried out in pursuance of its objectives being charitable in nature will automatically be exempted and hence no specific burden of proof for claiming exemption is required to be fulfilled for claiming exemption.

7. *The Lower Appellate Authority erred in holding that, the petitioner is not eligible for claiming exemption, without even considering the fact that the petitioner is a charitable organisation involved in better upliftment of children through educational activities and hence is squarely covered for exemption under Section 11. Further, only because the donor's i.e., Caruna Bal Vikas exemption has been rejected for carrying out functions other than charitable functions, the exemption of the petitioner cannot be denied until the provisions of Section 13 have attracted.*

8. *The Lower Appellate Authority failed to see that, it is an established principle of law that even spiritual activities for the advancement of general public is considered as Charitable Activities as has been held in (1977) 106 ITR 709 (Bom) and (1988) 155 ITR 358 (Ker) and hence has erred in upholding the finding of the Assessing Authority that the petitioners are not eligible for claiming exemption under Section 11 of the Income Tax Act, 1961*

9. *The Lower Appellate Authority has erred in holding that the petitioner has not discharged the burden of proof to claim exemption, without even considering the fact that it is the specific case of the petitioners that the activities carried out by the petitioner are Charitable as is provided under Section 2(15) i.e., imparting education to children and hence disallowing of exemption is illegal.*

10. *The Lower Appellate Authority failed to see that, the Apex Court in the case of CIT vs Bar Council of Maharashtra (1981) 130 ITR 28 any activity which is carried out for advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individuals would be a charitable purpose and hence no exemption can be denied if the Appellant organisation is involved in such charitable activities and hence committed gross*

11 *The Lower Appellate Authority failed to see that, the Assessing Authority has not provided any cognate reasons to state as to why the Appellant is not illegality in disallowing the exemption eligible for grant of exemption for carrying out educational activities and thus passed an abstract order violating the principles of natural justice. Further, even assuming not conceding that the Appellant is involved in religious and spiritual activities, it is still eligible for grant of exemption and hence the Lower Appellate Authority erred in holding that the Appellant is not eligible for exemption.*

12. *The Lower Appellate Authority had erred in concluding that the case of Commissioner of Customs vs Dilip Kumar and Company Civil Appeal No.3327 of 2007 is applicable, as the said judgment is with regard to applicability of an exemption when there is ambiguity as to its interpretation and is nowhere concerned with the facts of the case, where there is no ambiguity as to the applicability of the exemption provided under Section 11 of the Act, 1961.*

13 The Lower Appellate Authority failed to see that, the specific plea of the Appellant is that the notices issued on 20.11.2017 and 21.12.2017 by the Assessing Authority were pertaining to the year 2015-2016 but the assessment was conducted for the Assessment year 2010-2011 and that the Assessing Authority had not commented with regard to the same in his objections and hence acceding that sufficient time was not granted to the Appellants."

5. The assessee has also raised certain additional grounds. However, the learned Counsel for the assessee at the time of hearing did not press the same for which the learned DR has no objection. Accordingly, the additional grounds raised by the assessee are dismissed as not pressed.

6. The learned Counsel for the assessee submitted that the notices issued on 20.11.2017 and 20.12.2017 by the Assessing Officer pertain to the A.Y 2015-16 and do not relate to the impugned A.Y for which there was non-appearance before the Assessing Officer and the Assessing Officer has passed the order u/s 144 of the I.T. Act. She submitted that the assessee trust is a charitable organization involved in maintaining the wellbeing of children and is maintaining proper record and given an opportunity, the assessee is in a position to substantiate its case before either of the lower authorities. She accordingly submitted that in the interest of justice, the assessee should be given an opportunity to substantiate its case by filing the requisite details to the satisfaction of either of the lower authorities.

7. The learned DR, on the other hand, strongly objected to the arguments advanced by the learned Counsel for the assessee. He submitted that the assessee was given enough opportunity before the Assessing Officer and the CIT (A). Even the learned CIT (A) has called for a remand report before deciding the

issue and thereafter not only sustained the addition made by the Assessing Officer but also enhanced for increase by giving justifiable reason. Therefore, the order of the CIT (A) should be upheld and the grounds raised by the assessee should be dismissed.

8. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case completed the assessment u/s 143(3) r.w.s. 147 of the I.T. Act on the ground that the financial and other sources of the Trust are used in the Churches Projects with the aim of giving the children involved opportunity to become spiritually mature and therefore, the assessee is not eligible for exemption claimed u/s 11 of the I.T. Act. We find the learned CIT (A) while holding that the assessee is not involved in any religious activity, however, on the basis of the remand report, enhanced the income of the assessee on the ground that the assessee has received funds to the tune of Rs.17,83,716/- which otherwise was not ascertainable from the assessment order or from the statement of facts or any documents submitted by the assessee, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the learned Counsel for the assessee that before the Assessing Officer sufficient opportunity was not granted by him since along with proceedings of A.Y 2010-11, the proceedings for the A.Y 2015-16 were also going on and the letter dated 20.11.2017 copy of which is placed at page 3 of the Paper Book, relates to A.Y 2015-16. Similarly, the other various letters issued by the Assessing Officer also relate to the A.Y 2015-16. It is also her submission that the assessee is

maintaining proper record, the registration u/s 12A had not been cancelled and that given an opportunity, the assessee is in a position to substantiate its case before the Assessing Officer or before the CIT (A) as the case may be.

9. We find some force in the above argument of the learned Counsel for the assessee. A perusal of the various notices issued by the Assessing Officer other than letter dated 30.03.2017 shows that they relate to A.Y 2015-16. Even the copy of the Page 1 of the assessment order for A.Y 2010-11 shows that the Assessing Officer has also mentioned the A.Y 2015-16 which is being reproduced for completeness:

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT

G.RadhaBai
Income Tax Officer (Exemptions)-3
Hyderabad

1.	Name of the assessee	M/s Light Association Ministry of St.Barnabas Society
2.	Address	H.No.9-1-77/10 Church Road Medical Colony, Bhadrachalam Khammam-507111
3.	PAN/GIR No.	AAATL4330L
4.	District/Ward/Circle	ITO(Exemptions)-3, Hyderabad
5.	Status	AOP
6.	Assessment Year	2010-11
7.	Previous Year	2009-10
8.	Nature of activity	charitable
8.	Date(s) of hearing	05.12.2017
12.	Date of order	29.12.2017
13.	Section and sub-section under which the assessment is made	143(3) r.w.s.147 of the Income Tax Act, 1961

ASSESSMENT ORDER

The assessee filed its return of income admitting Nil income for the Asst. Year 2015-16 on 26.09.2015. The same was processed u/s 143 (1) of the Income Tax Act, 1961 (Act).

The assessee trust is registered u/s.12A of the Act on 30.08.2006 vide letter F.No.HQRS.I(25)/VJA/06-07.

Later the same was selected for scrutiny through CASS and notices u/s 143 (2) & 142 (1) of the Act were issued and served on the assessee. Despite several opportunities given vide several letters there is no response from the assessee. The details of communication from the office of the undersigned are as under

10. A perusal of the above shows that the Assessing Officer himself was confused and quoted details of A.Y 2015-16 in the order for A.Y 2010-11. Therefore, in our opinion, the matter requires a revisit to the file of the Assessing Officer with a direction to adjudicate the issue afresh and in accordance with law after giving due opportunity of being heard to the assessee. The assessee is also hereby directed to appear before the Assessing Officer and file the requisite details/documents as called for the Assessing Officer for completing the assessment without seeking any adjournment under any pretext failing which the Assessing Officer is at liberty to pass appropriate order as per law. We hold and direct accordingly.

11. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the Open Court on 27th March, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 27th March, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Light Associates Ministry of St. Barnaba Society, 9-1-77/10 Church Road, Medical Colony, Bhadrachalam, Khammam
2	Income Tax Officer (Exemptions)3 Hyderabad
3	CIT – 9 Hyderabad
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order