

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI B. R. BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No. 3271/Mum/2022
(Assessment Year: 2018-19)

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|--------------------------------|-----|--|
| ITO (Exemption)-2(3) Mumbai | Vs. | Smt. Rama Gulab Joshi Charitable Trust Chandan Niwas Rama Gulab Apartment, Tejpal Scheme, Main Road, Vile Parle (E), Mumbai-400 057 |
| PAN/GIR No. AABTS 8453 N | | |
| (Appellant) | : | (Respondent) |
| Assessee by | : | None |
| Revenue by | : | Smt. Mahita Nair |
| Date of Hearing | : | 20.03.2023 |
| Date of Pronouncement | : | 31.03.2023 |

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2018-19.

2. As there was no representation on behalf of the assessee, we hereby proceed to decide the appeal *ex parte* by hearing the learned Departmental Representative (Id. DR for short) for the Revenue and on perusal of the materials available on record.

3. The Revenue has challenged the ground that the Id. CIT(A) has erred in holding that only 25% of the payments made to specific persons need to be disallowed, instead of the entire exemptions as per the provisions of section 13(1) of the Act by relying on the

amendment to section 13(1)(c)/(d) of the Act which is said to come into effect from 01.04.2023.

4. The brief facts are that the assessee is a Trust registered which operates as a charitable trust and is engaged in running of educational institution called Mode Art International which imparts education on Modern Art, affiliated with INSTITUT INTERNATIONAL DES ARTS ET DE LA MODE DE PARIS, FRANCE. The assessee trust is also into charities in the nature of Education Aid and Medical Aid. The assessee filed its return of income for the impugned year dated 03.102.2018, declaring total income at Rs. Nil. The assessee's case was selected for limited scrutiny through CASS. It is observed that the assessee has received gross receipts at Rs.3,59,15,593/- against which the assessee has applied Rs.4,01,35,639/- towards Revenue expenditure and Rs.58,88,007/- towards capital expenditure thereby aggregating to Rs.4,60,23,646/- and for which the assessee is said to have met the deficit from the past accumulation. It is also observed that the assessee has total outlay on the object of the trust at Rs.3,87,01,537/- which includes salary at Rs.75,73,624/- and rental paid at Rs.40,11,683/-. The salary and rental expenses is said to include payments given to specific persons as per the provisions of section 13(3) of the Act. The assessee in Form No. 10B has given the details of the following persons to whom payments have been made u/s. 13(3) of the Act:

| <i>Sr. No.</i> | <i>Name of the person</i> | <i>Service Description</i> | <i>Amount paid</i> |
|----------------|---------------------------|--|--------------------|
| 1 | Nishant Joshi | Remuneration for being teacher cum administrator | 1335000 |
| 2 | Jitendra Joshi HUF | Rent | 2575874 |
| 3 | Alka Joshi | Remuneration for being teacher | 818000 |

5. When confronted with the explanation for making such payment to the specific persons, the assessee has stated that Smt. Alka Jitendra Joshi was a Teacher in assessee's

Trust and Shri Nishant Jitendra Joshi was a Teacher cum Administrator for whom salary has been paid along with TDS deduction. The assessee further submitted that rent was paid to M/s. Jitendra Joshi HUF which amounts to Rs.1,81,912/- per month aggregating to Rs.21,82,944/- + GST @ 18% amounting to Rs.3,92,930/- which comes to around Rs.25,75,874/-. The assessee contended that the salary and the rent paid were reasonable and was well within the limits.

6. The Assessing Officer (A.O. for short) failed to consider the submission of the assessee for the reason that the said amount was paid in excess of what may be reasonably paid for such services as per the provision of section 13(2)(c) of the Act for which the assessee was not eligible for exemption u/s. 11 & 12 of the Act. The A.O. further stated that the assessee has failed to justify the services rendered by Smt. Alka Jitendra Joshi and Shri Nishant Jitendra Joshi as the said persons was also engaged in other activities. The A.O. further stated that the assessee has failed to prove that Smt. Alka Jitendra Joshi was a Teacher with the assessee Trust as it was seen that she was a proprietor of firms viz. Rama, Vaibhavi & Nishan Enterprises and in case of Shri Nishant Jitendra Joshi who was also an employee of the family partnership firm viz. Lamaison Service, Rama, Vaibhavi & Nishan Enterprises. The A.O. rejected the exemption claimed by the assessee u/s. 11 of the Act amounting to Rs.3,59,15,593/- and added the same to the total income of the assessee.

7. The assessee was in appeal before the Id. CIT(A).

8. In an appeal before the Id. CIT(A) who held that 25% of the payments made to specific person was disallowed and had allowed the remaining payments made by the assessee.

9. The Revenue is in appeal before us, challenging the order of the Id. CIT(A) in giving partial exemption to the assessee.

10. The Id. DR for the Revenue contended that the assessee has failed to substantiate its claim before the A.O./Id.CIT(A). The Id. DR further stated that the Id. CIT(A) has given partial relief to the assessee without considering the fact that the assessee has failed to discharge the onus extended upon it to substantiate the claim. The Id. DR relied on the order of the A.O.

11. We have heard the Id. DR and perused the materials on record. It is evident that the assessee trust has not furnished the documentary evidence and other details pertaining to the salary and the rent paid to the specific person. The Id. CIT(A) has also not considered the fact that the assessee in respect of repeated notices have not furnished any evidence pertaining to its claim.

12. Considering the nature of the Trust, we deem it fit to provide the assessee with last opportunity to present its case before the A.O. and to furnish the details for the payments to justify the fact that the claim of the assessee is not in excess of the provisions of the Act. We hereby remit this issue back to the file of the A.O. and direct the A.O. to decide this issue in light of the evidence to be filed by the assessee substantiating its claim.

13. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 31.03.2023

Sd/-

(B. R. Baskaran)
Accountant Member

Mumbai; Dated : 31.03.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai