

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A No.644/DEL/2023
Assessment Year 2019-20

Pawan Dhir Eye Institute and Research Centre, Bhiwani.	v.	ITO, Ward-1, Bhiwani.
TAN/PAN: AAFAP6702J		
(Appellant)		(Respondent)

Appellant by:	Shri Sanjeev Kumar, Adv.		
Respondent by:	Shri Om Parkash, Sr.DR		
Date of hearing:	24	04	2023
Date of pronouncement:	24	04	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), NFAC, Delhi ('CIT(A)' in short) dated 11.01.2023 arising from the assessment order dated 08.02.2021 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2019-20.

2. The grounds of appeal raised by the assessee reads as under:

1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO, have wrongly denied exemption Ws 11(1)(a) of the Act in violation of 1st proviso to section 12A (2) of the Act and para 8(3) of the CBDT Circular No 1 of 2015. Because as per provision of the 1st proviso to section 12A (2) of the Act as

explained vide para 8(3) of CBDT circular, the appellant is eligible for exemption.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the appeal without adjudicating ground No 4 and 5 of the appeal, while holding that, "These grounds are general in nature, no separate adjudication is required."

3. That the appellant craves leave to add, amend, modify, rescind, supplement, or alter any of the grounds stated hereinabove before or at the time of hearing.

4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing appeal against assessment order dt. 08.02.2021, whereby the Ld. Assessing Officer, violating provisions of section 2(45) read with section 5 of the Income Tax Act, has assessed the appellant's gross receipt Rs. 8,51,790/- as its total income. As such, the assessment order dated 08.02.2021 and the impugned appellate order dt. 11.01.2023 are bad in law and deserve to be set aside /quashed.

5. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing ground No.1 of the appeal against the Ld. AO's order disallowing entire expenses at Rs. 7,33,848/- incurred for charitable purpose defined u/s. 2(15) of the Act, irrelevantly holding that the appellant is eligible for claim of exemption only with effect from the Assessment Year 2020-21."

3. When the matter was called for hearing, the ld. counsel for the assessee pointed out that as per the grounds of appeal, the assessee has two fold objections;

- firstly, the benefit of Sections 11 and 12 ought to have been given to the assessee when the assessment in question was pending at the time of registration granted under Section 12A r.w. Section 12AA of the Act albeit in the subsequent assessment year 2019-20;
- secondly, on merits, the assessee has incurred expenses of Rs.7,33,848/- for carrying out charitable activities against the gross receipts of Rs.8,51,790/-.

3.1 The Id. counsel thus pointed out that notwithstanding the denial of benefit under Sections 11 and 12, the expenses incurred need to be set off against the gross receipts to determine the real income for taxation purpose.

4. In the course of further inquiries and discussion at the time of hearing, the Id. counsel conceded that the relevant grounds relating to first issue towards availability of benefits under Sections 11 and 12 without registration of Trust in relation to Assessment Year 2019-20 in question is not pressed and therefore, need not be adjudicated.

5. In the light of the concession given on behalf of the assessee, the only question that remains for adjudication is whether the Revenue Authorities were justified in taxing the gross receipts ignoring the corresponding expenses incurred in the course of charitable activities. We straightaway find force in the plea of the assessee for allowability of expenditure in relation to receipts generated in the course of charitable activities notwithstanding non availability of registration under Section 12A for the Assessment Year 2019-20 in question. We do not see any rationale in the action of the Revenue in denying the expenditure incurred for generating the corresponding receipt on first principles. We therefore, consider it expedient to restore the issue back to the file of the Assessing Officer for verification of expenses and depreciation allowances incurred, if considered necessary. The expenses and allowances incurred for the purposes of charitable activities shall be allowed where it is found to have been incurred for carrying out charitable

activities.

6. The order of the CIT(A) is set aside accordingly and the issue is restored to the file of the Assessing Officer for adjudication in terms of the directions noted above. Needless to say, a reasonable opportunity shall be given to the assessee while determining the issue.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Order dictated and pronounced in the open Court on 24/04/2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

DATED: /04/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**