आयकर अपीलीय अधिकरण, कोलकाता पीठ ''ए'', कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 402/Kol/2022
Assessment Year: 2016-17

ITO(Exemption), Ward-1(3), Kolkata	Vs.	Shree Sardarshahr Gaushala Samity (PAN: AADTS 2117 D)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

C.O No. 8/Kol/2022
(Arising out of I.T.A. No. 402/Kol/2022)
Assessment Year: 2016-17

Shree Sardarshahr Gaushala Samity (PAN: AADTS 2117 D)	Vs.	ITO(Exemption), Ward-1(3), Kolkata
Cross-objector		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	24.03.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	04.05.2023
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, FCA
For the Respondent/ राजस्व की ओर से	Shri Vijay Kumar, Addl. CIT, Sr. DR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal by the revenue and the cross-objection by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) , National Faceless Appeal Centre (NFAC)- Delhi (hereinafter referred to as the Ld. CIT(A)"] dated 07.05.2022 for the AY 2016-17.

2. The revenue has challenged the order of Ld. CIT(A) wherein the Ld. CIT(A) has allowed the deduction u/s 57(iv) of the Act from the interest received on compensation by the assessee from Govt. of Rajasthan in respect of compulsory acquisition of land. The revenue has also challenged the order of Ld. CIT(A) on the ground that income of the trust is inclusive of all the income and no separate deduction is allowable while determining the income u/s 11 of the Act.

3. Facts in brief are that the assessee filed return of income on 16.10.2016 declaring total income at NIL. The Case of the assessee was selected for scrutiny and statutory notices were duly issued and served upon the assessee. The assessee trust was claiming exemption u/s 11of the Act. The AO during the assessment proceedings noted that the land of the assessee trust was compulsorily acquired bythe Govt. of Rajasthan. The AO also noted that the assessee has claimed indexed cost of acquisition while calculating capital gain and also claimed deduction u/s 57(iv) of the Act in respect of interest on compensation. According to AO, the assessee has claimed exemption u/s 11 of the Act which is a separate code itself for calculating the income as per Chapter III, so no claim of deduction under Chapter IV is allowable. Accordingly the AO rejected the claim of the assessee u/s 57 of the Act vide order dated 24.12.2018 passed u/s 143(3) of the Act.

4. The Ld. CIT(A) allowed the appeal of the assessee by observing and holding as under:

"5.2. After duly considering the assessment order dated 24.12.2018, the details available in ITR 7 dated 16.10.2016, Form 10 & Form 10B for the AY 2016-17 of the appellant, the grounds of appeal and the written submission made by the appellant on 21.01.2021, the appeal is decided as under:

The appellant has received a compensation of Rs. 22,37,37,412/- on 09.12.2015 towards acquisition of its land by the Govt. of Rajasthan. The compensation received of Rs. 22,37,37,412/- is inclusive of interest of Rs. 5,79,74,943/-. In the ITR 7 dated 16.10.2016, in schedule- Other sources deduction u/s 57 of Rs. 2,89,87,471/- (50% of 5,79,74,943) has been claimed by the appellant.

The deduction claimed of by the appellant (50% of 5,79,74,943/-) is as per the provisions of I.T. Act. Further the appellant has uploaded other evidence such as receipt of interest on compensation, Bank statement, letter issued by the Rajasthan Govt. to fortify its claim.

Therefore, it is hereby held that the determination of total income at Rs. 2,36,48,683/- by the AO in the order u/s 143(3) dated 24.12.2018, has no merit and not in tune with the provisions of I.T. Act.

As the claim of deduction of Rs. 2,89,87,471/- u/s 57 by the appellant is duly supported by the entries in ITR7 dated 16.10.2016, and other supporting evidence such as Bank Statement and letter issued by the Rajasthan Govt, the appeal on this issue is hereby allowed.

5.3. In the result, the appeal is allowed."

5. After hearing the rival contentions and perusing the material on record, the undisputed facts noted are that the assessee's land was acquired by the Govt. of Rajasthan on which compensation was received amounting to Rs. 22,37,37,412/- alongwith interest thereon of Rs. 5,79,74,943/- which was duly offered by the assessee in the return of income filed in ITR 7. The assessee calculated long term capital gain after calculating indexed cost of acquisition and claimed result the gain as exempt u/s 11(1)(a) whereas the interest were shown as income from the other source and claimed deduction at 50% u/s 57(iv) of the Act thereby claiming Rs. 2,89,87,471/- as deduction. The AO rejected the claim of the assessee on the ground that section 11 of the Act is a separate code itself under Chapter III and no deduction under Chapter IV is allowable which covers 57(iv) of the Act also. The Ld. CIT(A) allowed the appeal on the ground that the claim of deduction u/ 57(iv) is duly reported in ITR 7 and evidences were filed such as bank statements, letter issued by Rajasthan Govt. and thus allowed the appeal of the assessee. We have perused the provisions of Section 56(2)(viii) which provides that income by way of interest received on compensation

or on enhanced compensation would be treated as income u/s 56(1) as income from other sources and provisions of Section 57(iv) provides that in the case of income of the nature referred to in clause (viii) of sub-section (2) of section 56, a deduction of a sum equal to fifty per cent of such income would be allowed and no deduction shall be allowed under any other clause of this section. It is apparently clear from perusal of the provisions of section that the interest received by the assesse on compensation is taxable under the head income from other source and while computing the income of the assessee a deduction has to be allowed 50% and no other deduction shall be provided under any other clause of this Section but there is no bar in claiming exemption of compensation income u/s 11 of the Act as the section specifically provides that under this section which is 57 of the Act no other deduction shall be allowed. Besides the case of the assesse finds supports from couple of decisions namely i) DIT(E) Vs. Jasabai Foundation (2015) 374 ITR 315(Bom) wherein it has been held that income which the assesse trust has not included by virtue of section 10 could not be considered under section 11. The underlying facts in this case are that the dividend income which was claimed as exempt u/s 10(33) of the Act. According to the AO the said income formed a part of income from trust property and therefore can only be claimed to be exempt u/s 11 of the Act if applied for charity and not under section 10(33) of the Act. On this basis the AO disallowed the exemption u/s 10(33) of the Act. The order of the AO was confirmed by ld CIT(A) but tribunal seta side the same. The Hon'ble High Court on appeal upheld the order of the tribunal. ii) ACIT Vs Saurashtra Trust 106 ITD 1 (Mum Tri) wherein it has been held that in the case of the trust income should be classified under various heads such as house property , capital gain and other sources and held that the assesse would be entitled to deductions on account of income computed under each head. Therefore we do not find any infirmity in the order of Ld. CIT(A) and accordingly the appeal of the revenue is dismissed.

6. The cross-objection filed by the assessee in support of the Ld. CIT(A)'s order and therefore the same is infractuous and is dismissed.

7. In the result, the appeal of the revenue and the cross-objection are dismissed.

Order is pronounced in the open court on 4th May, 2023

Sd/-	Sd/-
(Sonjoy Sarma /संजय शर्मा)	(Rajesh Kumar/राजेश कुमार)
Judicial Member/न्यायिक सदस्य	Accountant Member/लेखा सदस्य

Dated: 4th May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO(Exemption), Ward-1(3), Kolkata
2. Respondent – Shree Sardarshahr Gaushala Samity, 181B, Chittaranjan Avenue, Kolkata-700007.
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata