

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.77/Rjt/2023
(Assessment Year: 2011-12)

Vidhyasagar Charitable Trust C/o. Rashmikantbhai P. Modi, 5 Soham, Paranakutir Society, Nanamava Road, Rajkot-360001	Vs.	ITO(Exemptions) Ward-1, Rajkot
[PAN No.AABTV1634L]		
(Appellant)	..	(Respondent)

Appellant by :	Shri R. M. Manek, A.R.
Respondent by:	Shri B. D. Gupta, Sr. DR

Date of Hearing	01.06.2023
Date of Pronouncement	09.06.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order passed by the Ld. CIT(Appeals), National Faceless Appeal Centre, (in short "NFAC"), Delhi in Order No. ITBA/NFAC/S/250/2022-23/1049768078(1) vide order dated 15.02.2023 passed for Assessment Year 2011-12.

2. The assessee has taken the following grounds of appeals:-

“(1) The Learned C.I.T.(A) (National Faceless Appellant Centre, Delhi) has erred in confirming the entire addition made by learned I.T.O.(Exemption), Ward-1, Rajkot and thereby dismissed the appeal though the online adjournment request was uploaded in e-filing Portal within / on due date of 13/02/2023 sought up to 28/03/2023 as displayed

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with reason for seeking adjournment "Gathering of materials from multiple sources require time and for preparing submission".

(2) The Learned C.I.T.(A) had without considering the adjournment request uploaded on portal finalised the order dt.15/02/2023 by confirming addition of Rs.22,00,000/- in hands of the Trust and raised demand of Rs.8,04,710/- which is bad in law and against natural justice which ought to be set aside.

(3) The Learned C.I.T.(A) and Learned Income-tax Officer (I.T.O) had disallowed and confirmed the entire Rent expenses of Rs.2200000/- without appreciation of the facts though the rent was paid by Trust and was not excessive and the same does not fall under the provision of section 13(2)(c) of I.T.Act. 1961.

(4) The Learned C.I.T.(A) and L.I.T.O. had without application of mind, and affording opportunity confirmed the order of I.T.O.by dismissing the claim which is bad on facts and also in law and ought to be set aside.

(5) The petitioner Crave, leave to add, alter, vary, withdraw any or all the grounds on or before the hearing of this appeal."

3. The brief facts of the case are that the assessee is a trust registered with the Charity Commissioner and is engaged in the provision of educational services and has also earned business income during the impugned year under consideration. The assessee's case was reopened under section 147 of the Act. During the course of reassessment proceedings, the AO observed that the assessee Trust had paid rent to Shri RP Modi, who was the settlor of the trust,

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amounting to ₹ 22 lakhs. Accordingly, the AO disallowed the aforesaid rental payment on the ground that any payment towards rent made to the settlor of trust is not an allowable expenses as per section 13(3) of the Act, and accordingly, the AO added the same to the income of the assessee. While passing the order, the AO made the following observations:

“The explanation given by assessee is not acceptable. The assessee is not eligible for expense made for rent payment for Rs.22,00,000/-. The assessee has made this rent payment to Sliri R.P. Modi who is settler of the trust. Any payment made to settler of trust is not allowable expenses as per section 13(3) of the I.T. Act. Therefore, rent payment made to the settler of the trust is being disallowed u/s.13(3) of the I.T. Act and is being added back to total income of the assessee. Penalty proceeding are being initiated u/s.271(1)(c) of the I.T, Act, for furnishing inaccurate particulars of income. The rent paid to the trustee Shri R. P. Modi Rs.22,00,000 is added to the total income of the assessee trust.

4. On going through Income & expenditure A/c. after verification and looking from the income & expenditure A/c it is observed that the assessee has claimed rent expense of Rs.22,00,000/- is added back to total income for A.Y. 2011-12 of said trust.”

4. In appeal, Ld. CIT(Appeals) dismissed the appeal of the assessee on the grounds of non-appearance, and confirmed the order of the Ld. Assessing Officer, with the following observations:-

“2. Aggrieved with the assessment order issued by the AO, the appellant has filed present appeal on 13.07.2015. In the course of

appellate proceedings, it is seen that the appellant was issued and served various notices u/s 250 of the Act from this office to present his contentions and any documents supporting them. In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken by the appellant, the case was posted for hearing on various dates, the details of which are as under:

<i>Date of Notice</i>	<i>Date of Compliance</i>	<i>Status</i>
<i>08.01.2021</i>	<i>25.01.2021</i>	<i>No compliance</i>
<i>01.12.2021</i>	<i>10.12.2021</i>	<i>No compliance</i>
<i>23.12.2021</i>	<i>07.01.2022</i>	<i>No compliance</i>
<i>06.02.2023</i>	<i>13.02.2023</i>	<i>No compliance</i>

3. The aforesaid notices remain un-complied with. The National Faceless Appeal Centre (NFaC) also in October, 2022 enabled communication window to facilitate filing of submissions by the appellant but to no avail. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but appellant has chosen not to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO and in support of the grounds taken in appeal.

*3.1 Reference is made to the decision of Hon'ble Supreme Court in the case of **CIT vs. BN Bhattacharya (1997) 118 ITR 461 (SC)**, in*

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which the Hon'ble Apex Court while dealing with the issue of persuasion of appeal has stated that-

“Preferring an appeal means more than formally filling it but effectively pursuing it.”

3.2 In view of these facts, I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed.

*4. In the result, the appeal is **dismissed.**”*

5. Before us, the counsel for the assessee submitted that firstly, the appellate order was passed by Ld. CIT(Appeals) without discussing the merits of the case at all, especially when all relevant facts of the case were before him. The second contention of the counsel for the assessee was that the assessee had paid rent of ₹ 22 lakhs to Shri RP Modi, who was the settlor of the trust towards use of land by the assessee trust. Therefore, there is nothing on record to show that the aforesaid rent was excessive in the facts of the instant case. Thirdly, the counsel for the assessee drew our attention to page 1 of the paper book and submitted that the assessee had filed adjournment application on 13 February 2023 i.e. on the due date of hearing before Ld. CIT(Appeals), in which an adjournment was sought by the assessee on the ground that assessee was in the process of gathering material for the purpose of preparing written submissions. However, Ld. CIT(Appeals) has not taken note of the aforesaid adjournment application filed by the assessee, while dismissing the appeal of the assessee in limine. Further, the counsel for the assessee also submitted that the case of the assessee does not fall within the restriction provided under section 13(3) of the Act, and accordingly the AO

and the Ld. CIT(Appeals) have erred in facts and in law in disallowing the claim of deduction in respect of the aforesaid rent payment.

6. In response, the Ld. DR placed reliance on the observations made by the AO and Ld. CIT(Appeals) in their respective orders.

7. We have heard the rival contentions and perused the material on record. On going to the facts of the case, we are of the considered view that in the instant facts, Ld. CIT(Appeals) should have discussed the merits of the case while passing the appellate order and should not have summarily dismissed the appeal of the assessee, when all the facts related to the case were on record before him. Accordingly, looking into the instant facts, we are hereby restoring the case to the file to the Ld. CIT(Appeals) for de novo consideration, after giving an opportunity of hearing to the assessee to present its case on merits, in the interest of justice.

8. Accordingly, the appeal of the assessee is restored to the file of Ld. CIT(Appeals) with the aforesaid directions.

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

This Order pronounced in Open Court on

09/06/2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 09/06/2023
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

ITA No.77/Rjt/2023
Vidhyasagar Charitable Trust vs. ITO(E)
Asst.Year –2011-12

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot