

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./ITA No.244/Rjt/2022
निर्धारण वर्ष/Asstt. Year: 2015-16

Dhyan Swamibapa Trust, Senjaldham, Tehsil Saavarkundala Dist. Amreli-364515 C/o. Sanghavi & Company, Prasham, 4 th floor, Kasturba Road, Nr. Bilkha Plaza, Rajkot-360001. PAN: AAATD1598E	Vs.	ITO Ward-1(Exemption), Rajkot.
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(Applicant)		(Respondent)
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Assessee by :	Shri G.R Sanghavi, A.R
Revenue by :	Shri B.D. Gupta, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **23/03/2023**
घोषणा की तारीख/**Date of Pronouncement**: **14/06/2023**

आदेश/ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals), Rajkot, (in short "Ld.CIT(A)") arising in the matter of assessment order passed under s.143(1) of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-16.

2. The assessee has raised the following grounds of appeal:

1. That the learned CIT(A) NFAC Delhi has grievously erred in confirming the assessment of the returned income of Rs. NIL at a taxable income of Rs. 25,60,000 whilst processing us 143(1) of the Act.

2. That the learned CIT(A) NFAC Delhi has grievously erred in confirming that the adjustment so done confirmed by the CPC is within the jurisdiction vested us 143(1) of the Act.

3. That the appellant craves for leave to add, amend and or modify the grounds of appeal.

3. The interconnected issue raised by the assessee is that the learned CIT(A) erred in confirming the adjustment made by the CPC under section 143(1) of the Act of the item for which adjustment was not permissible.

4. The brief facts of the case are that assessee in the present case is a public charitable trust and registered under the provisions of section 12AA of the Act. The assessee, in the year under consideration, filed the return of income declaring income at Rs. Nil. The gross total income shown by the assessee at ₹64,20,049/- was, inter alia, inclusive of the deemed income as specified under section 11(3) of the Act for an amount of ₹25,60,000 only. But the assessee has again accumulated the same under section 11(2) of the Act and claimed the deduction for the same. However, the CPC in the intimation generated under section 143(1) of the Act has denied the deduction treating the same inaccurate claim of the assessee.

5. Aggrieved, assessee preferred an appeal to the learned CIT(A) who also confirmed the intimation of the CPC.

6. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 56 and contended that deemed income specified under section 11(3) of the Act on hand is covered in favour of the assessee by the order of this tribunal in the case of Gujarat State Lions Conservation society vs. CIT in ITA No. 69/RJT/2017 vide order dated after making a reference/ reliance on the judgement of Hon'ble Calcutta High Court in the case of Natwarlal Chaudhary trust reported in 189 ITR 656. Thus, it was contended that the issue of deemed income on hand is covered by the order of Hon'ble Calcutta High Court. Thus, no adjustment for the deemed income under section 11(3) of the Act can be made under the provisions of section 143(1) of the Act.

8. On the contrary, the learned DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. At this juncture, we note that Paragraph No. 9 of the CBDT Instruction bearing No. 1814/1989 has direct bearing on the issue in hand which is extracted as under:

9. In the context of the legal position as outlined above, it follows that it will not be permissible for the Assessing Officer to disallow a claim for deduction allowance or relief in cases where the claim is made on the basis of the decision of any High Court, Appellate Tribunal or other appellate authority even though a contrary view in the matter may have been expressed by another High Court or another Bench of the Tribunal or any other appellate authority. The fact that the claim is based on a decision which has not been accepted by the board will also not make any difference to this position.

9.1 From the above Instruction, there remains no ambiguity to the fact that no adjustment can be made by denying the deduction or relief claimed by the assessee based on the decision of Hon'ble High Court or the Tribunal.

It is equally important to refer the judgement of Ahmedabad Tribunal in the case of Gujarat State Lions Conservation Society v CIT wherein it has been held,

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

5. We find that the issue in appeal is covered, in favour of the assessee, by Hon'ble Calcutta High Court, in the case of CIT Vs Natwarlal Chowdhury Charity Trust [(1991) 189 ITR 656 (Cal)] wherein Their Lordships have, inter alia, approved the view of the Tribunal to the effect that "(t)he legal fiction contained in [section 11\(3\)](#) should be allowed to play to the fullest extent and there is no warrant to take restricted view for denying the exemption which is specifically allowed by the statute. In fact, as per the law as stood from 1-4-1976, the charitable trusts are permitted to accumulate up to 25 per cent of their income without complying with any formalities or condition and such accumulation is not included in the total income. Therefore, we uphold the order of the AAC as it is quite justified in law and the assessee would be entitled to accumulate 25 per cent of the total income of the previous year relevant for the assessment year 1978- 79 inclusive of the deemed income under [section 11\(3\)](#)". Once the views so expressed by the coordinate bench have been approved by Their Lordships, we cannot have any good reason to deviate from the same. As to whether the views expressed by a non jurisdictional High Court are binding are on not, we find guidance from a coordinate bench decision in the case of ACIT Vs Aurnagabad Holiday Resorts Pvt Ltd [(2009) 118 ITD 1 (Pune)] which, inter alia, observes as follows:

3. Learned Departmental Representative, however, contends that decision of a non-jurisdictional High Court is not a binding precedent for us. Our attention is invited to the judgment of Hon'ble Bombay High Court in the case of CIT v.

Thana Electricity Supply Co. Ltd. (206 ITR 727) wherein Their Lordships have held so. Learned Departmental Representative submits that Godavari Devi Saraf judgment is no longer good law as it stands overruled by the later decision in the case of Thana Electricity Co. Ltd.'s case (supra). It is contended that while a non-jurisdictional High Court is not binding on us, a Special Bench decision of this Tribunal is certainly binding on us. It is submitted that this very issue has received consideration of a Special Bench of the Tribunal in the case of Nawal Kishore & Sons Jewellers (87 ITD SB 407) and the Special Bench has decided the issue against the assessee. We are thus urged to follow the Special Bench decision ITA No.69/Rajkot/2017 Assessment year: 2012-13 of the Tribunal in the case of Nawal Kishore & Sons (supra) and thus dismiss this preliminary issue raised by the assessee.

4. Having given our careful consideration to the rival submissions, we are inclined to uphold the objection taken by the assessee.

5. As observed by a Co-ordinate Bench of this Tribunal, in the case of Tej International (P.) [Ltd. v. DCIT](#) (69 TTJ 650), in the hierarchical judicial system that we have in India, the wisdom of the court below has to yield to the higher wisdom of the court above and, therefore, once an authority higher than this Tribunal has expressed its esteemed views on an issue, normally the decision of the higher judicial authority is to be followed. The Bench has further held that the fact that the judgment of the higher judicial forum is from a non-jurisdictional High Court does not really alter this position, as laid down by the Hon'ble Bombay High Court in the case of [CIT v. Godavari Devi Saraf](#) (113 ITR 589). For slightly different reasons and alongwith some other observations on the issue, which we shall set out a little later, we are in agreement with the conclusions arrived in this case.

6. That takes us to the question whether this decision stands overruled by the Hon'ble Bombay High Court's later judgment in the case of Thana Electricity Co. Ltd. (supra), as submitted by the learned Departmental Representative.

7. It is also important to bear in mind that the question requiring adjudication by Their Lordship was whether or not decision of one of the High Courts was binding on the other

High Courts. This will be clear from following observations made by Their Lordships in the beginning of the judgment :

"On a careful consideration of the submissions of the learned counsel for the assessee, we find that before taking up the issue involved in the question of law referred to us in this case for consideration, it is necessary to first decide.... whether this Court, while interpreting an all India statute like [Income-tax Act](#), is bound to follow the decisions of any other High Court and to decide accordingly, even if its own view is contrary thereto, because of the practice followed in this Court. Because, if we are to accept this submission, it will be an exercise in futility to examine the real controversy before us...."

8. One of the propositions that Their Lordships took note of was that 'the decisions of the High Court on the subordinate Courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction (but) it does not extend beyond its territorial jurisdiction.' Their Lordships in the same paragraph also noted that 'A Division Bench of the High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court', and 'if one Division Bench differs with another Division Bench of the same High Court, it should refer the case to a larger Bench'. Having thus noted the proposition, Their Lordships proceeded to 'analyse the decisions of this Court, on which reliance has been placed by the learned counsel for the assessee, in support of his ITA No.69/Rajkot/2017 Assessment year: 2012-13 contention that decision of any other High Court on all India statute like Income- tax Act, is binding even on this Court and on the Tribunals outside jurisdictions of that High Court'. On Godavari Devi Saraf's case (supra), which was delivered by a Division Bench of equal strength of this very Hon'ble High Court, Their Lordships took note of revenue's stand as follows :

"Referring to the observations of Godavari Devi (supra), that an all India Tribunal acting anywhere should follow the decisions of any other High Court on the point, it was submitted by the counsel of the revenue that this observation itself would show that the High Court was aware of the fact that different High Courts were not bound by the decisions of each other and, as such, there may be contrary decisions of different High Courts on the same point."

9. The issue of consideration was thus confined to the question whether or not a High Court decision is binding on another High Court or not. That admittedly was the core issue decided by Their Lordships. As for the binding nature of non- jurisdictional High Court decisions on the Tribunal, the observations made by Their Lordships were no more than obiter dictum and in this very judgment, Their Lordships have held that even in the case of Hon'ble Supreme Court judgments, which are binding on all Courts, except Supreme Court itself, but 'what is binding, of course, is the ratio of the decision and not every expression found therein'. Their Lordships have also referred to the oft quoted judgment of the Hon'ble Supreme Court in the case of [CIT v. Sun Engg. Works \(P.\) Ltd.](#) (198 ITR 297) wherein it is held that 'it is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of question under consideration, and treat it to be complete law declared by this Court.' [Emphasis supplied].

10. In this light, and bearing in mind the fact that limited question before Their Lordships was whether or not decision of one of the High Courts is binding on another High Court, it would appear to us that ratio decidendi in Thana Electricity Co. Ltd. (supra), is on the non-binding nature of a High Court's judgment on another High Court. In any case, this Division Bench did not, and as stated in this judgment itself, could not have differed with another Division Bench of the same strength in the case of Godavari Devi Saraf (supra). Therefore, it cannot be open to a subordinate Tribunal like us to disregard any of the

judgments of the Hon'ble Bombay High Court, whether in the case of Thana Electricity Co. Ltd. (supra) or in the case of Godavari Devi Saraf. It is indeed our duty to loyally extend utmost respect and reverence to the Hon'ble High Court, and to read these two judgments by the Division Benches of equal strength of the Hon'ble jurisdictional High Court, i.e., in the cases of Thana Electricity Co. Ltd. (supra) and Godavari Devi Saraf (supra), in a harmonious manner.

11. *Let us now take a look at the Hon'ble jurisdictional High Court's judgment in the case of Godavari Devi Saraf (supra). In this case, question before Their Lordships was as follows :*

ITA No.69/Rajkot/2017 Assessment year: 2012-13 "Whether, on the facts and circumstances of the case, and in view of decision in the case of A.M. Sali Maricar (90 ITR 116), the penalty imposed on the assessee under [section 140A\(3\)](#) was legal?"

12. *The specific question before Their Lordships was whether the Tribunal, while sitting in Bombay, was justified in following the Madras High Court decision holding the relevant section as unconstitutional. Hon'ble High Court concluded as follows:*

"It should not be overlooked that [Income-tax Act](#) is an all India statute, and if a Tribunal in Madras has to proceed on the footing that [section 140A\(3\)](#) was non- existent, the order of penalty under that section cannot be imposed by any authority under the Act. Until a contrary decision is given by any other competent High Court, which is binding on the Tribunal in the State of Bombay (as it then was), it has to proceed on the footing that the law declared by the High Court, though of another State, is the final law of the land an authority like Tribunal has to respect the law laid down by the High Court, though of a different State, so long as there is no contrary decision on that issue by any other High Court"

13. *It is thus clear that while the issue before the Hon'ble High Court in Thana Electricity Co. Ltd.'s case (supra) was whether or not a High Court should follow another High Court, whereas in Godavari Devi Saraf's case (supra), Their Lordships dealt with the issue whether or not a non-jurisdictional High Court is to be followed by a Bench of the Income-tax Appellate Tribunal. To that extent, and irrespective of some casual observations on the applicability of non- jurisdictional High Court judgments on subordinate courts and Tribunals, these two decisions deal in two different areas. As we have noticed earlier also, in Thana Electricity Co. Ltd.'s case, a note was taken of Godavari Devi Saraf's judgment and neither the said judgment was dissented nor overruled. In any event, in Thana Electricity Co. Ltd.'s case, Hon'ble Court was alive to the fact, which was acknowledged in so many words, that a Co-ordinate Bench decision cannot be overruled. In this view of the matter, it is difficult to hold, as has been strenuously argued before us by the learned Departmental Representative, that the Hon'ble Bombay High Court's judgment in the case of Godavari Devi Saraf's case stands overruled by Their Lordship's judgment in the case of Thana Electricity Co. Ltd.'s case. The only way in which we can harmoniously interpret these judgments is that these decisions deal with two different issues and ratio decidendi of these decisions must be construed accordingly.*

14. *Let us also see this issue from a different perspective. Even if we are to assume that it is possible to interpret that Godavari Devi Saraf's decision stands overruled by judgment in the case of Thana Electricity Co. Ltd.'s case, one cannot be oblivious to the fact that an interpretation is indeed possible to the effect that even non-jurisdictional High Court's judgment, for the reasons set out above, is binding on the Tribunal. This non-jurisdictional High Court's judgment is in favour of the assessee. Now, as held by the Hon'ble Supreme Court's judgment in the case of [CIT v. Vegetable Products Ltd.](#) (88 ITR 192), ITA*

No.69/Rajkot/2017 Assessment year: 2012-13 when two interpretations are possible, one in favour of the assessee must be adopted. For this reason, in our humble understanding, the plea of the assessee deserves to be accepted.

15. We may, however, add that the observations that we have made are particularly with reference to the legal position in the jurisdiction in Hon'ble Bombay High Court, as the view so taken in Godavari Devi Saraf's case (supra) has not found favour with Hon'ble Karnataka High Court as well as Hon'ble Punjab and Haryana High Court, in the case of [Patil Vijay Kumar v. Union of India](#) (151 ITR 48) and [CIT v. Ved Prakash](#) (178 ITR 332). The observations made in this order are subject to this rider and, therefore, while we agree with the conclusions arrived at by a Co-ordinate Bench in [Tej International \(P.\) Ltd.](#) (supra), our reasons are not exactly the same as adopted by our distinguished colleagues.

6. Yet, the coordinate bench, in the case of [B N Gamadia Parsi Hunnarshala Vs ADIT](#) (supra), decided not only to ignore this binding precedent but also had the audacity to hold that it was an incorrect decision. The coordinate bench went to the extent of observing that "We are unable to persuade ourselves to agree with the view taken by the Hon'ble Calcutta High Court (cited supra). A careful perusal of the language employed in [section 11](#) of the Act makes it crystal clear that exemption is available only on the 'income (within the meaning of [section 11](#) and not on the 'deemed income'). Consequently, the assessee cannot accumulate deemed income either under [section 11\(1\)\(a\)](#) or 11(2) of the Act". Much as we would like to refrain from commenting upon a coordinate bench decision, we cannot help quoting from the decision of the Hon'ble Supreme Court in the case of Asstt. [Collector of Central Excise v. Dunlop India Ltd.](#) [(1985) 154 ITR 172 (SC)] in which Hon'ble Supreme Court itself has quoted from the decision of House of Lords as under:

"We desire to add and as was said in [Cassell & Co. Ltd. v. Broome](#) [1972] AC 1027 (HL), we hope it will never be necessary for us to say so again that "in the hierarchical system of courts" which exists in our country, "it is necessary for each lower tier", including the High Court, "to accept loyally the decision of the higher tiers". "It is inevitable in hierarchical system of courts that there are decisions of the Supreme appellate Tribunal which do not attract the unanimous approval of all members of the judiciary... But the judicial system only works if someone is allowed to have the last word, and that last word, once spoken, is loyally accepted.". . . The better wisdom of the Court below must yield to the higher wisdom of the Court above. That is the strength of the hierarchical judicial system."

7. In our humble understanding, the right course for the lower authorities in the judicial hierarchy, so far as legal principles are concerned, is to humbly bow to the higher wisdom of Hon'ble Courts above rather than attempting to reinvent to the wheel. We adopt this approach. With our constraints, we have to leave it at that.

8. In view of the above discussions, in the absence of any decision to the contrary by Hon'ble jurisdictional High Court having been brought to our notice or having been noticed ITA No.69/Rajkot/2017 Assessment year: 2012-13 by us, and respectfully following the esteemed views of Hon'ble Calcutta High Court in the case of [Natwarlal Chowdhury Trust](#) (supra), we uphold the plea of the assessee that, for the purpose of computing benefit of accumulation, deemed income is to be taken into account. The addition of Rs 1,63,82,140, as confirmed by the CIT(A), must, therefore, stand deleted. We order so.

9.2 In view of the above, we note that the benefit of deduction of the deemed income specified under section under section 11(3) is available to the assessee

and therefore such adjustment cannot be made in the return of income under the provisions of section 143(1) of the Act. Accordingly, we set aside the finding of the learned CIT(A) and direct the AO to delete the adjustment made by him in the intimation generated under section 143(1) of the Act. Hence the ground of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 14/06/2023 at Ahmedabad.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 14/06/2023

Manish