

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**ITA No.108/JODH/2020
Assessment Year : 2016-17**

| | | |
|--|----|---|
| Sh. Gopal Goushala, C/o d. Kansara & Associates, CA'S 84, Narpat Nagar, Opportunity Shyam Restourant Pal Road, Jodhpur (Raj) 342001 PAN: AAATG2071M | Vs | Income Tax Officer, (Exemption), Jodhpur |
| Appellant / Assessee | | Respondent / Revenue |

| | |
|-----------------------|-------------------------------|
| Assessee by | None |
| Revenue by | Ms. Prerana Choudhary-JCIT-DR |
| Date of hearing | 16.08.2023 |
| Date of pronouncement | 17.08.2023 |

ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee Gopal Goushala against the order of Id. Commissioner of Income Tax (Appeals)-2 Jodhpur dated 12.02.2020 emanating from assessment order under section 144 of the Income Tax Act, 1961 dated 25.12.2018. The assessee has raised the following grounds of appeal:-

“1. That the lower authorities erred in computing/sustaining the assessment made ex parte u/s 144 of the Income Tax Act, 1961.

2. That the lower authorities erred in not allowing benefits of exemption u/s 11 of the IT Act to the trust duly registered u/s 12AA.

3. That the lower authorities erred in framing assessment in the status of AOP instead of religious and charitable trust.”

Findings & Analysis

2. On perusal of the assessment order, it is observed that the AO has denied benefits of section 11 to the assessee only on one ground that assessee did not submit copy of registration under section 12AA, copy of trust deed and bank account etc,. The relevant paragraph is reproduced here as under:-

“In compliance to show cause notice dated 12.12.2018, the assessee society did not submit any reply/details date. Therefore, I have no alternate but the complete the assessment proceedings ex-parte u/s 144 on the basis of material available on record.

The assessee society did not submit copy of its registration u/s 12AA of the Income-tax Act, 1961 and other details i.e. copy of trust deed, details of bank a/c etc. As the assessee society did not submit copy of registration u/s 12AA, therefore, assessment of the assessee society is being completed in status of AOP instead of Trust.

As per Income & Expenditure a/c, the assessee society's gross receipts are of Rs. 2,72,13,778/- and surplus of Rs. 32,16,825/-, The assessee society has claimed exemption for surplus of Rs, 32,16,825/- u/s 11 of the Income- tax Act, 1961. As the assessee society did not submit proof of its registration u/s 12AA, therefore, exemption claimed for surplus of Rs. 31,16,825/- is disallowed.

Since the assessee has furnished inaccurate particulars of income, penalty proceeding u/s 271(1)(c) is also initiated on this issue.

During the year under consideration, the assessee society's gross receipts is Rs. 2,72,13,778/-, therefore it was

required to the assessee society to get its account audited u/s 44AB of the Income-tax Act, 1961 before the specified date. As the assessee society's accounts are not audited u/s 44AB of the Income-tax Act, 1961, therefore, penalty proceedings u/s 271B of the Income-tax Act, 1961 is initiated.

With the above remarks, total income is computed as under:-

| | |
|---|----------------------|
| <i>Returned income as per return of income</i> | <i>Nil</i> |
| <i>Add: Disallowance exemption claimed u/s 11</i> | <i>Rs. 32,16,825</i> |
| <i>Total Income</i> | <i>Rs.32,16,825</i> |
| <i>R/o</i> | <i>Rs. 32,16,830</i> |

Assessed total income at Rs. 32,16,830/-. ITNS-150 which is part of this order and challan are enclosed with this order. Penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 is initiated for furnishing inaccurate particulars of income. Penalty proceedings u/s 271(1)(b) of the Income-tax Act, 1961 is also initiated for non-compliance of notice u/s 142(1) dated 21.06.2018. Penalty proceedings u/s 271B is also initiated for noncompliance of provision of section 44AB of the Income-tax Act, 1961.”

3. The ld. CIT(A) confirmed the assessment order though copy of registration under section 12AA was filed by the assessee and assessee also filed copy of the trust deed before ld. CIT(A).

4. We have heard ld. DR and perused the records. Assessee filed copy of the registration under section 12AA before ld. CIT(A) therefore, there was no reason for ld. CIT(A) to confirm the assessment order as ld. AO has denied the benefit of section 11

only on one ground i.e. non availability of registration under section 12AA. Even otherwise, registration under section 12AA is issued by Id. Commissioner of Income Tax (Exemption). The AO i.e. ITO (Exemption), Jodhpur works under CIT(E). It means, it was very easy for AO to get copy of the 12AA registration from the office of the CIT(E). However, both the authorities denied benefit under section 11 to the assessee stating that copy of registration under section 12AA has not been filed. Ld. CIT(A) also alleged that copy of bank statement has not been filed. However, we do not understand how exemption under section 11 could be denied if copy of bank statement is not filed. Therefore, in the facts and circumstances of the case, we are of the opinion that since assessee is a registered society under section 12AA of the Act and assessee had filed copy of the registration certificate issued by CIT(E), the ITO (E) erred in denying the benefit of exemption under section 12AA to the assessee therefore, AO is directed to grant exemption under section 11 to the assessee. Accordingly, grounds of appeal raised by the assessee are allowed.

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

Order pronounced on 17th August, 2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER
Dated: 17/08/2023
Sh.

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench