

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.19/RPR/2023

निर्धारण वर्ष / Assessment Year : 2016-17

Saroj Gopal Educational Society,
137, New Civic Centre, Bhilai
Durg (C.G.)-490 006
PAN: AADAS6074L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (Exemption)
Ward-2, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.B Doshi, CA
Revenue by : Shri V.K Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing : 16.08.2023

घोषणा की तारीख / Date of Pronouncement : 21.08.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee society is directed against the order passed by the Commissioner of Income-Tax (Exemption), National Faceless Appeal Center (NFAC), Delhi, dated 30.11.2022, which in turn arises from the order passed by the A.O. under Sec. 154 of the Income-tax Act, 1961 (in short 'the Act') dated 24.03.2021 for the assessment year 2016-17. The assessee has assailed the impugned order on the following grounds of appeal before us:

“1. In the facts & under the circumstances of the case, the Id. CIT(A) erred in upholding the order passed by CPC denying exemptions u/s.11 & 12. The appellant is entitled for exemption which has been wrongly denied.

2. The appellant reserves the right to add, amend or modify any of the ground/s of appeal.”

2. Succinctly stated, the assessee society had e-filed its return of income for A.Y.2016-17 on 27.03.2018, which was followed by a revised return, declaring an income of Rs.3,09,580 in the status of AOP/BOI. The assessee society filed Form No. 10 on 11.03.2019 and Form No.10B on 28.03.2018, i.e., after filing of return of income. The “due date” for filing of the return of income a/w. Form 10B for A.Y.2016-17 was 30.09.2016, which was extended to 17.10.2016.

3. Return of income filed by the assessee was processed as such u/s.143(1) of the Act by the AO/CPC, Bengaluru, on 30.05.2018, wherein after declining the assessee's claim for exemption u/ss.11 & 12 of the Act, the A.O raised a consequential demand of Rs.35.11 lacs.
4. The assessee society filed an application seeking condonation of delay in filing "Form No.10" before the CIT(Exemption), Bhopal which he rejected vide his order No. CIT (Exempt)/BPL/Condonation of delay Form 10B/2020-21, dated 08.07.2020.
5. Aggrieved the assessee society filed an application seeking rectification with the Income Tax Officer (Exemption), Ward-2, Raipur, dated 16.03.2021, requesting that the demand raised by the CPC/AO be rectified. Observing that the assessee had failed to file "Form No.10A" and "Form No.10B" within the stipulated period as per the mandate of the Income Tax Act, therefore, its claim of exemption u/ss. 11 & 12 of the Act was rightly declined, the A.O rejected the application filed by the assessee society.
6. The assessee society being aggrieved with the order of the CIT(Exemption), NFAC has carried the matter in appeal before us.
7. We have heard the Id. Authorized representatives of both the parties, perused the orders of the lower authorities and the material available on

record and considered the judicial pronouncements pressed into service by the Ld. AR to drive home his contentions.

8. At the very outset, the Ld. Authorized Representative (for short 'AR') for the assessee society relied on the order passed by the ITAT, "SMC" Bench, Raipur, in the case of Jain Shwetamber Murtipujak Sangh Vs. ITO (2023) 68 CCH 71 (Raipur). Referring to the order above, it was averred by the Ld. AR that even if the assessee's claim for exemption u/ss.11 & 12 of the Act was to be declined and it was to be assessed in the status as that of AOP/BOI, its claim for deduction of the expenses ought to have been considered. The Ld. AR submitted that there was no justification for the A.O. to have assessed the gross receipt of the assessee society and brought the same to tax. The Ld. AR drew our attention to the income and expenditure account of the assessee society, Page 20 of APB. The Ld. AR further submitted that he is confining his contentions only qua allowability on commercial lines the claim for deduction of expenses incurred by the assessee society.

9. Per contra, the Ld. Departmental Representative (for short, 'DR') relied on the orders of the lower authorities.

10. As observed by us hereinabove, the claim of the assessee society for exemption u/ss. 11 & 12 of the Act was declined by the A.O for the reason that the assessee had delayed the filing of "Form No.10" (filed on 11.03.2019) and

“Form No.10B filed on 28.03.2018, which were filed after filing the return of income. Also, the application filed by the assessee society seeking condonation of delay in “Form No.10” with the CIT(Exemption), Bhopal, was declined vide order dated 08.07.2020. As the Ld. AR had at the very outset submitted that he is not assailing the declining of the assessee’s claim for exemption u/ss.11 & 12 of the Act; therefore, we refrain from adverting to the facts and circumstances leading to the same. The Ld. AR had assailed the order passed by the A.O u/s.154 of the Act, which had been affirmed by the CIT(Exemption), on the ground that both the lower authorities had erred in assessing the gross receipts of the assessee society as its income. It is the claim of the Ld. AR that the A.O., after treating the assessee as an unregistered society, was obligated to have considered its claim for deduction of expenses raised in the income and expenditure account while deducing its taxable income. We find substance in the aforesaid claim of the Ld. AR.

11. We are unable to concur with the view taken by the lower authorities that the intimation issued by Income Tax Officer/CPC, Bengaluru u/s.143 of the Act, therein, assessing the gross receipt of the assessee as its income does not suffer from any mistake apparent from record u/s.154 of the Act. In our view, where the assessee’s claim for exemption u/s.11 & 12 of the Act is declined, it is incumbent for the A.O. to deduce its total income in line with

commercial principles. Accordingly, assessing the gross receipt of the assessee society by the A.O. suffers from a mistake which being glaring, patent, evident, and apparent from the record, had rendered the same amenable for rectification u/s.154 of the Act.

12. Before proceeding any further, we may herein observe that the declining of the assessee's claim for exemption u/ss. 11 & 12 of the Act, *per-se* would not justify assessing its gross receipt as its income for the year under consideration. Even though the assessee society may not be entitled to exemption u/ss.11 & 12 of the Act, its income under any circumstance must be deduced per commercial principles, i.e., after considering its claim of expenses per extant law. Our view above is fortified by the order passed by the ITAT, "SMC" Bench, Raipur, in the case of Jain Shwetamber Murtipujak Sangh Vs. ITO (2023) 68 CCH 71 (Raipur), wherein involving identical facts, though declining of the assessee's claim for exemption u/ss. 11 & 12 of the Act for delayed filing of "Form 10" was upheld by the Tribunal but its alternative claim that the A.O was obligated to have considered its claim for deduction of expenses raised in the income and expenditure account was accepted. The matter was restored to the file of the A.O. to consider the assessee's claim for deduction of expenses as debited in the income and expenditure account

under the provisions of the Act. For the sake of clarity, the relevant observations of the Tribunal in the case above is culled out as under:

“15. Be that as it may, as the assessee-trust does not cumulatively satisfy the set of conditions specified in Para 4(i) of the CBDT Circular No.10 (supra), and also had not filed any application for condonation of delay u/s.119(2)(b) of the Act as provided in Para 4(ii) of the said circular, therefore, there remains no occasion for condoning the delay involved in filing of Form 10B by the assessee beyond the stipulated time period. I, thus, on the basis of my aforesaid observations, find no infirmity in the view taken by the lower authorities who had rightly declined the assessee's claim for exemption u/s.11 of the Act. However, I may herein observe that the A.O after declining the assessee's claim for exemption u/s.11 of the Act could not have summarily held its gross receipts of Rs.24,83,562/- as its income. In sum and substance, the A.O after treating the assessee as an unregistered trust was obligated to have considered its claim for deduction of expenses as were raised in the income and expenditure account. Accordingly, on the basis of my aforesaid deliberations, I though uphold the declining of the assessee's claim for exemption u/s.11 of the Act, but at the same time, restore the matter to the file of the A.O with a direction to consider the assessee's claim for deduction of expenses as debited in the income and expenditure account, i.e. to the extent the same are allowable under the Act. Needless to say, the A.O shall grant a reasonable opportunity of being heard to the assessee in the course of set-aside proceedings.”

13. Adopting a similar view, we herein, on similar lines, restore the case of the assessee appellant to the file of the A.O with a direction to consider its claim for deduction of expenses as debited in the income and expenditure account, i.e., to the extent the same was allowable under the Act.

14. In the result, the assessee's appeal is allowed for statistical purposes in terms of our observations above.

Order pronounced in open court on 21st day of August, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 21st August, 2023

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT, Raipur-1 (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.