

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 181/Kol/2021
Assessment Year : 2016-17

M/s. Sasha Association For Craft Producers	Vs.	ITO (Exemptions), Ward-1(3), Kolkata
PAN: AABTS 5580 N		
Appellant		Respondent

Date of Hearing	04.07.2023
Date of Pronouncement	.08.2023
For the Assessee	Shri Sunil Surana, AR
For the Revenue	Shri S. Datta, CIT, DR

ORDER

PER SONJOY SARMA, JM:

The assessee has challenged the order passed by the Id. CIT(Exemptions), Kolkata u/s 263 of the Act by which setting aside the assessment order dated 28.12.2018 framed u/s 143(3) of the Act in respect of certain issues which according to Id. CIT(Exemptions) prejudicial to the interest of revenue.

2. Brief facts of the case are that the assessee filed its return of income on 06.09.2016 by declaring income of Rs. Nil. The case of the assessee was selected for scrutiny followed by notices issued u/s 143(2) and 143(1) of the Act by AO by making certain addition in the hands of assessee by determining total income of assessee at Rs. 28,32,961/-. The Id. CIT(Exemptions) on perusal of the assessment record observed that following exemptions were allowed by the AO beyond the permissible limit as per Income Tax Act.

Accordingly, ld. CIT(E) issued show cause notice u/s 263 of the Act to the assessee by stating as follows:

"i. In the return of income, Rs. 10,91,395/- was claimed to be accumulated/set apart u/s 11(2). No Form 10 was filed electronically. However, as per conditions mentioned in Section 13(9), the benefit of section 11(2) cannot be granted in cases where Form 10 has not been filed / has been filed beyond due date as prescribed u/s.139(1). However, in assessment, the Assessing Officer has wrongly allowed Rs. 5,67,896/- as exemption u/s. 11(2).

ii. In schedule I of Return of Income, balance amount accumulated in AY 2011-12 has been shown as Rs. 23,25,478/-. The assessee claimed Rs. 14,74,428/- towards purchase of fixed assets in FY 2015-16 towards application of amount set apart in AY 2011-12. As per Balance Sheet, there was addition to fixed assets to the tune of Rs. 7.05,985/- which was claimed as application in computation of income for the AY 2016-17. As such, accumulated amount of Rs. 23,25,478/- remained unutilized. Since 5 years have elapsed from the year of accumulation, the unapplied amount requires to be added as income u/s. 11(3). However, the Assessing Officer overlooked the issue in assessment.

iii. As per the return and the computation sheet furnished for the A.Y. 2016-17, it observe that the assessee has claimed application of Rs, 2,61,68,715/- which included Training, Research and Development Expenses' of Rs. 41,31,330/-. The balance sheet, VE account and the computation sheet for the F.Y. 2015-16 revealed that the said expenditure of Rs, 41,31,330/- included expenditures amounting to Rs. 13,85,984/- which are met out available balance of specific funds reflected under Reserve & Surplus' in the balance sheet including the current year accumulation.

The Reserve & Surplus funds have been created from the apportionment of the corpus/accumulation including statutory accumulation u/s 11(1)(a) over the years. Corpus fund received with specific direction u/s 11(1)(d) of the IT. Act, is not available

for applications. Similarly, accumulation @ 15% of income made by the assessee u/s 11(1)(a) has been claimed to be exempt too in the year of accumulation. Since, such funds are generally created from the amount exempt from the purview of income or application in the year of its receipt, claim of Rs. 13,85,984/- as an application from such funds should not be an allowable application, since double exemption of a particular amount is not allowable under the provision of the Act. However, the Assessing Officer overlooked the issue in assessment.

In view of the above, the assessment order passed by the Assessing Officer is found to be erroneous and is prejudicial to the interests of the revenue. As such, the assessment order is proposed to be reviewed in exercise of power conferred under section 263 enhancing/modifying the assessed income on the above said issues and any other issue revealed during the proceedings.”

3. In response to show cause notice on various issues issued by Id. CIT(Exemptions), the assessee filed its reply and on perusal of the same, Id. CIT(Exemptions) has taken his view in the following manner:

“I Non -Submission of Form 10:

Assessee in its reply stated that “we would like to draw your attention to the Circular no.7/2018 and 6/2020 dated 20.12.2018 R 19.02.2020. where CBDT has authorized the Commissioner of Income Tax to admit the belated applications in Form 10 in respect of AY 2016-17 where such form 10 is fled after the expiry of the time allowed under the relevant provisions of the Act. Form 10 submitted manually before the AO during the assessment proceedings was inadvertently left unsigned. Therefore to fulfil the requirement of the Act, we have now filed the Form 10 online on 08.02.2021. Therefore, the exemption u/s11(2) shall not be denied since the requirement of law to file the return and Form 10 has been complied with”

The explanation of the assessee perused and found not acceptable. It is reasonable to presume that the intimation required under Section 11 has to be furnished in the mode and manner prescribed in the section 11(2) read with rule 12(2), because such requirement is mandatory and without the particulars of the assessee's income, the Assessing Officer cannot entertain the claim of the assessee under Section 11.

Further, in view of the requirements of Section 13(9) the action of the A.O. in allowing accumulation u/s 11(2) in the case of late filing of form 10 is clearly erroneous and prejudicial to the interest of revenue. Therefore, the irrefutable conclusion is that not only the A.O. did not examine the correctness of the claim u/s 11(2) but also failed to take cognizance of the fact that Form-10 was filed belatedly and there was no condonation of delay in filing of Form-10 by the undersigned.

Furthermore, the application of assessee for admission of the belated Form 10, filed on 08.02.2021 has been rejected separately, vide order no CITE)Kol/ 119(2)(b)/AABTS5580N/2020-21/2741-43 dated 22.03.2021.

In view of the above facts, the claim of exemption u/s 11(2) cannot be allowed. The assessment Order of the A.O. is, therefore, erroneous and prejudicial to the interest of the revenue. The A.O. is accordingly directed to compute the income without allowing accumulation u/s 11(2).

II Accumulated amount of Rs. 23,25,478/-

In its reply assessee stated that schedule I, filled in the ITR was incorrect. In Schedule I of TTR, the amount of accumulation in AY 2011-12 is shown as Rs. 46,502,956/- and the amount of Rs. 23,25,478/- has been utilized till 01.04.2015. However, there is no

Surplus and no amount has been set apart in AY 2011-12. The reply of the assessee perused carefully and found not justifiable. The assessee has filled scheduled I in the ITR every

year and amount of accumulation is being shown in the said scheduled regularly. Hence, the explanation of the assessee is not primarily justified. The issue is therefore, set aside to the assessing officer to verify the claim of the assessee with respect to application of set apart amount in A.Y. 2011-12 in the subsequent A.Yrs. till 2016-17, and compute the income accordingly.

III Utilization of specific fund:

The assessee in its reply stated that the receipts in specific fund are shown as and has been included in the income and offered for taxation in the year of its receipt without statutory retention of 15% and the applications from these funds are shown as expense in the year of their utilizations.

The reply of the assessee perused carefully. The contention of the assessee is that specific fund received in any year are netted off with the amount utilized from the same specific fund during that year and shown as income or expenses is not tenable. On perusal of computation sheet and Income & Expenditure account of the assessee, it reveal that specific fund received by the assessee and after netting off with the expenses incurred during the year the balance fund is neither shown in its income and expenditure account nor included in its total income in its computation of income. As per balance sheet, during the F.Y. 2014-15, total specific fund received by the assessee was Rs. 32,83,170/-. Amount utilized during the year was Rs. 24,86,458/-. The balance fund of Rs. 7,96,712/- was neither shown in its Income & Expenditure account nor in computation of income. In F.Y. 2015-16, no specific fund was received by the assessee but claimed Rs. 13.85.984/- from these fund. Hence, assessee contention to take the specific fund in its income and offered for tax is not justifiable. Principally any amount credited to Reserve & Surplus is i formed out of surplus income, which is generated out of income exempted in a case covered by exemption u/s11. Since the Reserve & Surplus account is not formed out of any income offered for tax, further allowability would resulted in double exemption.

In view of above facts, claim of Rs. 13.85,984/- as an application from specific fund should not be an allowable application. The issue is therefore set aside and restore back to the assessing officer to pass an order considering the fact discussed above and compute the income accordingly.”

4. The ld. AR submitted before the bench that jurisdiction exercised by ld. CIT(Exemptions) is invalid and against the provisions of law as the order passed by the AO is neither erroneous nor prejudicial to the interest of revenue. The ld. AR drew our attention to the fact that during the assessment proceeding, the ld. AO called for details which were duly produced by the assessee including Form No. 10 in respect of accumulation of income. The ld. AR further drew our attention to Circular No. 7/2018 and 6/2020 dated 20.12.2018 & 19.2.2020 respectively by which CBDT has authorized the Commissioner of Income Tax to admit the belated applications in Form 10 in respect of AY 2016-17 where such Form 10 is filed after the expiry of time allowed under the relevant provisions of the Act. In the instance case, the assessee submitted Form 10 manually before the AO during the assessment proceeding again filed online on 08.02.2021 to fulfil the requirement of the Act. Therefore, the exemption u/s 11(2) of the Act shall not be denied since the requirement of law to file the return and Form 10 has been complied by the assessee. The ld. AR further submitted that in the case of assessee, it is not a case of no enquiry done by AO but where enquiry has been conducted by the AO and one of the possible views has taken by the AO by allowing the claim of assessee u/s 11(2) of

the Act. Therefore, the exercising of jurisdiction by ld. CIT(E) u/s 263 of the Act is invalid and kindly be quashed.

5. We after hearing the rival submissions and perusing the material on record, we note that on the alleged observation of ld. CIT(E) by stating that no enquiry or proper enquiry was conducted by the AO was not correct. As the ld. AO has given all the facts in the assessment order which unequivocally proved that all the facts and evidences were called for from the assessee during the assessment proceeding such as return of income, audit report in Form 10B, Form 10 etc. and AO after examination of all the details/documents allowed the claim /deduction u/s 11(2) of the Act. In our opinion, the instant issue is not the case of no enquiry was conducted by ld. AO and as such exercising of jurisdiction by ld. CIT(E) is wrong and cannot be sustained. Accordingly, we set aside the order passed by ld. CIT(E) on this issue and direct the AO to allow the claim made by the assessee u/s 11(2) of the Act.

6. In respect of another issue as alleged by the ld. CIT(E) regarding accumulated amount of Rs. 23,25,478/-, the ld. AR submitted that there was a mistake while filing up schedule I submitted along with Return of Income (RoI) and after realizing the mistake by rectifying the same and filed a copy before the ld. CIT(E) in this regard. However, it has been ignored by the ld. CIT(E) while passing the impugned order. The ld. AR drew our attention to the page 26 of the paper book which is reflected as Schedule-I to RoI, column 4, where the mistake had happened while entering figure by assessee under column 4 which reads

“Amount applied for charitable/religious purposes upto the beginning of the previous year.” The assessee inadvertently shown a wrong figure before the ld. AO and from the perusal of the aforesaid fact, we find that assessee had applied the fund as per the revised schedule by rectifying the same and copy of the same placed before us at page 26 of the Paper Book. Therefore, the alleged fault pointed out by the ld. CIT(E) based on the mistake of fact which crept into while filing column 4 of Schedule-I and it cannot termed as the assessee had surplus fund u/s 11(2) of the Act. Therefore, the apprehension of ld. CIT(E) that assessee has claimed double deduction is erroneous and on wrong assumption of fact. In view of the above fact, we are taking note of the relevant contents of page 26 of paper book, we do not find any omission on the part of AO while framing the assessment order on this issue. Therefore, the ld. AO rightly did not draw any adverse inference on this issue which was pointed out as a fault by the ld. CIT(E). Accordingly, in the facts & circumstances of the case as discussed (supra), we find that the ld. CIT(E) has erroneously usurped the revisional jurisdiction u/s 263 of the Act on this issue. Resultantly the same is hereby quashed.

7. The another issue relating to expenses met out available balance of specific funds reflected under reserve and surplus as alleged by ld. CIT(E) in his revisionary order that assessee has claimed double exemption is not correct. The ld. counsel for the assessee in this regard drew to our notice to page no 34 of the paper book where assessee has made a clear calculation by showing that no double exemption of a particular amount has

claimed by the assessee. Therefore, view taken by ld. CIT(E) is not correct and liable to be quashed. We note from the submissions made by the AR and going through the paper book at page no. 34, we find that the assessee has shown a correct calculation by showing that no double exemption had claimed of particular amount as alleged by ld. CIT(E) in impugned order. Therefore, the apprehension of ld. CIT(E) that assessee has claimed double deduction in view of wrong assumption of fact. We by taking note of relevant contents of page no. 34 of the paper book (supra) and after considering the documents placed before us, we do not find any omission on the part of AO while framing the assessment order on this issue. Therefore, the ld. AO rightly did not draw any adverse inference on the issue which pointed out as fault by ld. CIT(E) in his revisionary order. Accordingly, in the facts and circumstances of the case as discussed (supra), we find that ld. CIT(E) has erroneously usurp the revisional jurisdiction u/s 263 of the Act and resultantly we quashed the whole order passed by the ld. CIT(E) u/s 263 of the Act.

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

Order pronounced in the open court on .08.2023.

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: .08.2023
Biswajit

Copy of the order forwarded to:

1. Appellant- M/s. Sasha Association For Craft Producers, IC, Chatu Babu Lane, CIT Road, Kolkata-700014.
2. Respondent – ITO(Exemptions), Ward-1(3), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata