

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1288/M/2023
Assessment Year: 2014-15**

M/s. Suruchi, Somaiya Vidyavihar Compus, Vidya Vihar, Mumbai-400077 PAN: AAGTS6723A	Vs.	Income Tax Officer(exemption)-2(3), MTNL Tel. Ex. Building, Cumballa Hill, Peddar Road, Mumbai-4000026
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Gopal, A.R. &
Shri Om Kandalkar, A.R.

Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 13. 07. 2023

Date of Pronouncement : 27. 07. 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Suruchi (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 01.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2014-15 on the grounds inter-alia that :-

") The learned CIT (Appeals) erred in confirming the denial of exemption w/s.11 of the Income- tax Act 1961 made by the Assessing Officer. Your appellant submits that they are entitled to exemption

u/s.11 and that the learned Income-tax Officer be directed to grant exemption w/s.11.

Without prejudice to the above, even if the appellant is not allowed exemption u/s.11 and assessed to tax as a business entity, then the income ought to be loss of Rs.3,91,117/-.

2) The learned CIT (Appeals) erred in confirming the taxation of your appellant on gross income of Rs.30,50,805/- without considering total expenditure incurred amounting to Rs. 34,41,922/- as per Income & Expenditure A/e. The appellant has incurred loss of Rs. 3,91,117- as per Income & Expenditure Account which ought to have been allowed to the appellant. Your appellant submit that the addition of Rs.30,50,805/- be deleted and the appellant assessed on a loss of Rs.3,91,117/-.

3) Your appellants further reserve the rights to add, amend or alter the aforesaid grounds of appeal as they may think fit by themselves or by their representatives.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee being a trust engaged in providing employment to poor and needy women for making pickles, kakda, papad and other similar products and as such running at no profit no loss model, by filing return of income for the year under consideration claimed an exemption under section 11 of the Income Tax Act, 1961 (for short 'the Act) which was denied by the Assessing Officer (AO) on the ground that the assessee trust has failed to bring on record copy of registration certificate under section 12A of the Act and thereby framed the assessment at the total income of Rs.30,50,805/- under section 143(3) of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by

the Ld. CIT(A) the assessee has come up before the Tribunal by way filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the assessee trust has computed its income as per income and expenditure statement available at page 7 of the paper book. It is also not in dispute that the AO as well as Ld. CIT(A) had decided the case merely on the ground that the assessee has failed to bring on record registration under section 12A if granted.

6. In the backdrop of the aforesaid facts and circumstances of the case the Ld. A.R. for the assessee contended that his submissions before the Ld. CIT(A) that "if exemption under section 11 is not allowed and assessment be made by treating the assessee as a business entity by allowing the total expenditure of Rs.34,41,922/- which further leads to the loss of Rs.3,91,117/- (wrongly shown at Rs.1,42,254/-)." This contention of the assessee has been declined by the Ld. CIT(A) merely on the ground that no such statements were made by the assessee before the AO, thus treated and taken the income as per income and expenditure account to the tune of Rs.30,50,805/-. The Ld. CIT(A) has returned vague findings that the expenditure shown and claimed now at Rs.34,41,922/- cannot be held to be wholly and exclusively for the purpose of receipt of Rs.30,50,805/-.

7. Before the AO such issue has not been examined nor it is examined by the Ld. CIT(A) in the impugned order. I am of the considered view that the issue is required to be decided afresh by the AO. In case the assessee produces registration certificate under section 12 of the Act then issue as to claiming exemption under section 11 is to be decided in accordance with law. Otherwise the income of the assessee is to be assessed as per income and expenditure statement claimed by the assessee. The AO is to decide in accordance with law if assessee is entitled for claim of expenditure to the tune of Rs.34,41,992/- and then frame the assessment after providing opportunity of being heard to the assessee.

8. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27.07.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 27.07.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.