

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.846/PUN/2022
निर्धारण वर्ष / Assessment Year : 2015-16

ITO (Exemptions), Pune.	Vs.	Poona Panjarpole Trust, 461/3, Sadashiv Peth, Pune- 411030. PAN : AAATP1774C
Appellant		Respondent

Revenue by : Shri M. G. Jasnani
Assessee by : Shri Suhas Bora

Date of hearing : 06.09.2023
Date of pronouncement : 06.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 27.09.2022 for the assessment year 2015-16.

2. Briefly, the facts of the case are that the assessee is public trust registered under the Bombay Public Trust Act, 1950. It is formed for the purpose of rendering the charitable activities by running a Goshala. The assessee trust is also registered u/s 12A of the Income Tax Act, 1961 ('the Act') and granted approval u/s 80G of the Act. The Return of Income for the assessment year 2015-16 was filed on

04.09.2015 disclosing Rs.Nil income after claiming exemption u/s 11 of the Act. The said return of income was processed u/s 143(1) vide Intimation dated 24.02.2017 at total income of Rs.4,50,00,000/-. On receipt of the intimation, a rectification petition u/s 154 was filed on 08.03.2017 stating that the intimation was issued without granting exemption u/s 11 of the Act. The said petition u/s 154 came to be rejected vide order dated 28.06.2021 on the ground that the assessee trust had not filed Form No.10B.

3. Being aggrieved, an appeal was filed before the NFAC, who vide impugned order held that there is requirement of filing Form No.10B in order to apply surplus income for subsequent application. The NFAC further held that the investments made in the acquisition of the assets made by the assessee trust in fixed deposits amounts to application of income and, therefore, the question of filing Form No.10B does not arise.

4. Being aggrieved by the decision of the Id. CIT(A), the Revenue is in appeal before us in the present appeal.

5. The Id. Sr. DR contends that the assessee trust had not sought the exemption u/s 11(1A) in respect of the sale proceeds of the capital assets in the return of income. Therefore, the NFAC erred in holding that the investments in fixed deposits amounts to application of income. He further contended that the NFAC ought

not to have allowed the fresh claim which was not made in the return of income, without giving opportunity to the Assessing Officer before admitting the additional evidence.

6. On the other hand, ld. AR submits that it was not fresh claim made for the first time before the NFAC. Taking us through the return of income, the ld. AR submits that the entire income had been shown as application of income and the question of filing Form No.10B does not arise, as the order of the NFAC is based on the proper appreciation of law, requires no interference. In the absence of accumulation of income for future purpose, the question of filing the Form No.10B does not arise.

7. We heard the rival submissions and perused the material on record. From perusal of the intimation, it is clear that the exemption u/s 11 was denied on the ground that Form No.10B was not filed along with the return of income. But, from perusal of the return of income, it is clear that there was no income, which is set apart or accumulated for future purpose. It is the sale proceeds received on the sale of the assets, which were invested in the fixed deposits. The investments in fixed deposits out of the sale proceeds would be regarded as utilization of the net consideration for acquisition of another capital asset within the meaning of section 11(1A) of the Act in view of the clarification issued by the Board Circular No.883

dated 24.09.1975. The board circular was also followed by the Hon'ble Calcutta High Court in the case of CIT vs. Hindustan Welfare Trusts, 70 Taxman 93 (Cal.) and in the case of CIT vs. East India Charitable Trust, 73 Taxman 880 (Cal.) and the Hon'ble Gujarat High Court in the case of CIT vs. Ambalal Sarabhai Trust No.3, 173 ITR 683 (Guj.). Therefore, when the entire income of the assessee trust was applied for charitable purposes, the question of filing of Form No.10 does not arise. The NFAC rightly allowed the claim of the assessee trust. Therefore, we do not find any reason to interfere with the order of the NFAC. Thus, the grounds of appeal filed by the Revenue stand dismissed.

8. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 06th day of October, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 06th October, 2023.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.