

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.163/PUN/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Poona Panjarpole Trust, 461/3, Sadashiv Peth, Pune- 411030. PAN : AAATP1774C	Vs.	ITO (Exemption), Ward-1(2), Pune.
Appellant		Respondent

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

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 assessee directed against the order of the National Faceless Appeal Centre, Delhi ['NFAC'] dated 16.12.2022 for the assessment year 2017-18.

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 2017-18 was filed on

23.01.2018 disclosing taxable income of Rs.Nil after claiming exemption u/s 11 of the Act. Against the said return of income, the assessment was completed by the Income Tax Officer, Exemption Ward-1(2), Pune ('the Assessing Officer') vide order dated 26.12.2019 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.2,97,86,660/-. While doing so, the Assessing Officer treated a sum of Rs.3,05,55,560/- being the amount of interest receivable from the Pharande Promoters and Builders towards interest on account of the delay in payment of compensation. It was contended that the said interest was not received by the assessee and, therefore, the question of offering to tax, as income had not arisen and it is a capital receipt forming part of the sale consideration, cannot be brought to tax. However, the Assessing Officer had brought to tax the said amount.

3. Being aggrieved, an appeal was filed before the NFAC, who vide impugned order held that since the amount was received as interest and TDS had been deducted u/s 194A of the Act, the interest income partakes the character of revenue receipt and, therefore, formed part of the income of the assessee trust since the income was not applied for charitable purposes and no application was filed for carry forward. Therefore, the same should be taxed as income.

4. Being aggrieved by the above decision of the NFAC, the appellant is in appeal before us in the present appeal.
5. Ground of appeal nos.1, 2 and 3 were not pressed at the time of hearing of appeal, hence the same are dismissed as not pressed.
6. By the ground of appeal no.4, it is contended that the entire amount received for investment in the fixed deposits amount of application of income and, therefore, the question of application does not arise.
7. On the other hand ld. Sr. DR opposed the submissions of the assessee.
8. We heard the rival submissions and perused the material on record. The only issue involved in the present appeal is whether investment of fixed deposit with bank out of the sale proceeds of asset, could be regarded as the application of income or not. This issue was clarified by the Board vide Instruction No.883 dated 24.09.1975:-

“The Board had occasion to examine whether investment of the net consideration in fixed deposit with a bank would be regarded as utilization of the amount of the net consideration for acquiring another capital asset within the meaning of section 11(1A) of the Income Tax Act, 1961. The Board has been advised that investment of the net consideration in fixed deposit with a bank for a period of 6 months or above would be regarded as utilization of the net consideration for acquisition of another capital asset within the meaning of section 11(1A).”

9. This board circular was followed by the Hon'ble Kolkata High Court in the case of CIT vs. Hindustan Welfare Trusts, 70 Taxman 93 (Kol.) and in the case of CIT vs. East India Charitable Trust, 73 Taxman 880 (Kol.) and the Hon'ble Gujarat High Court in the case of CIT vs. Ambalal Sarabhai Trust No.3, 173 ITR 683 (Guj.). In the light of settled position of law, we direct the Assessing Officer not to tax interest component of compensation amount, as the same was regarded as application of income. Accordingly, the grounds of appeal filed by the assessee stands allowed.

10. In the result, the appeal filed by the assessee stands allowed.

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.