

आयकर अपीलिय अधिकरण, ,“बी” बेंच, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER &
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.427/Ahd/2022
Assessment Year : 2019-20

Vidya Sagar Education Trust Sola Gam Road Science City Road, Sola, Ahmedabad - 380 060 Gujarat	v.	The Income Tax Officer Ward-4(2)(5) Ahmedabad, Gujarat
PAN:AAATV 2930 L		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Chirag R.Shah, AR
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 22/01/2024
घोषणा की तारीख /Date of Pronouncement: 22/01/2024

आदेश/O R D E R

Per Coram,

This appeal filed by Assessee is directed against the appellate order dated 25/08/2022 passed by Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [“CIT(A)” in short] under section 250 of the Income Tax Act, 1961 (hereinafter called “the Act”) for Assessment Year 2019-20 (DIN & Order No.ITBA/NFAC/S/250/2022-23/1044932657(1)), the appellate proceedings have arisen before Ld.CIT(A) from order dated 25/09/2020 of Assistant Director of Income Tax (CPC) (hereinafter called “the AO) passed u/s.143(1) of the 1961 Act(DIN CPC/1920/A7/2008042753).

2. The assessee has raised following grounds of appeal in Memo of Appeal filed with Income Tax Appellate Tribunal, Ahmedabad Benches, Ahmedabad (hereinafter called "the Tribunal):

		<i>Tax effect relating to each Ground of appeal (see note below)</i>
"1.	<i>The intimation passed by assessing officer u/s. 143(1) of I.T. Act is bad in law and deserves to be uncalled for.</i>	-
2.	<i>The assessing officer has erred in law and on facts in not allowing the deduction of expenditure incurred by the appellant towards the education purpose amounting to Rs. 67,97,457/-.</i>	31,12,880/-
3.	<i>The appellant craves to reserve his right to add, alter, amend, or delete any ground of appeal during the course of hearing.</i>	
	<i>Total Tax effect (see note below)"</i>	31,12,880/

3. The brief facts of the case are that the assessee has filed its return of income for AY 2019-20 on 22.07.2020, wherein the assessee declared income of Rs.NIL after claiming exemption u/s.11 of the I.T. Act, 1961. The said return was processed by Revenue u/s.143(1) of the Act vide orders dated 25.09.2020, and the exemption u/s.11 of the Act as claimed by the assessee

was denied by Revenue on the grounds that the assessee was not holding registration u/s.12A/12AA of the 1961 Act by holding as under:

"As per the details furnished in the return, Assessee is not registered u/s 12A/12AA or approved u/s 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via). Claim of exemption has been made in Sl. No. 4i to 4viii of Schedule Part B – TI. These fields are applicable for claim of exemption under section 11 or 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via). Hence exemption is not allowable. As per details furnished in the return assessee has mentioned status as AOP/BOI. For the sub status selected by the assessee, assessee is liable to tax at Maximum Marginal Rate as per section 167B (For persons registered under section 12A details entered in Schedule Part A General Personal Info is considered and slab rates are applied)."

3.1 Vide intimation dated 25/09/2020 (DIN CPC/1920/A7/2008042753 and Demand Identification Number 2020201937015926531T), it was held that the assessee has claimed incorrect claim u/s.143(1)(a)(ii) by holding as under:

(ii)					
Incorrect Claim u/s.143(1)(a)(ii)					
Sl.No.	Schedule	Error Description	Amount in Income Tax Return	Amount as computed	Variance
1.	Part BTI	In Part A Gen-1 under "Details of registration or approval under Income Tax Act" the trust or institution has not furnished the details of registration u/s 12A /12AA or approval u/s 10(23C)(iv) or 10(23C)(v) or	6797547	0	6797457

		<p>10(23C)(vi) or 10(23C)(via) hence the exemption claimed in Sl. No. 4i to 4viii in Schedule Part B-TI is not allowed. PS: Filing of Form 10B is mandatory for assessee registered u/s 12A/12AA. Filing of Form 10BB is mandatory for assessee approved u/s 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via)</p>			
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4. The assessee-trust being aggrieved, filed its first appeal with Ld.CIT(A), and the assessee admitted before Ld.CIT(A) that assessee is not registered u/s.12A of the Act , but the assessee claimed that it is entitled for exemption u/s.10(23C)(iiiad) of the Act , and inadvertently the assessee has claimed exemption u/s.11 of the Act . The assessee submitted before ld. CIT(A) that since its turnover is less than Rs.1 Crores , and the assessee is engaged in the educational activities by running educational institution, hence, assessee was eligible for exemption u/s.10(23C)(iiiad) of the Act. The Ld.CIT(A) rejected the claim of the assessee vide appellate order dated 25.08.2022, by holding as under:

"5. DECISION:

I have carefully considered the facts of the case, findings of the AO in the order u / s 143(1), the Grounds of appeal, Statement of facts as per Form No. 35 as well as the written submission of the appellant.

5.1 All the Grounds of appeal as well as the additional Ground of appeal relates to the sole issue of disallowance made by the AO while processing the return of an amount of Rs.65,93,431/- being the application of income for the objects of the Trust u/s 11.

5.2 As observed earlier, the assessee Trust which is engaged in running an educational institution filed its return of income on 22.07.2020 declaring Gross receipts of Rs.67,97,457/- and expenditure of Rs.65,93,431/- for the objects of the Trust. The return filed was processed vide intimation u/s 143(1) of the Act on 25.09.2020 after disallowing the entire claim for expenditure made by the assessee Trust u/s 11 of Rs.65,93,431/- being the application of income for the objects of the Trust u/s 11. Accordingly the taxable income of the assessee was computed at Rs.67,97,457/- by the AO.

5.3 In course of the appellate proceedings, the appellant submitted that it is eligible for claiming exemption u/s 10(23C)(iiiad) but inadvertently it had claimed exemption u/s 11 in the return filed. It was further submitted that it has Gross receipts of Rs. 67,97,457/- which is below Rs.1,00,00,000/- and therefore is eligible to claim deduction u/s 10(23C)(iiiad). The appellant further submitted that even without registration u/s.12A, only the net taxable income computed after allowing the claim of expenses is to be taxed and not the entire gross receipts as held by the Hon'ble Delhi High court in the case of **Petroleum sports promotion board** (supra). Accordingly, the appellant contended that the action of the AO of making the disallowance of the entire expenditure claimed by it of Rs.65,93,431/-, is not correct.

5.4 The contentions of the appellant have been duly considered. It is noted that the Tax Auditor had adversely remarked in the Tax Audit Report that in respect of the expenses claimed by the assessee there are no third party supporting evidences and the only evidence available are in the form of self made vouchers. It is further noted that as per clause (iv) of 143(1), adjustment has to be made while processing return for the disallowance of expenditure or increase in income indicated in the Tax Audit Report but not taken into account in computing the total

income in the return. In the instant case, the appellant himself should have quantified the disallowable expenditure out of the total expenditure incurred of Rs.65,93,431/- for which the only evidence available with the assessee was in the form of self made vouchers as noted in the Tax Audit Report. However, this quantification of the disallowance was not done by the assessee while computing the taxable income despite the adverse remarks of the Tax Auditor. If the appellant himself would have quantified the disallowance and made appropriate addition while computing its taxable income, it could have faulted the action of the AO for disallowing the entire amount of expenditure claimed of Rs. 65,93,431/-. However, since this was not done by the appellant while computing its taxable income, the action of the AO is justified. Therefore, no infirmity is found in the action of the AO of making disallowance of the entire expenditure claimed of Rs.65,93,431/- on the basis of the adverse remarks of the Tax Auditors. Accordingly, Grounds of Appeal as well as the Additional Ground of Appeal raised by the appellant are dismissed.

6. In the result, the appeal is treated as dismissed. Order passed under section 250 read with section 251 of the Act."

5. Aggrieved by appellate order passed by Id. CIT(A), the assessee filed its second appeal before the Tribunal. The Id.counsel for the assessee, at the outset, submitted that the assessee has filed its return of income with Revenue inadvertently claiming exemption u/s.11 of the Act , while the assessee is eligible for deduction u/s.10(23C)(iiiad) on the ground that assessee's turnover is less than Rs.1 Crore and assessee is engaged in the educational activities as it is running an educational institution. The Id.counsel for the assessee submitted that the CPC Bengaluru while processing assessee's return of income has disallowed the claim of the assessee-trust for exemption u/s 11 on the grounds that it is not holding registration u/s.12A/12AA of the Act or approval u/s 10(23C)(iv), 10(23C)(v),10(23C)(vi) or 10(23C)(via). It was further submitted by assessee

before Ld.CIT(A), that the assessee is eligible for deduction u/s.10(23C)(iiiad) of the Act on the ground that assessee is engaged in educational activities as it is running educational institution and the turnover is less than Rs. 1.0 crores, but Ld.CIT(A) confirmed the addition of Rs.65,93,431/- on the ground that the assessee is not having proper vouchers and assessee is only having self-made vouchers as reported adversely by Auditors in the Audit Report , and the additions were confirmed to the tune of Rs.65,93,431/- by ld. CIT(A). It was submitted by ld. Counsel for the assessee that the auditors had given a general remarks about non availability of evidences in support of the expenses incurred. The ld. Counsel for the assessee submitted that the assessee has filed paper book containing 15 pages in which audited accounts with auditors report is placed. The said paper book is placed on record in file. The ld. Counsel for the assessee submitted that the expenses incurred included salaries to the tune of Rs. 26,53,200/- which is paid to staff who is engaged by the educational institution run by the assessee for educational activities such as faculty and other administrative staff. It was also submitted that there are other expenses such as seminar expenses, uniform expenses , communication expenses , vehicle expenses, postage expenses etc. which were incurred for the educational activities of the assessee, for which the assessee will submit all the evidences to substantiate the genuineness of expenses being incurred for the educational activities of the assessee.The ld.counsel for the assessee submitted that the matter may be restored back to the file of Ld.CIT(A) as assessee will produce all the vouchers and evidences to prove that the expenses are genuinely incurred for educational activities carried on by the assessee. The ld. CIT-DR also submitted that the

Department has also no objection if the matter is restored back to the file of Ld.CIT(A) for fresh adjudication in accordance with law.

6. After considering the material available on record and hearing both the parties, we have observed that the assessee has filed its return of income with Revenue on 22/07/2020, wherein it claimed exemption u/s.11 of the Act. The assessee was not holding any registration u/s.12A/12AA of the Act, and the CPC while processing the return of income has disallowed the exemption u/s 11, and brought to tax income of Rs.67,97,457/-, after disallowing the claim of exemption u/s.11 of the Act. The assessee filed first appeal before the Ld.CIT(A) , and it was claimed that the assessee is not holding registration u/s.12A of the Act and assessee is not eligible for deduction u/s.11 of the Act, but however, it was claimed that since the turnover of the assessee is less than Rs.1 Crore and the assessee is engaged in the educational activities by running Educational Institution, the assessee is eligible for deduction u/s.10(23C)(iiiad) of the Act. The Ld.CIT(A) observed that the assessee has claimed expenses for which no proper evidences are available and claim of deduction of the expenses have been made merely on the basis of self-made vouchers , as was adversely reported by the auditors in their audit report by way of adverse comment/remarks about the claim of deduction of expenditure based on self made vouchers instead of evidence in support of expenses, and based on that Ld.CIT(A) disallowed the claim of deduction of expenses of Rs.65,93,431/- as the genuineness of these expenses could not be proved by the assessee. The ld.counsel for the assessee had submitted before us that one more opportunity be provided to the assessee , and the assessee will produce all the relevant documents/evidences to prove that the assessee is genuinely engaged in the educational activities of running of the

educational institution and holding the necessary evidences to support the expenses being incurred for the purposes of the educational activities of the assessee. It was submitted by Id. Counsel for the assessee that the auditors had given a general remarks about non availability of evidences in support of the expenses incurred. The Id. Counsel for the assessee had submitted that the assessee has filed paper book containing 15 pages in which audited accounts with auditors report is placed. The said paper book is placed on record in file. The Id. Counsel for the assessee submitted that the expenses incurred included salaries to the tune of Rs. 26,53,200/- which is paid to staff who is engaged by the educational institution run by the assessee for educational activities such as faculty members, administrative staff etc, and there are other expenses such as seminar expenses, uniform expenses , communication expenses , vehicle expenses, postage expenses etc. which were also incurred for educational activities of the assessee in running the educational institution, for which it is submitted by Id. Counsel that the assessee will submit all the evidences to substantiate the genuineness of expenses being incurred for the educational activities of the assessee. The Department has no objection if the matter is restored back to the file of Ld.CIT(A) for fresh adjudication. Therefore, in the interest of justice and fair play and keeping in view the entire material on record, we set aside the appellate order passed by Id. CIT(A) and restore the matter back to the file of Id. CIT(A) for deciding afresh appeal filed by the assessee with Id. CIT(A) on merits in accordance with law, after affording proper opportunity of being heard to the assessee. The assessee is directed to co-operate with Ld.CIT(A) , and submit all the explanations and information sought for by Id. CIT(A) in order to adjudicate appeal filed by the assessee on merits in accordance with law, and to produce all the relevant documents to prove

the claim of the assessee. We clarify that we have not commented on the merits of the issues involved in this appeal filed by the assessee with Tribunal , and all the contentions are kept open. Thus, in nut-shell, this appeal filed by the assessee is allowed for statistical purposes. We order accordingly.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Order pronounced in the Open Court on 22nd January, 2024 at Ahmedabad in the presence of both the parties, and reduced to writing and signed on 24 January, 2024.

Ahmedabad, Dated 24/01/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-(NFAC)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad