

।आयकरअपीलीयअधिकरण “बी” न्यायपीठपुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES “B” :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.1194/PUN/2023
निर्धारणवर्ष / Assessment Year : 2020-21

Vidyarthi Vikas Pratishthan Jalgaon, Gat No.148, Yashwant Nagar, Ramanand Nagar, Maharashtra – 425001. PAN: AAATV6624R	V s	Assessment Unit, Income Tax Department(NFAC)
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Hari Krishnan – AR
Revenue by	Shri Sourabh Nayak – JCIT-DR
Date of hearing	01/02/2024
Date of pronouncement	02/02/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of Ld.Commissioner of Income Tax(Appeal)[NFAC], Delhi under section 250 of the Income Tax Act, 1961 for A.Y.2020-21 passed on 20.09.2023 emanating from order under section 143(3) r.w.s 144B of the Income Tax Act, 1961 dated 20.09.2022. The assessee has raised the following grounds of appeal :

“1. The Learned CIT(A) has erred in dismissing the grounds of appeal filed before him by the assessee and in

confirming the arbitrary and adhoc disallowance of Rs.53,56,317/- being the 50% of expenditure claimed by the assessee.

2. Appellant craves leave to add, alter, amend or substitute to the above ground of appeal at the time of hearing.”

Brief facts of the case :

2. As emanating from assessee’s written submission and orders of the lower authorities, assessee e-filed return of income on 31.05.2021 declaring total income at Rs.Nil for A.Y.2020-21 in ITR-5. Admittedly assessee is a charitable trust registered under Bombay Public Trust Act. Assessee also have valid 12A registration issued by Income Tax Department on 12.01.2009. During the assessment proceedings, Assessing Officer asked assessee to explain why Return of Income was filed in ITR-5 whereas it should have been filed in ITR-7. The Assessing Officer(AO) also asked the assessee to explain why expenditure claimed should not be disallowed. The assessee explained that assessee is running a charitable healthcare facility. The entire expenditure has been incurred for charitable healthcare facilities. The assessee explained before the AO that assessee had employed Doctors and Other Medical Staff to whom assessee is paying

salaries and incurring expenditures. Assessee is not charging any fees from the patients. However, assessee is charging the patients for cost of medicines dispensed. Thus, assessee's income is mainly from cost of medicines, which is Rs.78,50,390/-. In addition to this, assessee has received donation of Rs.24,40,662/- and bank interest of Rs.50,919/-. Thus, total income during the year was Rs.1,07,93,971/-, whereas total expenditure was as under:

<i>Expense Head</i>	<i>Amount (Rs.)</i>
<i>Audit Fees</i>	<i>Rs.18,500/-</i>
<i>Bank Charges</i>	<i>Rs.5,340/-</i>
<i>Building Maintenance</i>	<i>Rs.74,476/-</i>
<i>Computer Expenses</i>	<i>Rs.55,693/-</i>
<i>Electrical Expenses</i>	<i>Rs.2,23,717/-</i>
<i>Electrical Maintenance</i>	<i>Rs.17,687/-</i>
<i>GST Paid</i>	<i>Rs.3,66,242/-</i>
<i>License Fee</i>	<i>Rs.3,250/-</i>
<i>Municiple Tax</i>	<i>Rs.36,241/-</i>
<i>Postage and Telegram</i>	<i>Rs.170/-</i>
<i>Printing and Stationery</i>	<i>Rs.84,937/-</i>
<i>Remuneration to Doctors and Nurses</i>	<i>Rs.32,97,914/-</i>
<i>Remuneration to Pharmacists and Other Staff</i>	<i>Rs.11,87,548/-</i>
<i>Shop Rent</i>	<i>Rs.6,34,667/-</i>
<i>Student Bhojan Expenses</i>	<i>Rs.1,54,854/-</i>
<i>Telephone Expenses</i>	<i>Rs.22,461/-</i>
<i>Xerox Expenses</i>	<i>Rs.2,062/-</i>

<i>Cost of Medicine Sold</i>		
	<i>Opening Stock</i>	<i>Rs.6,22,306/-</i>
<i>Add:</i>	<i>Purchase during the year</i>	<i>Rs.46,28,468/-</i>
	<i>[sample copies of Purchase bills are attached herewith]</i>	
		<i>Rs.46,89,549/-</i>
<i>Less:</i>	<i>Closing Stock</i>	<i><u>Rs.5,61,225/-</u></i>
<i>Total</i>		<i>Rs.1,08,75,308/-</i>

3. Assessee also claimed during the assessment proceedings, which is mentioned in the assessment order that assessee could not file Return of Income for the year in ITR-7 due to some technical reasons, as a result, assessee filed Return of Income in ITR-5. For earlier years, assessee had filed Return of Income in ITR-7 and Income Tax Department had granted assessee exemption under section 11 of the Act. For A.Y.2020-21 i.e. the year under section, assessee claimed that assessee had shown entire income under “Income From Other Sources” and claimed expenditure as deduction under section 57(iii) of the Act. Admittedly, assessee had filed the details of expenditure as called for by the AO.

However, AO in para 5 of the assessment order held as under :

“Since assessee filed ITR-5 instead of ITR-7 and claimed deduction under wrong section i.e. u/s 57 instead of section 11 of the I.T.Act, all the expenditure claimed are liable to be disallowed. However, for the sake of natural justice and keeping in view that assessee had been claiming similar deduction u/s 11 of the I.T.Act up to A.Y.2019-20, 50% of deduction claimed u/s 57 of the I.T.Act claimed by the

assessee in its ITR which comes to Rs.54,37,654/- is allowed and balance is added back to the income of the assessee. After calculation, total disallowance comes to Rs.53,56,317/-. Penalty proceedings u/s 270A of the I.T.Act has been initiated separately for under-reporting of income.”

4. Aggrieved by the assessment order, assessee filed appeal before the ld.CIT(A). The ld.CIT(A) upheld the disallowance. Aggrieved by the order of the ld.CIT(A), assessee filed appeal before this Tribunal.

Submission of ld.Authorised Representative(ld.AR) :

5. The ld.AR filed written submission. The ld.AR submitted that due to technical reasons, assessee could not file Return of Income in ITR-7. Therefore, assessee filed Return of Income in ITR-5. The Department has not rejected assessee's Return of Income. Nowhere in the assessment order, it is mentioned that Return of Income filed by the assessee is rejected. Rather the assessment order is based on Return of Income filed in ITR-5. Assessee has not claimed any exemption under section 11 of the Act. Assessee has claimed the expenditure incurred for earning the income under section 57(iii) of the Act. During the assessment proceedings, AO had verified the documents filed by the assessee.

Nowhere the AO has pointed out any mistake. It is not the case of the AO that expenditure is not verifiable or bogus. Since assessee had incurred expenditure to earn the income, the said expenditure is allowable under section 57(iii) of the Act. The ld.AR relied on the decision of the Hon'ble Delhi High Court in the case of DDIT(E), Investigation, Circle-II Vs. Petroleum Sports Promotion Board in [2014] 362 ITR 235 (Delhi).

Submission of ld.Departmental Representative(ld.DR) :

6. The ld.DR vehemently supported orders of the Lower Authorities. The ld.DR pleaded that the income earned from sale of medicines cannot be taxed as Income From Other Sources as it is a business income. Therefore, the expenditure claimed cannot be allowed under section 57(iii) of the Act.

6.1 We asked ld.DR a specific question “whether assessment order can be improved at this stage!, as nowhere in the assessment order AO has mentioned that Income from Sale of Medicine cannot be treated as Income from Other Sources. Ld.DR repeated his leading that income needs to be

taxed as Income from Business and hence expenditure is not allowable.

Findings & Analysis :

7. We have heard both the parties and perused the records. The AO in the assessment order has disallowed the expenditure claimed on ad-hoc basis. Assessing Officer nowhere challenged the genuineness of the expenditure. Rather in the assessment order, AO had mentioned that Bills, Vouchers were submitted. It is an admitted fact that expenditure has been claimed under section 57(iii) of the Act. The said section 57(iii) is reproduced here as under :

“Section 57(iii) of the Act :

(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income;”

8. Thus, as per section 57(iii), any expenditure which has been incurred wholly and exclusively for earning income and which is not capital expenditure is an allowable deduction. In this case, it is not the case of the AO that the expenditure was capital expenditure. Thus, the only thing one needs to verify is that whether it was incurred wholly and exclusively for the purpose of

earning income. Admittedly, assessee had earned income of Rs.78,50,390/- from dispensing medicines. We have perused the list of expenditure submitted by the Id.AR and apparently, we are convinced that it was incurred in relation to income earned from dispensing medicines. The AO has also not challenged genuineness of the expenditure. The AO has not doubted that expenditure was not incurred for earning income. The Hon'ble Delhi High Court in the case of DDIT Vs. Petroleum Sports Promotion Board(supra) held as under :

“.....If the income is assessed under the residual head full play must be allowed to Section 57(iii). Though prima facie it would appear that the phraseology employed in Section 57(iii) is different from Section 37(1), it has been held by the Supreme Court in CIT v. Rajendra Prasad Moody, f 1978] 115 ITR 519 that Section 57(iii) must be construed broadly and the somewhat wider language of Section 37(i) should not affect the interpretation of Section 57(iii). The assessee in the present case was created in 1979 with the object of promoting sports; there was no other object and all its constituents were giving grants/ funds only for that purpose. In truth and reality the assessee was merely acting as a custodian or conduit to the constituents for the purpose of promoting sports activity inside and outside the country. The expenditure incurred by the assessee is only for the purpose of promoting the sports events and activities and in this respect there is no challenge to the finding of fact recorded by the Tribunal. If such expenditure is not allowed, it may amount to taxing the gross receipts of the assessee and not the income, which is not permissible under the income tax law. Moreover, upto the

assessment year 2002-03 the assessee was exempt from tax under Section 10(23C); from the assessment year 2006-07 it has been granted registration or a charitable institution under Section 12A making it eligible for the exemption under Section 11.

8. For the aforesaid reasons we do not find any infirmity or error of law in the decision of the Income Tax Appellate Tribunal. There is no challenge to the findings of fact recorded by it. In the circumstances, no substantial question of law arises for our consideration. The appeals are accordingly dismissed with no order as to costs".

9. Respectfully following the Hon'ble Delhi High Court(supra), in these facts and circumstances of the case, we are of the opinion that AO had no jurisdiction to make the ad-hoc disallowance of 50% expenditure without pointing out any defect in the Bills, Vouchers or Ledgers pertaining to the expenditure. In these facts and circumstances of the case, we direct the Assessing Officer to delete the addition made of Rs.53,56,317/-. Accordingly, Ground No.1 of the assessee is allowed.

10. Ground No.2 is general in nature and does not need any adjudication

Order pronounced in the open Court on 2nd February, 2024.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 2nd Feb, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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