

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 244/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2015-16)

Deputy Commissioner of Income Tax, Exemptions Circle, Hyderabad	Vs.	National Fisheries Development Board, Hyderabad [PAN No. AAAAN4771E]
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अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri R. Mohan Kumar, AR
राजस्व द्वारा/Revenue by: Shri K. Madhusudan, CIT-DR

सुनवाई की तारीख/Date of hearing: 07/02/2024
घोषणा की तारीख/Pronouncement on: 13/02/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Challenging the order dated 06/03/2023 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of National Fisheries Development Board ("the assessee") for the assessment year 2015-16, Revenue preferred this appeal.

2. Brief facts of the case are that assessee is a Board established by the Central Government to act as a nodal agency in developing activities of fisheries among various states in the country. The major source of receipt is the Grants from the Central Government, and the outflow is utilisation of the grants. Assessee undertakes the projects on Cold Water Fisheries, Aquaculture in Inland and Coastal areas, Deep-sea fishing, fish processing and other activities as per, the request of the State Government. The projects are developed by the respective State Governments and are supervised by the assessee. The funds required for development of the projects are indented from the Central Government by the State Government. Such indents are processed through the assessee. The amounts so indented are sanctioned and paid by the Central Government to the assessee. The assessee based on the stage of completion of the project releases the grants to the State Government.

3. Assessee maintains the books of account and gets them audited. As part of such accounts, assessee disclosed the current year's receipts and payments in the "Receipts and Payments account" where the actual grant received are treated as receipt and the amount allowed as grant is treated as the payment. As per the details on the record, it is observed that when the grants are received, the same was kept in the liability side as the same is to be spent in accordance with the directives of the Central Government. When the grants are paid to the State Governments for implementing the projects, the same are kept in advances account. When the amount sanctioned to the State Governments is spent, an account is submitted by the State Governments to the Central Government through the assessee. Such amount is treated as expenditure in the "Income & Expenditure

account". The amount so spent including the administrative expenses of the assessee are recognised as the income and the same is taken to the income part of the Income & Expenditure Account.

4. While preparing the Income and Expenditure account for the previous year 2014-15, the assessee shown the income at Rs.181,16,39,318/- including the grants utilised by the State Governments and the expenditure at Rs.178,12,90,211/-. The difference of Rs.3,03,49,107/- has been shown as excess of income over expenditure. While preparing the Income & Expenditure account, the assessee recognised the grants-in-aid received from the Central Government to the extent of Rs.176,69,43,837/-, which represents the amount utilised in the projects by the State Governments as increased by the grants utilised for the administrative purpose. For the assessment year 2015-16, assessee filed the return of income on 30/09/2015 declaring NIL income by claiming exemption under section 11 of the Income Tax Act, 1961 ('the Act').

5. During the assessment proceedings it was submitted before the learned Assessing Officer that out of the income recognised, assessee applied more than 85% of such income towards its objects, and that therefore, the balance income of the assessee is exempt under section 11 of the Act. This averment was made on the basis of the accounting principles followed by the assessee.

6. Learned Assessing Officer, however, was not convinced by the submissions of assessee. He was of the view that the assessee did not utilise 85% of the total amount, being the total grants-in-aid received during the year and the funds received back as refunds from various

projects during the year. Another contention of the learned Assessing Officer is that the assessee invested an amount of Rs. 1.55 crores in the equity shares of Sasoon Dock Matsya Shakari Samstha Ltd., and continuing the investment so made, and thereby contravened the provisions of section 13(1)(d) read with section 11(5) of the Act. Basing on these two circumstances, learned Assessing Officer came to the conclusion that the shortfall in application of income below 85% of the total income of the trust for the year under consideration is liable to be taxed.

7. Aggrieved, assessee preferred appeal before the learned CIT(A) and contended that a separate income and expenditure account was annexed to the return of income, but the learned Assessing Officer wrongly placed reliance on the receipts and payments account and treated such receipts and payments account as income and expenditure account. It was further contended that the grants are for specific purpose and do not represent the income of the assessee, as they were received, kept and disbursed by the assessee as per the instructions of the Government, without holding any right to utilise such expenses otherwise than in compliance with the directions of the Government of India, but the learned Assessing Officer erroneously considered the specific purpose grants in aid as the income of the assessee. The other contentions of the assessee was that the entire expenditure incurred by the assessee and State Governments from out of the advances has to be taken into consideration for working out utilisation of funds under section 11 of the Act as against the findings of the learned Assessing Officer that the expenditure relating to the year is only to the extent of the amount spent from out of the funds received during the year. In respect of the interest derived on deposits made from out of the grants

received from Government of India, the case of the assessee is that it does not represent the income of the assessee inasmuch as the grant itself does not constitute the income. On the aspect of the investments made in Sasoon Dock Matsya Shakari Samstha Ltd., assessee submitted that the investment was made in the process of implementing the objects of the assessee and that too in the assessment year 2009-10, and, therefore, a contrary view cannot be taken in this year.

8. On a reappraisal of the matter, learned CIT(A) found that the assessee has been maintaining its accounts on sound commercial principles and as per the mandate of the statutory authority, adequate cheques and balances, including observance of the GFR guidelines have been in place and, therefore, rejection of books of accounts by the learned Assessing Officer, without bringing on record any defects in the audited accounts of the assessee is incorrect. Learned CIT(A) allowed the contentions of the assessee holding that the assessee is having a valid registration under section 12AA of the Act; that the assessee has maintained and audited its books of accounts by the independent auditors, hence, there is no scope for the learned Assessing Officer to reject the book; that the accounting policies of the assessee are based on accepted commercial principles of accountancy and made in compliance with the GFR regulations of the Government of India; that the income and expenditure shown in the income and expenditure account are based on commercial principles, and, thus, the excess of income over expenditure reported in the return of income does not suffer from any infirmity which is also duly backed by the audited report in Form No. 10B, resultantly, the learned Assessing Officer tinkering with the same and redrawing of a

different income and expenditure account, is disapproved as discussed; and that the decision of the learned Assessing Officer to deny exemption under section 11 of the Act on the ground of past year's investment in equity shares stands jettisoned for reasons given. Learned CIT(A) accordingly allowed the claim of exemption under section 11 of the Act.

9. Aggrieved, by such a finding returned by the learned CIT(A), Revenue preferred this appeal. It is the submission of the learned DR that the assessee has not been notified by the Government of India under section 10(46) or 10(46A) of the Act, assessee obtained registration under section 12AA of the Act for claiming exemption benefit under section 11 of the Act and, therefore, the assessee is bound to fulfil the conditions stipulated thereunder. The issue involved in this matter is, therefore, that whether the assessee complied with the conditions under section 11 of the Act to avail the benefit thereunder? According to him, the reference to the rule of consistency under *Radhasoami Satsang vs. CIT* (1992) 60 Taxman 248 (SC) is misplaced. Firstly, he contended that there is no record available before us to show whether or not such a claim was involved in the earlier assessment years, or such assessments were under section 143(1) or 143(3) of the Act. Secondly he submitted that rule of consistency cannot be extended to apply to the cases where there was a patent mistake committed by the learned Assessing Officer in the earlier years and to correct such mistake is the compulsion of judicial conscience as observed by the Hon'ble Apex Court in the case of *Distributors (Baroda)(P.) Ltd., vs. Union of India* [1985] 22 Taxman 49 (SC).

10. Next contention of the learned DR is that the assessee Board receives the grants every year and also releases the grants to State Governments every year; that the receipts are accounted as income and grants released as expenditure by the assessee; that in the 'income and expenditure' accounts, Rs. 181,16,39,318/- taken as income for the year consists of grants of earlier years (current year grants are Rs. 146,40,00,000/- only); that the expenditure accounted for the year Rs. 178,12,90,211/- includes the grants released in earlier years; that actual grants released out of current year grants are only Rs. 86,51,80,058/-; and that therefore, for the purposes of income tax, income and expenditure of each year has to be accounted, but the assessee failed to do the same. On this score, learned DR justified the order of the learned Assessing Officer in recasting the income and expenditure account. Learned DR further submitted that the accounting entries made by the assessee do not decide the tax liability and such a liability has to be determined basing the principles and provisions of income tax.

11. Learned DR further submitted that, as could be seen from the income and expenditure for the year that the assessee has not utilised 85% of its income for the objectives and, therefore, assessee cannot seek the benefit of section 11 of the Act. According to him, where 85% of income referred to in section 11(1) of the Act is not applied for the objectives in India, assessee had an option to furnish a statement in form No. 10 to the learned Assessing Officer under section 11(2) of the Act and, therefore, there is failure on the part of the assessee in compliance with the provisions of section 11 of the Act.

12. Per contra, learned AR submitted that all the grants received by the assessee do not constitute its income, nor the funds released to the State Governments are its expenditure, since the assessee is only a facilitating agency, depending upon the Central Government funds even for the salaries of its employees. He submitted that the Government of India releases the specific purpose funds, the spending of which is not in the hands of the assessee, but as per the directions attendant to such grant of funds and, therefore, the view taken by the learned Assessing Officer that it constitutes the income of the assessee is incorrect. He further challenged the method of arriving at the income and expenditure by the learned Assessing Officer by considering the amounts received from Government of India to the tune of Rs. 146.40 crores as receipt and Rs. 86,51,86,058/- the funds released to the State Governments as expenditure stating that the expenditure actually incurred during the year, but not part of the amount spend should also have considered by the learned Assessing Officer.

13. We have gone through the record in the light of the submissions made on either side. It is not in dispute that the assessee is a statutory body and a registered society. It is also not in dispute that it maintains the books of accounts, bills, vouchers and all other requisite supporting documents in respect of the grants received, spent and other activities. Such books are audited by independent auditors. It is an undisputed fact that the assessee has been following the accounting procedure as defined in GFR 230(5) of the Government of India and the directions of the Integrated Financial Division of Ministry of Agriculture, Government of India (IFD) over the years and treating all the grants as liabilities and only

when the grants are utilised by the implementing agencies they are treated as income and when utilisation certificates are received, they are treated as expenditure irrespective of the year in which the grant is received, as per the directions of the Government of India. At no point of time, this method of accountancy followed by the assessee is found fault with.

14. Case of the learned Assessing Officer is that the claim of expenses incurred out of grant released in earlier years and the corresponding claim of receipt cannot be allowed in the current year. Learned Assessing Officer failed to appreciate what exactly the amount the assessee has been treating as income and what the amount the assessee is treating as expenditure. Assessee has been treating only such part of grants that are utilized by the implementing agencies as income and only such part of the funds released to the implementing agencies in respect of which the utilization certificates are received as expenditure. This method of accountancy followed by the assessee in treating the income and expenditure irrespective of the year of receipt of grant has not been appreciated or referred to by the learned Assessing Officer so as to find out any defects or reasons to reject the same. Given the position of the assessee in respect of the funds vis-à-vis the implementing agencies, it is not possible to treat all the grants as receipts and all the allocations as expenditure. Such an approach is not at all scientific, because there is no income element on grant of funds by the Central Government, nor any expenditure incurred merely by allocation. We do not find anything illegality or irregularity in the method of accountancy followed by the assessee in treating the funds utilized by the implementing agencies as

income and the funds covered by the utilization certificate as expenditure. According to us, learned CIT(A) was right in his approach in holding that on an incorrect appreciation of the accounting policies followed by the assessee, the learned Assessing Officer rejected the books, without actually bringing on record any defect in the audited accounts of the assessee.

15. It is true that the principle of res judicata is not applicable to the income tax proceedings and every year is a separate and independent, and merely because the learned Assessing Officer has not made any addition or rejected the claim of exemption under section 11 of the Act, preferred by the assessee in the earlier years, such an erroneous order of the learned Assessing Officer cannot be made to be perpetuated. But, if we accept the contention of the learned DR, then as against the actual grants during the current year to the tune of Rs. 146.40 crores, the assessee spent a sum of Rs. 178.13 crores which includes the expenditure on account of the grants received for the current year as against the earlier year, which is more than 85% of the grants received. Further it disturbs the method of accountancy consistently followed by the assessee. Since the assessee, in the instant case, is consistently treating the grants received from the Government of India and utilised by the implementing agencies as income and the grants released to the State Government, as and when the utilization certificates are received as expenditure, in compliance with the accounting procedure defined in GFR 230(5) of Government of India and the directions of IFD, we are of the considered opinion that the assessee in the instant case has spent 85% of the income in the current assessment year also.

16. Now coming to the aspect of 13(1)(d) of the Act, there is no contradiction to the plea taken by the assessee that such an investment was made in Sasoon Dock Matsya Shakari Samstha Ltd., in the financial year 2008-09 and not during the current year and never in the earlier years any objection on that aspect is taken. It is also not in dispute that registration under section 12AA granted by the authorities in favour of assessee is continuing. In these circumstances, the ground raised by the Revenue cannot be countenanced and is liable to be rejected. In view of this and in view of the detailed discussion given by the learned CIT(A), we do not find any reason to interfere with the impugned order and accordingly confirm the same. Grounds are dismissed accordingly.

17. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on this the 13th day of February, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 13/02/2024

TNMM

Copy forwarded to:

1. Deputy Commissioner of Income Tax, Exemptions Circle, Hyderabad.
2. National Fisheries Development Board, Pillar No. 235, Fish Building,
PVNR Expressway, Rajendra Nagar, Hyderabad.
3. The Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD