

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'SMC' BENCHES :: PUNE

BEFORE SHRI INTURI RAMA RAO, HON'BLE ACCOUNTANT MEMBER

ITA No.1225/PUN/2023
(A.Y. 2016-17)

Lions Comprehensive Eyecare Foundation, C/o Plot No.31, MIDC, Miraj, Sangli-416410. PAN: AAATL 0619 A	vs	ITO, Exemption Ward, Kolhapur.
Appellant		Respondent

Assessee by	:	Shri Kishore B. Phadke, CA
Revenue by	:	Shri Ganesh B. Budruk, DR
Date of hearing	:	13/02/2024
Date of pronouncement	:	15/02/2024

ORDER

This is an appeal filed by the assessee directed against the order of National Faceless Appeal Centre [NFAC], Delhi, dated 25.09.2023 for A.Y.2016-17.

2. Brief facts of the case are that assessee is a charitable trust registered u/sec. 12A of the Income Tax Act, 1961 (for short, 'the Act') on 26/02/1992. The assessee-trust was formed for the benefit of poor and needy eye patients to provide total eye care. Return of income for the A.Y. 2016-17 was filed on 28/03/2019 claiming exemption u/sec. 11 of the Act. Against the said return of income, the assessment was completed by the Assessing Officer (AO) u/sec. 144 of the Act vide order dated 19/12/2018 at an assessed income of Rs. 48,12,32/- by

denying exemption on the ground that assessee was not entitled for exemption as the assessee did not have registration under 12A/12AA of the Act. The AO also disallowed 10% of the revenue expenditure as the assessee has failed to prove the genuineness of the expenditure.

3. Being aggrieved by the order of the AO, the assessee filed an appeal before the NFAC, who vide impugned order allowed the exemption u/sec. 11, however, confirmed the disallowance of 10% of the revenue expenditure as the assessee failed to prove the genuineness of the expenditure even before him.

4. Aggrieved by the order of the NFAC, the assessee is in appeal before this Tribunal by raising the following additional ground of appeal:-

"Without prejudice to the earlier grounds of appeal, appellant contends that, quantum of ad-hoc disallowance of expenses of Rs. 35,95,602/-; together with the surplus of Rs. 12,16,630/- amounts to income of Rs. 48,12,232/- which is about 12.95% of the total receipts of Rs. 3,71,72,650/-. Appellant further contends that, such income of Rs. 48,12,232 is less than permitted accumulation limit of 15% u/sec. 11(1)(a) of the ITA, 1961 and as such, the taxable income ought to be worked out at Rs. NIL."

As the additional ground goes to the root of the matter and is purely legal in nature, requiring no verification of facts, I admit this additional ground and proceed to adjudicate the same.

5. It is submitted that even assuming for argument sake that the disallowance of revenue expenditure is justified, the same would only

go to inflate the income of the assessee trust, which remains unspent for charitable purpose which does not exceed 15% of the total income of the assessee trust, the same should be allowed to carry forward for subsequent application and no addition is called for.

6. On the other hand, Id.Sr.DR did not dispute the above proposition as advanced by the Id.AR.

7. I have heard rival submissions and perused the material on record. I find merit in the submission made on behalf of the assessee trust that disallowance of revenue expenditure would only inflate the surplus income of the assessee trust. Since the surplus income does not exceed 15% of the total receipts of the assessee trust, the same has to be carried forward for subsequent application of this income for charitable purposes. Therefore, no addition is called for. The additional ground of appeal filed by the assessee stands allowed and the other grounds of appeal are dismissed as infructuous.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in open Court on 15th February, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Dated : 15th February, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "SMC" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.