

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Shri Sonjoy Sarma, Judicial Member &
Shri Girish Agrawal, Accountant Member]

I.T.A. No. 1313/Kol/2023

Assessment Year: 2020-21

Brajeswari Radharaman Intergenerations Humanitarian Trust (Bright)	vs	ITO, Ward-1(2), Exemption, Kolkata
PAN: AABTB 9105 E		
Appellant		Respondent

Date of Hearing	31.01.2024
Date of Pronouncement	21.03.2024
For the Assessee	Shri Anil Kochar, AR
For the Revenue	Shri I, Jamir, CIT, DR

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2020-21 is directed against the order dated 05.10.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)'].

2. Brief facts of the case are that the assessee is a trust filed its return of income for the A.Y. 2020-21 declaring total income Nil. The case of the assessee was selected for scrutiny on the following issue:

"i. Trust executing contracts, providing professional services, earning commission incomes or rent (verification as per proviso to section 2(15) or any other section.

ii. Ratio of expenditure on establishment and administration to expenditure on objects of the trusts is high.

iii. Large amount deemed to have been applied for charitable or religious purpose."

3. Later on notice u/s 143(2) as well as 142(1) along with detailed questionnaires were issued upon the assessee. In response to the notices, assessee did not file any submission. However, after issuance of show cause notice submitted its reply before the AO by furnishing various report on e-filing portal i.e. trust deed, audited financial statement along with detailed notes, balance sheet, P&L, certificate of approval u/s 80G, certificate of order u/s 12AA, form no. 10AC, ledger/bill of expenses etc. On examination of the same, the ld. AO disallowed honorarium expenses of Rs. 31,27,452/- and student scholarship expenses of Rs. 52,64,250/- respectively. The ld. AO further on perusal of the financial statement, he noticed that during the assessment year in question assessee has only received donation from Narula Educational Trust amounting to Rs. 8,40,00,000/- and the assessee has failed to prove the creditworthiness of the party from which it has received the donation. Therefore, alleged donation added to the income of the assessee as cash credit. The ld. AO further noticed that the assessee had debited depreciation amounting to Rs. 52,70,543/- from the income and expenditure account. The ld. AO viewed that as per section 11(6) of the Act provides that depreciation shall not be allowed while computing the income subject to application against those assets which have been treated as application in earlier years. Accordingly, depreciation amounting to Rs. 54,70,543/- was disallowed in the hands of assessee.

4. Aggrieved by the above order, assessee went into appeal before the ld. NFAC where the appeal of the assessee was dismissed.

5. Dissatisfied with the above order, assessee is in appeal before the Tribunal raising multiple grounds of appeal. Ground No. 1, 2 & 3 are general in nature therefore need not required to be adjudicated. Ground No. 4, 5 & 6 are inter connected therefore we are going to decide simultaneously.

6. The issue relation to disallowance made by AO and confirmed by ld. CIT(A) in respect of claim of Rs. 31,27,452/- on account of honorarium expenses and Rs. 52,64,250/- on account of student scholarship as claimed by the assessee while filing the return of income. In this context, the ld. AR contended that assessee had submitted the name of the faculty members to whom honorarium payments were made by furnishing details before the AO at the time of framing of assessment order but assessee could not provide the address of such person and mode of payment etc. Therefore, the ld. AO disallowed the claim of Rs. 35,27,452/- at the time of framing of assessment. The ld. AR further submitted before the bench and complete details of honorarium expenses paid to various faculties with their address and other details along with mode of payment, PAN and other services provided by such members at page no. 52 to 55 of paper book submitted before this bench. He also submitted that immediately preceding year also assessee made payment of Rs.

59,63,925/- towards honorarium expenses to various faculties and claim of the assessee was allowed by department. Therefore, the disallowance made by the AO cannot be sustained. The ld. AR further submitted that the assessee being educational trust and in order to facilitate various educational programme invited various faculties from different college universities etc. and payments were made by debiting under the head of honorarium expenses. Therefore, the honorarium expenses are nothing unusual and disallowance of such expenses are uncalled for. Therefore, the ld. AR prayed before the bench to allow the claim of assessee directing the AO to delete the same.

7. Similarly, on the issue of claim of Rs. 52,64,250/- on account of student scholarship. The contention of AR of the assessee is that the assessee's management/trustees decided to waive the amount receivable from the student in respect of college fee outstanding from them which they could not make payment due to their financial crisis. Further during the assessment year in question, the trustee/management committee had decided to make the payment to various meritorious students in order to pursuance their studies. The ld. AR in order to prove the fact he had submitted complete list of such waiver outstanding dues, stream, university registration no., batch period, amount and remarks stating that on which account it was waived by furnishing details in the paper book at page no. 56 to 57. The ld. AR further contended that those details were also submitted before the AO and ld. CIT(A). However, those were

never considered by the authorities below. Therefore, he prayed before the bench to allow the claim of assessee to the extent of Rs. 52,64,250/- on account of student scholarship.

8. We after hearing the rival submission of the parties and perused the material available on record find that details of honorarium expenses made by the assessee during the assessment year in question has furnished the details at paper book at page no. 52 to 55 which clearly reflected such expenses including date of payment, name of the recipient, amount paid, cheque no. towards RTGS/transfer of NEFT along with address, PAN No. and nature of service rendered by them. Therefore, such addition in the hands of assessee is uncalled for. Similarly, the assessee also submits details in respect of scholarship expenses by furnishing details in paper book at page no. 56 to 57 by providing name of the person, stream, university registration no., batch period, remarks/reasons for grant of such scholarship to the meritorious students as well as to such students who have financial hardship. We after having gone through the evidences on record and contention made by ld. AR, we do not find any reason to sustain such addition as made by the AO. We, therefore, viewed that the disallowance made by AO in the instant case without pointing out any defects in the claim made by the assessee. Accordingly, we set aside both the disallowance made by the AO of Rs. 31,27,452/- and Rs. 52,64,250/- in the hands of assessee with a direction to delete the same by setting aside the impugned order passed by ld. CIT(A).

9. Ground no. 7 and 8 are in relation to disallowance of depreciation charge as claimed by the assessee amounting to Rs. 52,70,543/- in its I/E A/c. The ld. AO drawing attention to the bench by showing the consolidated balance sheet of the trust that the alleged disallowance amounting to Rs. 52,70,543/- is wrong and incorrect as the assessee in the income and expenditure account claim was made by the assessee for sum of Rs. 1,03,75,142/-. He further stated that while computation of total income and depreciation of Rs. 1,03,75,142/- was not claimed instead of same was deducted from the total expenditure side and it was not confirming part of expenditure apply towards charitable purposes. Therefore, the addition as made by AO is wrong in the facts indicated above.

10. On the other hand, ld. DR supported the order of authorities below.

11. We have heard the rival submission of the parties and perused the material available on record as well as gone through the evidence submitted by the assessee find that the ld. AO erred in making disallowance of Rs. 52,70,543/- as the assessee is not made any claim towards depreciation in computation of total income. Accordingly, we set aside the disallowance of Rs. 52,70,543/- as made by ld. AO while framing the assessment order. Thus, ground no. 7 and 8 taken by the assessee are hereby allowed.

12. Ground No. 9, 10 & 11 are relates to addition made on account of unexplained cash credit to the tune of Rs. 8,40,00,000/-. The ld. AR stated that the alleged amount received from Narula Educational Trust which is separately assessed to tax PAN No. AAATN 4519 P an amount of Rs. 8,40,00,000/- was donated by the said trust on different dates to the assessee. In the course of assessment proceeding, the ld. AO had issued show cause notice to the assessee to justify the genuineness of the transaction and creditworthiness of donor namely Narula Educational Trust. The assessee responded to the show cause notice issued by the AO furnishing various details before him. However, the ld. AO did not find any suitable explanation submitted by the assessee and observed that donor do not have any taxable income during the year and had claimed refund TDS of Rs. 41,89,158/- by disallowing said donation as unexplained cash credit in the hands of assessee. The ld. AR further stated that Narula Educational Trust had made payments by withdrawing alleged amount from Guru Nanak Institute of Dental Sciences & Research. The ld. AR in order to substantiate its claim drew our attention to the paper book submitting various details of trust from whom donation has been received which contains relevant submission of accounts, list of donation made and copies of registration u/s 12A along with renewal of Narula Educational Trust. He further contended that the donor trust i.e. Narula Educational Trust was formed on 05.08.1999 and has been running Narula Institute of Technology as well as Guru

Nanak Institute of Dental Sciences & Research. The gross receipts of the Narula Educational Trust for the period ending on 31.03.2020 had been Rs. 55.93 crores. The said trust has been regularly assessed to tax and has been issued Registration Certificate u/s 12A of the Act and renewal time to time. The assessee also submitted before the bench the relevant bank statements of the donor. The Narula Institute of Technology as well as Guru Nanak Institute of Dental Sciences & Research are existing trust and donor trust had its transaction with Guru Nanak Institute of Dental Sciences & Research. He also stated that while framing the assessment order, the ld. AO has noted that assessee had filed in response to show cause notice issued by him filing ITR V and bank statement showing that payments were made by Narula Educational Trust to the assessee. The assessee has also submitted the source of the fund in the hands of Narula Educational Trust from its own subsidiaries. We after examining the evidences produced before us, we viewed that the assessee has duly explained the nature and source of the receipt of Rs. 8,40,00,000/- with sufficient documentary evidences in relation with donation received from the donor. Hence we find that it cannot be considered as undisclosed income in the hands of assessee. Therefore, the view taken by AO as well as ld. CIT(A) failed to consider the claim of assessee by holding that the donor trust was an entry provider. Accordingly, we direct the AO to delete the addition of Rs. 8,40,00,000/- made in the hands of assessee u/s 68 r.w.s. 115BBE of the Act with immediate effect. Accordingly, ground no. 9, 10 & 11 are hereby allowed.

13. The remaining grounds are 12, 13 & 14 are consequential in nature therefore need no required to be adjudicated.

14. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.03.2024.

Sd/-

Sd/-

(Girish Agrawal)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 21.03.2024

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- Brajeswari Radharaman Intergenerations Humanitarian Trust (Bright), 3, Suren Tagore Road, Gariahat, Ballygunge, Kolkata – 700019.
2. Respondent – ITO, Ward-1(2), Exemption, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata