

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.306/PUN/2024

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Dadasaheb Somadale Shikshan Prasarak Mandal, Near Kala Maruti, Pandharpur – 413 304 Maharashtra PAN : AAFTS0034B	Vs.	DCIT, Pune
Appellant		Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri Arvind Desai

Date of hearing : 18.04.2024
Date of pronouncement : 19.04.2024

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the National Faceless Appeal Centre, Delhi [‘NFAC’] dated 21.12.2023 for the assessment year 2011-12.

2. Brief facts of the case are that the appellant is a Trust registered under Bombay Public Trusts Act, 1950. It was formed with the object of imparting education. No regular return of income under the provisions of section 139(1) of the Act was filed. The Assessing Officer formed opinion that income escaped

assessment, as the Trust made cash deposit of Rs.40,21,899/- during the F.Y. 2010-11 and therefore, issued notice u/s.148 of the Act on 27.03.2018. The appellant had not complied with either the notice u/s.148 or notice 142(1) of the Act. Therefore, the AO proceeded to frame the assessment order.

3. During the course of assessment proceedings, the AO noticed that the appellant made cash deposit of Rs.40,21,899/-. When the appellant was called upon to explain the source of cash deposit, it was explained that the said cash deposits were made out of the donations received in cash. On failure of the appellant to file the details, such as, Name, Address of the donors, the AO concluded that the said donations are anonymous donations and brought to tax u/s.68 of the Act.

4. Being aggrieved by the assessment, an appeal was filed before the CIT(A) contending that the income of the appellant trust is eligible for exemption u/s.10(23)(iiiab) of the Act. It was also contended that in such case, the addition u/s.68 cannot be made for which reliance was placed upon the judgment of Hon'ble Delhi High Court in the case of *DIT (Exemption) Vs. Raunaq Education Foundation 294 ITR 76 (Delhi)*. However, the ld. CIT(A) confirmed the addition on the ground that the appellant had not

filed the return of income as prescribed u/s.139(4C) in order to claim exemption u/s.10(23)(iiiab) of the Act.

5. Being aggrieved, the appellant is in appeal before the Tribunal in the present appeal.

6. The Id. Authorised Representative submits that the provisions of section 139(4C) have no application for the assessment year under consideration. Thus, he submitted that the CIT(A) ought not to have confirmed the addition from the different reasoning adopted by the AO.

7. On the other hand, the Id. Sr.DR placed reliance on the order of the CIT(A).

8. Heard the rival submissions and perused the relevant material on record. The solitary issue that arises for my consideration is whether in the facts of the case, the Id. CIT(A) was correct in law in denying exemption u/s.10(23C) only on the ground that the appellant had not filed the return of income as prescribed under the provisions of section 139(4C) of the Act. On mere perusal of the assessment order, it would be evident that the addition of cash deposits was made by the AO on the ground that the appellant trust had failed to discharge the onus of proving the genuineness of the donations received. However, on appeal, the Id. CIT(A) while

concurring with the contention of the appellant trust that even the addition made u/s.68 qualifies for exemption u/s.10(23C)(iiiab) proceeded to hold that the appellant trust is not eligible for exemption u/s.10(23C)(iiiab) as the return of income was not filed as prescribed u/s.139(4C) of the Act. The provisions of section 139(4C) of the Act read as under :

“(4C) Every—

- (a) research association referred to in clause (21) of section 10;
- (b) news agency referred to in clause (22B) of section 10;
- (c) association or institution referred to in clause (23A) of section 10;
- (ca) person referred to in clause (23AAA) of section 10;
- (d) institution referred to in clause (23B) of section 10;
- (e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiab) or sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiac) or sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10;
- (ea) Mutual Fund referred to in clause (23D) of section 10;
- (eb) securitisation trust referred to in clause (23DA) of section 10;
- (eba) Investor Protection Fund referred to in clause (23EC) or clause (23ED) of section 10;
- (ebb) Core Settlement Guarantee Fund referred to in clause (23EE) of section 10;
- (ec) venture capital company or venture capital fund referred to in clause (23FB) of section 10;
- (f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10;
- (fa) Board or Authority referred to in clause (29A) of section 10;
- (g) body or authority or Board or Trust or Commission (by whatever name called) referred to in clause (46) of section 10;
- (h) infrastructure debt fund referred to in clause (47) of section 10, shall, if the total income in respect of which such research association, news agency, association or institution, person or fund or trust or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund or Mutual Fund or securitisation trust or venture capital company or venture capital fund is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form⁵⁶ and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act

shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

9. The institution referred to in sub-clause (iiiab) of clause 23(C) of section 10 was inserted in clause (e) of section 139 (4C) by Finance Act, 2016 w.e.f. 01.04.2016 and the same are applicable only from the A.Y. 2016-17. Therefore, the said provisions have no application for the assessment year under consideration. Therefore, the reasoning adopted by the CIT(A) cannot be sustained in the eyes of law.

10. In the result, the appeal of the appellant is allowed.

Order pronounced on this 19th day of April, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 19th April, 2024.
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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