

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य

एवं

श्री संजय शर्मा, न्यायिक सदस्य

के समक्ष

Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER**

I.T.A. No.: 980/KOL/2023

Assessment Year: 2018-19

***Sasha Association for Craft Producers.....Appellant
[PAN: AABTS 5580 N]***

Vs.

ITO, Ward-1(3), Exempt, Kolkata.....Respondent

Appearances by:

Assessee represented by – Sunil Surana, A/R.

Department represented by – P.P. Barman, Sr. D/R.

Date of concluding the hearing : March 26th, 2023

Date of pronouncing the order : April 22nd, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in short Id. 'CIT(A)'] dated 05.08.2023.

2. The brief facts of the case are that the case of the assessee was selected for scrutiny issues relating to the export-import data followed by statutory notices issued u/s 143(2) & 142(1) of the Act. In response to the notices, assessee filed its submission before the AO. After perusing all the submissions of the assessee a show cause notice as a draft assessment order dated

03.03.2021 issued upon the assessee. The case of the assessee was fixed for hearing on 07.03.2021. However, the assessee has failed to file its response/objection against the draft assessment order passed by the AO. Therefore, ld. AO passed the final assessment order as per the draft assessment order framed as earlier by making following addition in the case of assessee:

Income declared as per ITR	Rs. NIL
Add-	
1. disallowed exemption u/s 11 r.w.s. 2(15)	Rs. 24,51,316/-
2. On account of u/s 11(6)	Rs. 9,46,771/-
Taxable Income	Rs. 33,98,117/-

3. Dissatisfied with the above order, assessee went into appeal before ld. CIT(A) where ld. CIT(A) partly allowed the appeal of the assessee with a direction to the AO in order to verify whether in the earlier income of the appellant was exempt u/s 11 of the Act was utilised for acquiring the assets in question or falls within the years when the income has been denied exemption u/s 11 of the Act on the issue of disallowance of depreciation on fixed assets and loss on sale of the car of Rs. 8,41,842/- & Rs. 1,04,929/- respectively. However, in respect of the other issues the grounds taken by the assessee has been dismissed.

4. Aggrieved by the above order, assessee is in appeal before this Tribunal stating that the instant issue in respect of impugned order passed by the ld. CIT(A) by confirming the direction of the AO by treating the activities of the assessee as business or trade, as when the assessee is engaged in charitable activity of giving relief to the poor which were duly accepted by the Department in earlier years and the ld. A/R submitted substantial argument before the Bench placed a copy of the judgment rendered by the Tribunal in assessee's own case ITA No. 439-441/KOL/2017 in respect of AY 2011-12 & AY 2012-13 where the identical issue involved in which the Department went into appeal before the Tribunal against the order passed by ld. CIT(A) by which treating the assessee for providing relief to the poor by allowing assessee's

claim made u/s 11 of the Act. Ld. A/R brought to our notice by placing the relevant paragraph which are as follows:

"We advert to the relevant facts pertaining to the above sole issue. There is no dispute that the assessee-society is registered body with the Registrar of Societies, West Bengal since 18.03.1988. Its objects clauses read as under:-

"3. The objects for which the Society is established are:-

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(i) To assist Producers/Artisans working in or with welfare organizations, co-operative and Registered Societies, and others, engaged in cottage and small scale industries to marketing their products using any suitable marketing channel in the country or abroad.

(ii) To assist welfare organizations, co-operative societies, Registered Societies, people engaged in cottage and small scale industries in the form of advances, locating suitable raw material sources, design and technical inputs whenever required in order to meet market commitments or requirements;

(iii) To arrange exhibition and meals, organize showrooms/sales counter within the Country or abroad for sale, display of products of the producers associated with the society, with or without help of any other organization having similar aims and objectives that of the society or in collaboration with the Government Departments (Central or State) and Semi Government Organisations;

(iv) To take over the assets and liabilities of any society working or defunct with objects similar to that of the Society, subject to approval by the members at a special meeting called for the purpose;

(v) To take help/assistance of experts or of any organization for the betterment of the craft products viz design, quality, production and for the economic, social and cultural upliftment of the producers irrespective of caste, creed or sex;

(vi) To cooperate and collaborate with national, international and other agencies working with similar and/or allied objectives as this society) preferably on specific projects;

(vii) To provide relief to the distressed people during natural calamities viz. famine, drought, flood, earthquake, fire etc.

(viii) To receive or accept donations, gifts, grant-in-aid, movable or immovable property from either Central or State Government, Municipalities, Corporation, District and Local Bodies or benevolent person or persons or societies, Trusts, Limited Companies Public or Private, Cooperative body, philanthropic organisations in India or abroad on such terms and conditions as the Managing Committee may consider fit and proper;

(ix) To hire, purchase, build, acquire or take on rental or lease any movable and immovable property or exchange any rights and privileges for the purposes of the society;

(x) To borrow money with or without security and/or with or without interest that may be required for the purposes of the society;

(xi) To invest fund of the society in such manner as the Managing Committee may think fit for the safety and benefit of the society and to convert or change such investments as per decision of the Managing Committee and according to the Acts & Rules of the Government;

(xii) To enter into any liability for the purpose of the society and to repay or discharge any debt or liability by mortgage, charge, pledge, hypothecation or assignment of any property of the society in such manner as the Managing Committee deems fit and proper;

(xiii) To incorporate and/or grant affiliation to social service societies with objects; similar to any or all of the society and to cooperate financially or otherwise with any person or persons in aid of and in furtherance of such objects;

(xiv) the society shall not distribute amongst its members any money in any form at all which the society may have earned as profit and such profits shall be applied solely for the purpose of carrying out the aims and objects of the society. This shall not, however, prevent payment of remunerations to any person or persons or to any member in return for any Services actually rendered to the society;

(xv) To do all other activities that are incidental or conducive to the attainment and furtherance of the aims and objects of the society;

(xvi) To make rules and regulations in connections with the management and control of the society;

4. The income and properties of the society whatsoever derived or obtained shall be applied solely towards the promotion of the objects of the society and no portion thereof shall be paid or divided amongst any of its members by way of profits."

4. The assessee applied for its section 12A registration read with 80G of the Act on 03.03.1989 in the prescribed Form 10A. The DIT(E) accepted its registration application vide order dated 27.11.1990 forming part of record

before us. There is no dispute between the parties at all that assessee's main activities are to work with the poor, marginal artisans and woman craft producers as well as rendering necessary assistance to them in enterprise development, skills technical upgradation and providing market excess. The Assessing Office has admittedly treated the assessee to be eligible for exemption right up to AY 2007-08, His regular assessment order dated 30.11.2009 to that effect forms part of the paper book at page 27.

5. We now come to the dispute between the parties. The Assessing Officer framed re-assessment/ assessments (supra) in the impugned three assessment years applying section 2(15) (1 proviso) of the Act inter alia on the grounds that its IEC, VAT and CST registration indicated that it is engaged in the business of retailer, exporter and wholesaler of the artisans products concerned having exorbitant profit margin of 35% on production cost (supra), there was no restriction on its membership, the relevant relief of the "poor" clause was nowhere incorporated in its objects and its dissolution clause did not prevent disbursement of profits to trustees and other parties etc. He therefore invoked sections 11, 12 & 13(8) of the Act to disallow assessee's exemption claim.

6. The CIT(A) reverses Assessing Officer's above stated action in his common lower appellate order under challenge. He has first of all considered visuals of the assessee providing all help to a variety of artisan of groups as well as individuals. The said detailed discussion is not reproduced in verbatim for the sake of brevity as it runs into seven pages in lower appellate findings. Learned Departmental Representative is fair enough in not disputing the same during the course of hearing before us. The CIT(A) therefore takes into account CBDT's Circular No.11/2008 making it clear that relief of the "poor" in section 2(15) indicates relief to indigent artisans as well. The assessee has therefore succeeded in lower appellate proceedings.

7. We have given our thoughtful consideration to rival contentions. Learned Departmental Representative reiterates Revenue's stand that the assessee has been wrongly held to be cover relief of the "poor" charitable purpose who rather advances objects general public utility leading to exclusives u/s. 2(15) 1st proviso squarely applicable in its case as it has been carrying out the activities concerned in the nature trade, commerce or business only. We find no merit in Revenue's instant sole substantive ground. The Board's circular (supra) hereinabove makes it sufficiently clear that the former category "relief of the poor" includes within its ambit any purpose such as relief to indigent artisans as under:-

"EXEMPTION UNDER SECTION 11 IN CASE OF ASSESSEE CLAIMING BOTH TO BE CHARITABLE INSTITUTIONS AS WELL AS MUTUAL ORGANISATIONS
CIRCULAR NO. 11/2008, DATED 19-12-2008

Definition of Charitable purpose under section 2(15) of the Income-tax Act, 1961

Section 2(15) of the Income Tax Act, 1961 (Act) defines "charitable purpose" to include the following.:-

- (i) Relief of the poor
- (ii) Education
- (iii) Medical relief and
- (iv) the advancement of any other object of general public utility.

An entry with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of charitable purpose'. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of

(a) any activity in the nature of trade, commerce or business; or (b) any activity of rendering any service in relation to business;

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

2. The following implications arise from this amendment-

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

2.2 Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid, Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(44) or the seventh proviso to section 10(23C) which are that

(i) the business should be incidental to the attainment of the objects of the entity, and

ii) separate books of account should be maintained in respect of such business.

Similar entities whose object is 'education ' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on account of commercial activity subject to the conditions mentioned above.

Learned Departmental Representative fails to rebut the fact that Assessing Officer has himself accepted the assessee to have been working with poor, marginal artisans and women crafts producers assisting them in enterprise development, skills and technical upgradation as well as in providing them market access for their corresponding products. It is in this backdrop of facts that we observe the assessee to be covered under the specified category of relief of the poor" as per Board's beneficial circular issued us 119 of the Act. We therefore adopt judicial consistency to conclude that the Revenue's instant sole grievance deserves to be rejected. The CIT(A)'s common order under challenge in all these three appeals is affirmed.

8. These three Revenue's appeals are accordingly dismissed."

5. on the other hand, ld. D/R supported the decisions rendered by the ld. CIT(A) while passing the impugned order stating that the appeal of the assessee shall be liable to be dismissed.

6. We, after going through the fact of the case and perusing the material available in the record and also considering the judgment rendered by the Tribunal in the case of the assessee where claim of the assessee was allowed by the Tribunal by dismissing the Revenue's appeal in ITA No. 439-441/KOL/2017 treating the assessee for providing relief to the poor by allowing assessee's claim made u/s 11 of the Act. Accordingly, applying the same ratio rendered by this Tribunal, we allow the instant appeal of the assessee by setting aside the order passed by the authorities below and direct the AO to allow the claim of the assessee in terms of our above direction.

7. So far regarding the issue of adding back of Rs. 8,41,842/- referring the amendment made in Section 11(6) of the Act on account of depreciation as not allowable application since the purchase of the fixed asset has already been considered as application without appreciating the fact by ld. CIT(A) as well as ld. AO. The said depreciation was already added back in the computation and return filed by the assessee. Therefore, such disallowance is also not sustainable. Similarly, ld. AO as well as ld. CIT(A) erred in adding back Rs. 1,04,929/- referring the amendment in Section 11(6) of the Act on

account of loss on sale of car as non-allowable application since the purchase of fixed asset has already been considered as application without appreciating the reply filed by the assessee that said amendment was restricted to the depreciation and not applicable in the case of loss or profit on sale of the assets.

8. On the other hand, ld. D/R supported the contention made by the authority below.

9. We have heard the rival submission and perused the material on record. The instant addition made by the AO in respect of claim of assessee's depreciation of Rs. 8,41,842/- and loss on sale of car of Rs. 1,04,929/- is not sustainable. Accordingly, such addition is hereby set aside and grounds taken by the assessee are hereby allowed. In terms of the above, appeal of the assessee is allowed.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 22nd April, 2024.

Sd/-

[Rajesh Kumar]
Accountant Member

Sd/-

[Sonjoy Sarma]
Judicial Member

Dated: 22.04.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Sasha Association for Craft Producers, 1C, Chatu Babu Lane, CIT Road, Kolkata-700 014.**
2. **ITO, Ward-1(3), Exempt, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata