

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं डा0 मीठा लाल मीना, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & DR MITHA LAL MEENA, AM

आयकर अपील सं./ITA No. 776/JP/2023  
निर्धारण वर्ष / Assessment Year : 2020-21

Shri Namdev Samaj Tank Shastriya Vikas Samiti and Shodh Sansthan New Housing Board, Madan Ganj, Kishangarh, Ajmer, 305 801	बनाम Vs.	The ITO (Exemption) Jaipur Road, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAIAS 1835 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri C.M. Agarwal, CA  
राजस्व की ओर से / Revenue by: Shri Anoop Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 31/01/2024  
उदघोषणा की तारीख / Date of Pronouncement: 10 /04/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 14-12-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2020-21 raising therein following grounds of appeal.

“1. That order of ld. CIT(A) is bad in law and on facts in not allowing the expenses incurred on charitable activities out of receipts on this account.

2. The Id. CIT(A) is not justified in disallowing the exemption u/s 11 of the Act as the return was filed within the time allowed u/s 139(4) of the act.”

2.1 Apropos Ground No. 1 & 2 of the assessee, the facts as emerges from the order of the Id. CIT(A) dismissing the appeal of the assessee at para 4 to 6 of his order as under:-

“4. DECISION ON GROUNDS (1) & (2):-

4.1. The brief facts are that the assessee is a trust registered u/s 12A bearing registration no. AAIAS1835L/08/2016-17/S-333/12AA dated 31- 3-2017 and also registered u/s 80G bearing registration no. AAIAS1835L/08/2017-18/S-062/80G. The assessee filed return of income for AY 2020-21 on 29-05-2021 which was processed by CPC u/s 143(1) on 21-03-2022. In the return of income the assessee has shown the gross receipts at Rs 6,62,396/- and amount applied/utilized for charitable purpose amounting to Rs.6,68,713/-. Therefore the assessee claimed that it is eligible for tax exemption. However, the CPC Bangalore has not allowed the exemption u/s 11 as the assessee has not filed the ITR within the due date of 15-02-2021. The relevant screenshot of 143(1) is mentioned at Page 3 of his order. Subsequently, the assessee filed rectification application to the CPC and the CPC has passed rectification order u/s 154 on 30-05-2022 wherein also the total income was computed at Rs.6,62,396/- without allowing exemption u/s 11. The relevant screenshot of order u/s 154 is mentioned at page 3 of his order.

The appeal is filed against the order u/s 154,

42. I have gone through the facts of the case. Vide Intimation u/s 143(1)(a) dated 21-03-2022 issued by CPC, Bangalore, wherein the assessee's claim for exemption u/s 11(2) of the Act was declined, for the reason that the same was to be allowed only if return of income were furnished electronically within the "due date specified u/s 139(4A) of the Act. For the AY 2020-21 the due date to file ITR is 15-02-2021 whereas the assessee filed ITR on 29-05-2021.

4.3. The provisions of section 12A (ba) Income Tax Act 1961 provides that the exemption under Section 11 of Income Tax Act 1961 can be availed only if the return of income was filed in the manner prescribed under the provisions of section 139(4A) of the Act which in turn requires that an assessee claiming exemption of income under Section 11 Income Tax Act 1961 to file the return of income within the due date prescribed under Section 139(1) of the Income Tax Act 1961.

4.4. In order to avail the exemption under Section 11, it is a mandatory condition that the return of income should be filed in the manner prescribed under sub-section (4A) of section 139 of the Act. In the assessee's case, the return of income was admittedly filed beyond the due date prescribed under Section 139(4A) of Income Tax Act. Hence, assessee was not entitled for exemption under Section 11 Income Tax Act 1961.

4.5. The provisions of Income Tax Act had not conferred any discretion on the assessing authority or the appellate authority to condone the delay in filing the return of income.

4.6. In the absence of any discretionary power, neither the assessing authority nor the appellate authority can relax the provisions of the Statute

4.7. In this connection, it is pertinent to mention the judgment of Honorable Supreme Court in the case of WIPRC Ltd reported as [2022] 140 taxmann.com 223(SC) wherein the Apex Court held that the exemption provisions of the Act are to be complied with strictly and literally and the same cannot be construed as procedural requirement. The judgment is applicable to the present case as the appellant has not complied with the conditions to claim exemption u/s 11 of the Act.

4.8. For detailed reasons cited as above, the rectification order u/s 154 dated 30-05-2022 issued by CPC, Bangalore for AY 2020-21 does not warrant any interference on facts and in law. The Grounds of appeal raised by the appellant are dismissed.

5. Ground (3) is general in nature and is not adjudicated.

6. In result, the appeal is DISMISSED.”

2.2 At the outset of hearing, the ld. AR of the assessee prayed that the ld. CIT(A) has wrongly dismissed the appeal while as the issue as mentioned in his appeal is totally covered the by the order of ITAT Chennai Bench in the case of Kingston Educational Trust vs DCIT, CPC, Bengaluru (ITA No. 567/CHNY/2019 dated 21-11-2019) and accordingly the same should be allowed.

2.3 On the other hand, the ld. DR vehemently supported the order of the ld CIT(A) and refuted the arguments advanced by the ld. AR of the assessee..

2.4 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee Trust was created on 12-11-1999 and registered u/s 12AA of the I.T. Act, 1961, w.e.f. 01-04-2016 vide registration no. AAIAS1835L /08/2016-17/5-333/12AA, dated 31-03-2017 of the CIT, Exemption Jaipur (APB 1-2). The trust is regularly assessed to tax and allowed the benefit of exemption u/s 11 year after year. It is noted that there appears no change in objects/activities of the Trust during the previous year relevant to the assessment year under consideration, For the impugned assessment year the Trust filled its return of income u/s 139(1) on 29-05-2021 in ITR-7 showing Nil income after claiming benefit of exemption u/s 11/12AA which is apparent from the return of income itself (Ack. No. 638630910300522). The Audit Report u/s 12A (b) in Form 10B was duly filed on 29-05-2021. From all these facts it is apparently clear that the assessee Trust deserves to be allowed the benefit

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of exemption u/s 11 of the Act while filing the return of income on 29-05-2021. It

is also noted that on the basis of above details the ACIT, CPC, Bangalore while processing the return u/s 143(1) on 21-03-2022 denied the benefit of exemption u/s 11 / 12AA of the Act and assessed the income of Trust treating its gross receipts of Rs. 6,62,396/- as its income, creating demand of Rs. 71,210/- while making the processing u/s 143(1). However, the CPC did not accept the rectification request of the assessee Trust and rejected the same without any reason and without giving any opportunity of being heard. From the above facts, the Bench noted that the assessee Trust qualifies for benefit of exemption u/ s 11 of the Act and ACIT, CPC, Bangalore has taken hyper technical view of the matter and declined the benefit of exemption u/ s without any basis and the CPC has taxed the gross receipts of Rs. 6, 62,396/-. It is settled principal that what is to be taxed is the surplus income and not the gross receipts. We also noted that during the previous year relevant to the A.Y. 2020-21 out of gross receipts of Rs. 6,62,396/- the assessee Trust had incurred expenditure of Rs. 6,68,713/- leaving no surplus. Therefore, the AO should have allowed expenditure of Rs. 6 ,68,713/ relating to the assessment year under consideration. In this regard reliance is placed on the recent decision of Hon'ble ITAT, Chennai in the case of 'Kingstion Education' Trust V. DCIT, CPC, Bengalure, in ITA NO. 657/CHNY/2019, dated 21-11-2019 wherein the Bench held as under:-

"8. We heard the rival submissions and perused the material on record. While processing the return of income under the provisions of Section 143(1) of the Act, the Assessing Officer is expected to carry on adjustment in respect of items which are prima facie inadmissible. In the present case, though the assessee does not enjoy exemption u/s.12AA of the Act, he filed return in ITR 7, he offered to tax net income earned from running of school. The Assessing Officer treated gross receipts as taxable income and levied tax at maximum marginal rate of tax. The approach of the Assessing Officer is totally untenable as the word "taxable income" does not mean gross income. The Hon'ble Lahore High Court in the case of Nagin Chand Shiv Sahai vs. CIT, Punjab (1938) 6 ITR 534w (Lah) had held that the word "income" is not used in the meaning of money received but is used in much wider sense and it connotes the assessable figure arrived at after accounting for all the legitimate deductions and exemption. This view was reiterated by Hon'ble Madhya Pradesh High Court in the case of Kaluram Ganeshram (HUF) vs. CIT, (1988) 172 ITR 154. Therefore in the present case, when the Assessing Officer considered the gross receipts as income, he should also have considered the expenditure claimed to be incurred in connection with earning of gross receipts. In the event, he feels that it requires verification whether or not, the expenditure was incurred for earning gross receipts then the only option available to the Assessing Officer is to convert the case into scrutiny assessment. The Assessing Officer cannot ignore the information contained in other part of return of income which is against him. The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from the assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. It is impossible to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed to have exercised it in a proper and judicious manner. In any event the Assessing Officer should have acted fairly in disposing the petition filed u/s.154 of the Act, which he failed to do so and we highly deprecate the practice adopted by the Assessing Officer and the Id. CIT(A) had also not applied his mind and upheld the order of the Assessing Officer. We reverse the orders of the lower authorities and allow the appeal of the assessee.

From the above, the Bench noted that the issued raised by the assessee is fully covered from the decision of ITAT Chennai Bench in the case of Kingston EducationTrust vs DCIT (supra). Hence, in view of the above facts, circumstances of the case and the decision of Chennai Bench, the Bench does not find merit in the order of the Id. CIT(A) and thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 10 /04/2024.

Sd/-

( डा० मीठा लाल मीना )  
(Dr. Mitha Lal Meena)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10 /04/2024

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

\*Mishra

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

1. The Appellant- Shri Namdev Samaj Tank Shastriya Vikas Samiti and Shodh Sansthan
2. प्रत्यर्थी / The Respondent- The ITO, Ward-7(1) ,Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.776/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar