

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.519/Bang/2024
Assessment year : 2017-18

M/s. Dr. M. Nagaraju & Renuka Nagaraju Charitable Trust (R), Vaderahalli Village, Harohalli Hobli, Kaggalahalli, Ramanagar, Kaggala Halli B.O. – 562 112. PAN : AAATM 8955C	Vs.	The Income Tax Officer (Exemptions), Ward 2, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Siddesh Nagaraj Gaddi, CA
Respondent by	:	Shri Srinath S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.05.2024
Date of Pronouncement	:	21.05.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1060988365(1) dated 15.02.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2017-18 on the following grounds:-

“ 1. The order of assessment passed by the learned AO in so far as it is against the appellant, is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The Learned CIT(A) has erred in law and on facts in not passing the order in accordance with the provisions of section 250(4)/(6) of the Act;

3. In the absence of proper service of notice/order, the impugned reassessment order is bad in law and against the principles of natural justice.

4. The learned AO is not justified in holding that the appellant is not entitled to claim donation paid to the various trusts for a sum of Rs. 91,53,000 /- as the application of income u/ s 11 of the Act under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the right to seek a waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/ s. 234-B of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered

On the basis of the above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayer that the order passed under section 250 of the Act, to the extent, it is against the Appellant, be quashed and the relief sought to be granted”

2. Briefly stated the facts are that the assessee filed return of income on 11.10.2017 declaring NIL income after claiming exemption u/s. 11 of the Act. The case was selected for scrutiny and statutory notices were issued to the assessee. The AO from the documents furnished by the assessee noted that assessee is granted registration u/s. 12A(a) by the CIT, Mysore vide No.Trust/Mys/102/12A/97-08 dated 19.02.1998. Income of the trust is derived from interest from fixed deposits and savings bank account. On examination, it was noted that

assessee has donated to the tune of Rs.95,13,000/- to 11 organizations, out of which 7 are not registered u/s. 12AA/12A(a) of the Act and therefore the payments made to unregistered institutions by the assessee to the extent of Rs.91,53,000 cannot be regarded as application of income. The AO relied on the following decisions and made addition of Rs.91,53,000:-

- CIT v. Shamnur Savithramma[2011] 11 taxmann.com 59 (Kar)
- CIT v. Sarladevi Sarabhai Trust No.2, 172 ITR 698 (Guj)
- CIT v. Shriram Memorial Foundation, 269 ITR 35 (Del)
- CIT v. Hindusthan Charity Trust, 139 ITR 913 (Cal)
- CIT v. U.P. Forest Corporation, 220 ITR 945 (SC)
- ITO(E) v. M/s. The Trust Association of the Advent Christian Conference of India Pvt. Ltd. (ITAT, Chennai)

3. The assessee filed appeal before the CIT(Appeals). The CIT(Appeals) issued three notices. However, there was no response from the assessee's side. Accordingly the CIT(A) dismissed the appeal of the assessee observing that mere raising of grounds of appeal is not sufficient to adjudicate the issues on merits. Aggrieved, the assessee is in appeal before the ITAT.

4. The ld. AR of the assessee submitted that the CIT(Appeals) issued notices on 27.01.2021 with regard to information regarding Vivad Se Vishwas Scheme. The second notice was dated 31.08.2022 asking for submissions in respect of grounds of appeal. Thereafter the CIT(A) issued notice on 09.01.2024 for compliance and the due date was 24.01.2024. The ld. AR submitted that the managing trustee/founder aged about 82 years being the sole manager of trust

affairs doesn't frequently check his mail due to age and focusses mainly on day to day activities and therefore he missed the notices sent by the CIT(A). He submitted that the CIT(Appeals) decided the appeal in a hasty manner without giving sufficient opportunity to the assessee and without going into the merits as per section 250(4) and 250(6) of the Act. He further requested for deletion of the addition and relied on the decision on the following in support of assessee's case:-

- Bombay High Court judgment in the case of Pr. CIT v. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407
- CBDT Instruction No.1132 dated 5.1.1978
- CBDT Circular No.8/2002 – Explanatory notes on provisions relating to direct taxes.
- St. Josephs Convent Chandannagar Ed. Soc. V. JCIT [2016] 70 taxmann.com 21 / 158 ITD 1022 (Kol)
- St. Joseph's Monastery [2022] 137 taxmann.com 133 (Karnataka)

5. The Id. DR relied on the order of the AO and submitted that the CIT(Appeals) gave various opportunities, but the assessee did not avail the same. The decisions relied on by the AO for making the addition are very much applicable to present facts. The decisions relied on by the Id. AR are not applicable.

6. Considering the rival submissions, we note that during the course of assessment proceedings the AO noted that the donations given to 7 organisations which are not registered u/s. 12AA/12(A)(a) and made disallowance of Rs.91,53,000. The CIT(Appeals) issued three notices and dismissed the appeal in the absence of assessee's submissions without going into the merits. In the interest of justice, we

remit the appeal back to the CIT(Appeals) for fresh consideration and decision as per law after giving opportunity of being heard to the assessee. The assessee is directed to update its email id, telephone/mobile no. and communication address with the department and comply with the notices issued with all relevant documents in support of its case, without seeking unnecessary adjournment for early disposal of the case.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 21st day of May, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st May, 2024.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.