

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

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

ITA No.988/Bang/2023
Assessment year : 2013-14

M A J Foundation, No.41/3, Vinayaka Nagar, Hessarghatta Road, Chikbanavar, Bangalore – 560 090. PAN : AABTM 4257C	Vs.	The Income Tax Officer, Ward 2 (Exemption), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri G. Venkatesh, Advocate
Respondent by	:	Shri Srinath S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	07.05.2024
Date of Pronouncement	:	22.05.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1056721264(1) dated 03.10.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2013-14 on the following grounds:-

“ 1. The impugned order of the Commissioner of Income Tax (Appeals), Income tax department, National Faceless Appeal Center, Delhi, [for short `CIT(A), NFAC'] passed under section 250 of the Income Tax Act, 1961, in so far the same is against the appellant, is

opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. *The learned CIT(A), NFAC erred in confirming the invoking of the provisions of section 13(1)(c)(ii) of the Act and thereby denying the exemption under section 11 and 12 of the Act on the facts and circumstances of the case.*

3. *The learned CIT(A) is not justified in confirming the invoking of the provisions of section 13(1)(c)(ii) of the Act by merely stating that the contention of the Assessing Officer has not been challenged in satisfactory manner on the facts and circumstances of the case.*

4. *The learned CIT(A) erred in observing that nothing has been written on the issue of loans and that only general submissions have been made without taking into consideration the detailed submissions made by the appellant along with documentary evidences brought on record on the facts and circumstances of the case.*

5. *The impugned appellate order passed by the learned CIT(A), NFAC is in gross violation of principles of natural justice in as much as the CIT(A), NFAC ought to have provided adequate opportunity to the appellant to make submissions and produced documentary evidences more so when the appellant has made specific request to that effect on the facts and circumstances of the case.*

6. *The learned CIT(A), NFAC and also the assessing officer failed to appreciate that the Trust has not extended any loan to the trustees but has only advanced amounts towards construction of hostel for use by the Trust on the land belonging to them which does not under attract the provisions of section 13(1)(c)(ii) of the Act on the facts and circumstances of the case.*

7. *The lower authorities have misconstrued that the entire property is funded by the Trust and that the trustees have utilized / mis-utilized the funds of the Trust for their personal use which is factually incorrect on the facts and circumstances of the case.*

8. *The lower authorities ought to have appreciated that the transactions with the trustees by the Trust is entirely on the same footing as it would have with any third party and hence there can be no question of invoking the provisions of section 13(1)(c)(ii) of the Act on the facts and circumstances of the case.*

9. *The learned CIT(A), NFAC failed to adjudicate the specific ground nos. 3 and 4 before the CIT(A) relating to disallowances of Rs.25,00,000/- and Rs.27,72,490/- respectively more so when there are specific written submissions in para 5 and 6 of the submissions on the facts and circumstances of the case.*

10. *The lower authorities ought to have appreciated that the lease deposit payment of Rs.25,00,000/- is allowable as application of income even though the same is capital expenditure on the facts and circumstances of the case.*

11. *The lower authorities ought to have taken note that the in the case of trust its income is computed by allowing deduction of application of income which consists of both capital and revenue expenditure and thus, there is no occasion to exclude the payment of lease deposit of Rs.25,00,000/- on the facts and circumstances of the case.*

12. *The lower authorities also ought to have considered that the claim of hostel expenditure of Rs.27,72,490/- could not have been disallowed as unpaid during the year when the appellant maintains the books of account on accrual system of accounting and there is no statutory prohibition whatsoever in allowing the same on the facts and circumstances of the case.*

13. *The appellant craves for leave of this Hon'ble Tribunal, to add, alter, delete,*

amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

14. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.”*

2. Briefly stated the facts of the case are that the assessee filed return of income for AY 2013-14 on 30.9.2013 declaring NIL income. Subsequently the case was selected for scrutiny under CASS and statutory notices were issued to the assessee. The assessee is granted registration u/s. 12A vide No.DIT(E)BLR/12A/Vol.II/M-627/W-2/2005-06 dated 31.10.2005. Copies of trust deed and registration

certification u/s. 12A was submitted by the assessee. The AO noted from computation of income that assessee has reduced revenue expenses to the extent of Rs.2,84,58,504 from gross receipts to arrive at the net surplus. On close verification of revenue receipts the AO noted that revenue expenditure of Rs.2,84,58,504 is inclusive of lease deposits made towards leased buildings amounting to Rs.25,00,000. In this regard, assessee was asked to justify how the refundable deposit can be considered as revenue expenditure. The assessee has not filed any explanation. Accordingly Rs.25,00,000 was excluded from the revenue expenditure. The AO further noted that the assessee has debited a sum of Rs.27,72,490 on account of hostel expenditure which is found to be unpaid during the year. Accordingly it was also disallowed from the revenue expenditure. To sum up, the AO computed total revenue expenditure of Rs.2,31,86,014 and excess of income over expenditure was arrived at Rs.1,74,18,159 (4,06,04,166 – 2,31,86,104). Resultantly the gross surplus was considered as above.

3. Further the AO noted from the balance sheet that assessee has given loan without any security to the trustees as under:-

i)	J. Arif Ahmed	-	Rs. 72,43,716
ii)	Neelam Ahmed	-	<u>Rs. 97,67,682</u>
	Total	-	<u>Rs.1,70,11,398</u>

3.1 In this regard the assessee submitted that this amount is advanced to the trustees on their own request and it is interest free in nature and not secured. The AO further verified and noted that these amounts are utilised to acquire immovable property in the name of

trustees (individual capacity) and the said property leased out to the institution in lieu of rent i.e., trustees have got the double benefit. The AO after considering the submissions concluded that there is clear violation of section 13 and invoked section 13(1)(c) and denied exemption u/s. 11 and 12 as claimed by the assessee from the surplus of the relevant AY and it was treated as AOP and brought to tax.

4. Aggrieved from the AO's order, the assessee filed appeal before the CIT(Appeals). The CIT(Appeals) after considering the entire submissions confirmed the order of the AO.

5. The Id. AR reiterated the submissions made before the lower authorities and submitted that AO has not given proper opportunity to assessee to explain the objections raised by him. Only three opportunities were granted. The CIT(Appeals) has not adjudicated ground Nos.3 & 4 taken before him. The CIT(A) has wrongly adjudicated the appeal of assessee without going into the documents submitted before him. The AO has also concluded that trustees have utilised the loan amount to acquire immovable property in their individual capacity and have leased out the same to the institution for rent. This is entirely unsustainable in law. The loan given to the trustees is for buying land for construction of nursing college. The CIT(Appeals) has also not granted proper opportunity to the assessee. The observation of the CIT(Appeals) are rather general and superficial which is entirely unsustainable in law. In fact despite the assessee making specific submissions and enclosing documentary evidence in

support of its submissions, no specific finding is given. To the contrary, factually incorrect finding has been rendered that “nothing has been written on issue of loans and how the AO has wrongly invoked the provisions of section 13(1)(c)(ii) of the Income Tax Act.” The CIT(A) has decided only grounds No.5, 6 & 7 relating to invoking provisions of section 13(1)(c)(ii) and taxing amount of Rs.1,74,18,159.

6. The Id. DR relied on the order of the lower authorities and submitted that the assessee is a trust and has given deposit which has been charged to Income & Expenditure account and hostel expenditure is not paid upto the year end and has been claimed as revenue expenditure, this should not be allowed. Further the assessee has given interest free loan to the two trustees of Rs.1,70,11,398 interest free on which building has been constructed and assessee is also paying lease rent for utilisation of the same building and value of the land will be increased after passing of time and only the trustees will get benefit of the enhanced value of the land. It clearly shows that trustees are getting dual benefits. Even as per the observation of the AO, the trustees have taken loan which is interest bearing and assessee has given interest free loan to trustees. Mr. Arif Ahmed has taken loan of Rs.46 lakhs for construction of house @ 13% from Union Bank of India, Jayanagar Branch, whereas the assessee has given loan interest free. Accordingly he submitted that both the lower authorities are justified.

7. Considering the rival submissions, we note that ground No.3 & 4 has not been decided by the CIT(Appeals) and assessee submitted that loan was given to trustees for constructing nursing college and this fact has not been examined by any of the authorities below. Hence, in the interest of justice, we remit this issue as well as exemption u/s. 11 to the CIT(Appeals) for fresh consideration and decision as per law after giving opportunity of hearing to the assessee. The assessee shall produce all the documents in support of his case and not seek unnecessary adjournment for early disposal of the case. The assessee has also filed additional evidence before us containing pages 148 to 180. Since we have remitted the issue to the CIT(Appeals) for fresh consideration, therefore the additional evidence is not admitted and assessee is given liberty to file these documents before the CIT(Appeals).

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 22nd day of May, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 22nd 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.