

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. Nos. 374 & 375/Kol/2024
Assessment Year: 2020-21 & 2021-22

Pratap Chandra Sau Welfare Trust (PAN: AABTP 6065 D)	Vs.	ITO, Ward-38(1), Midnapore
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	09.05.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.05.2024
For the Appellant/ निर्धारिती की ओर से	Shri Soumitra Choudhury, Advocate Shri P. Sarkar, Advocate
For the Respondent/ राजस्व की ओर से	Shri Sanjoy Paul, Sr. D.R

ORDER / आदेश

Per Rajesh Kumar, AM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-Addl./JCIT-10, Mumbai (hereinafter referred to as the Ld. CIT(A)"] even dated 05.01.2024 for the AY 2020-21 & 2021-22 respectively.

2. Since issue raised in both the appeals are common, therefore these appeals clubbed together and heard together and being disposed of by this consolidated order for the sake of brevity and conveyance. First of all we shall take ITA No. 374/Kol/2024 A.Y. 2020-21.

3. The only common issue raised in ground nos. 2,3 & 4 is against the order of Ld. CIT(A) confirming the order passed by AO, CPC wherein the entire expenses amounting to Rs. 1,36,39,854/- were disallowed.

4. Facts in brief are that the assessee filed return of income u/s 139(4) of the Act after receiving audit report along with audited accounts from the auditors of the trust appointed by the Government which was processed u/s 143(1) of the Act. In the intimation passed u/s 143(1) , the entire expenses claimed by the assessee were disallowed and added to the income of the assessee. The assessee is a registered trust and engaged in imparting education and apart from that it is not engaged any other activity other than the education up to AY 2019-20. The aggregate annual receipts of the assessee were remained below Rs. 1.00 crore and thus the income of the trust was exempt u/s 10(23C)(iiad) of the Act. During AY 2020-21 and 2021-22, the aggregate annual receipts of the assessee exceeded Rs. 1.00 crores and accordingly the assessee was required to file the return of income. The assessee is not registered u/s 12A/12AA of the Act for the impugned assessment year and in view of that the AO CPC did not allow any expenditure so debited in the income and expenditure account. It is also pertinent to state that the assessee filed return of income during the year under the status of AOP and not as charitable trust. The assessee claimed all these expenses as application of income in the Income Tax Return.

5. In the appellate proceedings, the appeal of the assessee was also dismissed by the first appellate authority for the same reasons as cited by the AO in the assessment order.

6. We have heard rival contentions and perused the material on record, we find that the assessee is a registered trust engaged in imparting education during the

impugned assessment year and the income of the trust exceeded Rs. 1.00 crore. Consequently it had to file income tax return after getting the account audited. The auditor of the assessee trust submitted the audit report with audited accounts on 28.12.2020 and consequently the assessee filed return of income u/s 139(4) of the Act. The AO CPC while processing the return of income disallowed the entire expenses amounting to Rs. 1,36,39,852/- in the intimation u/s 143(1)(a) of the Act on the ground that the assessee is not registered u/s 12A/12AA of the Act. In our considered opinion the blanket disallowance of entire expenses is unreasonable and unjustified. In a prima facie adjustment any adjustment can be made if when it is not required to be established by arguments and a long process of reasoning on the points on which there may be arguably two opinions. These expenses as disallowed by the AO do not fall within the ambit and scope of prima facie adjustments. We note that the adjustment to the income by way of disallowance of expenses relate to debatable issue and therefore cannot be added as prima facie adjustment on the basis information available in the return of income. The case of the assessee is squarely covered by the decision of Co-ordinate Bench in the case of Manas Flour Mills Pvt. Ltd. vs. CPC, Bangalore in ITA No. 400/Kol/2021 for AY 2019-20 dated 16.05.2022. The operative part is extracted as under:-

“5. We have duly considered rival contentions and gone through the record carefully. A perusal of the record would reveal that the addition of Rs.5,51,909/- on account of two major expenditures relate to subscription of club memberships and these expenditures were incurred in the earlier year but amortized for a period of five years. Every year 1/5th was claimed. It was allowed by the Assessing Officer in the earlier year. It is 1/5th in this year also. Therefore, these could not be adjusted. It is further observed that in a prima facie adjustment, an item can be adjusted when it is not required to be established by arguments and a long drawn process of reasoning on points on which there may conceivably two opinions. The adjustment said to be made by the Assessing Officer relate to a debatable issue i.e., whether the expenses were incurred for obtaining the membership of the club or otherwise routine expenditure. Whether the expenditure could be termed as incurred for the purpose of business or not and such type of adjustment cannot be made u/s 143(1) of the Act. Therefore, this adjustment is set aside and the addition is deleted.”

Similar ratio has been laid down by the coordinate bench in the case of ACIT Vs Ricky Chandra ITA No. 1025/Kol/2011 the operative part whereof is as under:-

“7.2. A bare perusal of Section read with Explanation reveals that the adjustments contemplated are very limited. Explanation (a) to Section 143(1) explains the meaning of an incorrect claim. The assessee had adjusted the loss relating to previous years aggregating to Rs. 33,96,510/-. All the information in this regard were available with the Assessing Officer. If he had any doubt in this regard, then he could have issued notice u/s 143(2) but while issuing intimation under Section 143(1) could not deny the adjustment of loss claimed by the assessee as the same does not come within the ambit of ‘an incorrect claim apparent from any information in the return.’ Therefore, the adjustment made by the Assessing Officer was without jurisdiction.

8. As we have held that the adjustment per se was bad in law therefore, the ground raised by Department challenging the action of Ld. CIT(A) in restoring the matter to Assessing Officer for verification in view of the amendment to Section 251(1)(a) with effect from 01.06.2001 becomes wholly academic and, therefore, the ground raised by Department is dismissed as infructuous. Further , since the Cross objection filed by the assessee is in support of Ld. CIT(A)’s order, the same is also dismissed as being infructuous.”

Since the facts of the case before us are quite similar to the above decision and therefore respectfully following the same, we are inclined to hold that disallowance of expenses made by AO in the order passed u/s 143(1)(a) of the Act is debatable issue and cannot be added in the said order. The order passed by the Ld. CIT(A) is set aside and the AO is directed to delete the disallowance. Ground nos. 2 to 4 are allowed.

7. The common issue raised in ground no. 5 to 7 are that since the assessee has filed the return status of AOP and the net income as per income expenditure account is only Rs. 1,45,280/- and therefore the order of Ld. CIT(A) upholding the entire disallowance completely bad in law.

8. Though we are not adjudicating this issue raised by the assessee at this stage however nonetheless it is a trite law it is the net income which has to be assessed after allowing the expenses. The issue is left open to be decided at later stage if the need arises for the same.

9. Since the issue raised before us in this appeal is similar to one as decided by us in ITA No. 374/Kol/2024 wherein we have allowed the grounds raised by the assessee .Accordingly, in the present case also the facts are quite similar and would, mutatis mutandis, apply to this appeal as well. Consequently the appeal of the assessee is allowed.

10. In the result, both the appeals of the assessee are allowed .

Order is pronounced in the open court on 21st May, 2024

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 21st May, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Pratap Chandra Sau Welfare Trust, C/o, Bibhas Chandra Sau, Block No. D, 24/1, Saratpally, P.O. Midnapore, Dist. Paschim Medinipur-721101.
2. Respondent- ITO, Ward-38(1), Midnapore
3. Ld. CIT(A)-Addl./JCIT(A)-10, Mumbai
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata