

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE**

BEFORE SHRI R. K. PANDA, VICE PRESIDENT

**ITA No.672/PUN/2024
Assessment Year : 2011-12**

Shri Chandraprabhu Maharaj Digamber Jain Mandir Trust, 110A, Digambar Mandir, Guruwar Peth Road, Guruwar Peth, Pune – 411002	Vs.	ITO (Exemption), Ward-1(1), Pune
PAN : AAGTS7246C		
(Appellant)		(Respondent)

Assessee by : Shri Sharad Shah
Department by : Shri Gaurav K Singh
Date of hearing : 16-05-2024
Date of pronouncement : 27-05-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 07.02.2024 of the CIT(A)/NFAC, Delhi, relating to assessment year 2011-12.

2. Facts of the case, in brief, are that upon verification of ITS data it was noticed that the assessee trust has received interest income of Rs.5,78,400/- from Bank of Maharashtra and has time deposit of Rs.24,34,569/- with Bank of Maharashtra. The said transactions remained unexplained relevant to assessment year 2011-12. In absence of filing of return of income, the Assessing Officer was of the opinion that the above mentioned interest income / investment remained

unexplained and needed to be brought to tax. Therefore, the Assessing Officer, after recording reasons, reopened the assessment u/s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and notice u/s 148 of the Act was issued on 28.03.2018 which was duly served on the assessee. However, no return was filed in response to the said notice. The notice issued u/s 142(1) of the Act also remained non-complied with. In absence of any reply from the side of the assessee to the notice issued u/s 142(1) of the Act, the Assessing Officer determined the total income of the assessee at Rs.30,12,969/- by making addition of Rs.5,78,400/- being the interest income from the Bank of Maharashtra as income from other sources and Rs.24,34,569/- being the time deposit with Bank of Maharashtra as unexplained investment u/s 69 of the Act.

3. Before the CIT(A)/NFAC it was submitted that the fixed deposits made during the year were out of fixed deposits of earlier years which got matured during the year. It was submitted that all the fixed deposits were made out of donations received from the date of inception of the trust. It was further argued that no time deposits were made during the year and these are only renewal of earlier deposits. So far as the interest income of Rs.5,78,400/- is concerned, it was submitted that the trust has made deposits out of the donations received from the inception till date, on which the interest income was received. Being a religious trust, the trustees were under the impression that no return of income needs to be filed since it was registered u/s 12AA of the Act and due tax was deducted from the interest income and that the entire income is exempt since the utilization of

these funds is more than 85%. It was accordingly argued that no addition is called for.

4. However, the CIT(A) / NFAC was not satisfied with the arguments advanced by the assessee. So far as the addition of Rs.24,34,569/- is concerned, he decided the issue against the assessee by observing as under:

“4.3 I have gone through the grounds of appeal, statement of facts, assessment order and the submissions of the appellant. The appellant had not filed any supporting documents which could prove that the above referred transactions were reported by the appellant in the ROI. Even during the course of appellate proceedings also, the appellant has not furnished any letter from the Bank to establish that these deposits are renewed from the matured amount of earlier years.

4.3.1 A charitable or religious trust or institution is mandatorily required to file a return of income under Section 139(4A) if its income without giving effect to the provisions of Sections 11 and 12 exceeds the maximum amount not chargeable to income-tax. In other words, such a trust or institution must file a return of income if it has taxable income for the year before claiming exemption under Sections 11 and 12. The report of the auditor in Form 10B has to be filed along with the return. In the absence of these details, I have no reason to interfere with the decision of the Assessing officer and hence the addition made by the AO of Rs. 24,34,569/- is upheld. Ground No.1 is dismissed.”

5. Similarly, he also sustained the addition of interest by observing as under:

“5.3.1 In the instant case, the appellant is a charitable trust, claimed interest income as exempt u/s.11 of the Act not the corpus funds. An organization can accumulate 15 per cent of its income indefinitely. In other words upto 15 of income can be transferred to the corpus every year. Income accumulated or set apart in excess of 15% of the income where such accumulation is not allowed under any specific provisions of the Act shall be taxable under section 115 BBI. The exemption is allowed to a trust for the income accumulated in excess of 15% subject to fulfillment of certain conditions. This exemption however shall be withdrawn if such conditions are not complied with by the assessee. As per sec. 11(2) if a trust is not able to apply 85 per cent of its income in a particular year, it can accumulate the shortfall to be used for religious or charitable purposes within the next 5 years. This accumulation is allowed if the assessing officer is informed about the purpose of the accumulation and the period for which the income is

being accumulated. The information is to be furnished in Form 10 at least two months prior to the due date specified under section 139(1) for furnishing the return of income for the previous year.

*5.3.2 In the instant case, the appellant neither filed the ROI nor Form 10 before the due date before the Assessing Officer. In view of the above, I have no reason to interfere with the decision of the assessing officer and accordingly, the addition made by the AO is upheld. **Ground No.2 and 3 are dismissed.**"*

6. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

- 1. The Ld AO erred in and Ld. CIT(A) erred in confirming that the entire principal amount of new time deposits made during the year of Rs.24,34,569/- is unexplained investment and added the same as income u/s 69.*
- 2. The Ld AO erred in and Ld. CIT(A) erred in confirming the addition of entire interest of Rs.5,78,400/- to income.*
- 3. The Ld. AO ought to have given TDS credit of tax deducted at source on interest income of Rs.5,78,400/-.*
- 4. The Ld AO erred and Ld. CIT(A) erred in taxing the interest income at 30% instead of slab rates applicable to Trust.*
- 5. The Ld. AO erred in and Ld. CIT(A) erred in not giving benefit u/s 11 (accumulation and standard deduction of 15% of receipts).*

7. The Ld. Counsel for the assessee submitted that the accounts of the assessee are audited and for that purpose he drew the attention of the Bench to the audit report for the assessment years 2009-10, 2010-11 and 2011-12, copies of which are placed at pages 9 to 38 of the paper book. Referring to pages 39 to 40 of the paper book, he drew the attention of the Bench to the order u/s 12AA(1)(b)(i) of the Act, dated 28.08.2018. The Ld. Counsel for the assessee filed certain Xerox copies of fixed deposit receipts and submitted that these deposits were made way back in

2007 which got matured and such deposits were re-invested. He submitted that these additional evidences go to the root of the matter. Further, the Assessing Officer also could have verified the availability of these fixed deposits from the previous balance sheets itself. However, the Assessing Officer has not done so. He accordingly submitted that the addition made by the Assessing Officer and sustained by the CIT(A)/NFAC should be deleted.

8. The Ld. DR on the other hand, submitted that the assessee did not file any submission before the Assessing Officer for which the assessment was completed u/s 144 r.w.s. 147 of the Act. The additional evidences now being filed by the assessee are fresh evidences and no justifiable reason is given by him as to why the same should be admitted. He accordingly submitted that the order of Ld. CIT(A)/NFAC be upheld and the appeal filed by the assessee be dismissed.

9. I have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. I find in absence of any response to the notice u/s 148 of the Act and to the notice u/s 142(1) of the Act, the Assessing Officer made addition of Rs.24,34,569/- being the time deposit with the Bank of Maharashtra as unexplained investment u/s 69 of the Act. Similarly, he made addition of Rs.5,78,400/- being the interest income from Bank of Maharashtra. I find the Ld. CIT(A) / NFAC sustained both the additions, the reasons of which are already reproduced in the preceding paragraph. It is the submission of the Ld. Counsel for

the assessee that the assessee has not made any time deposits during the year and the time deposits are nothing but the re-investment out of matured proceeds of the old fixed deposits which were already shown in the audited balance sheets of preceding years. It is also his submission that the assessee has utilized more than 85% of the funds and since the trust enjoys the registration u/s 12AA of the Act, the income is exempted u/s 11 of the Act.

10. I find some merit in the above arguments advanced by the Ld. Counsel for the assessee. A perusal of the various details filed in the paper book shows that the trust enjoys registration u/s 12AA of the Act vide order dated 28.08.2018 of the CIT(Exemption), Pune. Further, a perusal of the audited balance sheets show that the investments in fixed deposits are reflected in the Balance Sheet. The assessee has also filed Xerox copies of the fixed deposits along with a chart showing that no new deposits have been made during the year and all the time deposits are nothing but matured proceeds of the old deposits made in financial year 2007-08. Since the assessee has not made any submission before the Assessing Officer during the course of assessment proceedings and since the assessee has filed certain term deposit receipts made in earlier years as additional evidences, therefore, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the Assessing Officer with a direction to grant an opportunity to the assessee to substantiate its case and decide the issue as

per fact and law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on this 29th May, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 29th May, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	28.05.2024		Sr. PS/PS
2	Draft placed before author	29.05.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			