

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.101/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sri Sai Educational Society, Mahbubnagar, Telangana. PAN: AAFAS6773C	Vs.	Income Tax Officer, Ward-1, Mahbubnagar.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri Mohd. Afzal, Advocate	
राजस्व द्वारा / Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख / Date of hearing:	04/06/2024	
घोषणा की तारीख / Pronouncement:	10/06/2024	

आदेश/ORDER

PER LALIET KUMAR, J.M. :-

This appeal is filed by Sri Sai Educational Society ("the assessee"), feeling aggrieved by the order passed by the learned ADDL/JCIT (A)-10 Mumbai ("Id. CIT(A)"), dated 04.01.2024 for the AY 2018-19.

2. The assessee has raised the following grounds :

- "1. The order of the learned Commissioner of [Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.
2. The learned Additional Commissioner erred in confirming the intimation u/s 143(1) in which the gross receipts of Rs.4,27,15,832/- are treated as total income of the assessee.
3. The learned Additional Commissioner ought to have appreciated that the assessee filed ITR-7, inadvertently and offered the total

income from business at Rs.14,04,710/- from business accordingly taxes are paid, therefore, erred in confirming the receipts of Rs.4,27,15,832/- as income of the assessee.

4. The learned Additional Commissioner ought to have appreciated that the assessee filed ITR-7, instead of filing ITR-5, therefore, the same is to be treated as an invalid return under the provisions of section 139(9) of the IT Act, in the absence of such an action the learned Additional Commissioner erred in confirming the intimation u/s 143(1), wherein, the receipts of Rs.4,27,15,832/- are treated as income of the assessee.

5. The learned Additional Commissioner erred in assuming that the gross receipts are taxed in view of the provisions of the IT Act and therefore, further erred in confirming the disallowance of Rs.4,27,15,832/- to treat the same as income.

6. The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.”

3. The facts of the case in brief are that, the assessee is engaged in running an educational institution with a profit motive , filed its return of income on 30.10.2018 declaring total income of Rs.14,04,710/- for the A. Y. 2018-19. The return filing requirement of the assessee was not covered u/s. 139(4A)/139(4C) of the Income Tax Act, 1961 (“ the Act “) . Hence the assessee was required to file return of income in ITR No.5. However, the assessee filed its return of income in ITR No.7, which is applicable for the assessee required to file their return of income u/s. 139(4A)/139(4C) of the Act. As the assessee filed the return of income in wrong ITR, the return of income was processed by Central Processing Centre, Bangalore (“CPC”)

u/s.143(1) of the Act on 26.02.2020, determining the total income of the assessee at Rs.4,40,80,521, treating the gross receipts as its income.

4. Feeling aggrieved by the order passed by CPC, assessee filed appeal before the Ld. CIT(A), who upholding the order of the CPC, dismissed the appeal of the assessee. The Ld. CIT(A) in para 'c', 'h', 'i', 'j' and para 6.3 it was held as under :

“ (c). In this case the appellant is admittedly not registered under section 12A/12AA or 10(23C)(iv). When the appellant is not registered under section 12A/12AA or 10(23C)(iv), in the return of income filed for A.Y. 2018-19 on 30.10.2018 (after due date), the tax liability ought to have been computed under normal provisions of the Act and the appellant should not have claimed any exemption. The fact of non registration u/s 12A/12AA or 10(23C)(iv) was already in its knowledge. Still, the appellant continued to claim exemption.

(h). In it's submissions the appellant has relied upon the CBDT Circular No. 689 dtd.24.08.1994. However, the said Circular is not applicable in the case of appellant since the procedure as per said Circular applies to returns pending for processing u/s143(1) as on 24.08.1994.

(i). In it's submissions the appellant has submitted that returns of income filed in earlier years in ITR-7 have been accepted by the Department and the returns of income subsequent to current assessment year have been filed in ITR-5, they are also accepted by the Department and therefore, the determination of income at Rs.4,27,15,832/- may be set aside to accept the return of income. These submissions are devoid of any merit since return of income filed for each assessment year is processed separately considering the claims made in the said return of income.

(j). It may be pertinent to quote the Hon'ble Bombay High Court in the case of Commissioner of Income-tax v. Shivanand Electronics 209 ITR 63 to emphasis the point: “When the Legislature casts a duty on the assessee claiming certain benefit, to comply with requirements which are associated with such benefit, the assessee cannot get the benefit without doing his part of the duty. He cannot be allowed to say that it was for the ITO to ask him to do so. If the assessee does not do his part of the statutory duty, the ITO may proceed to decide the allowability or otherwise of the relief on the basis of the facts and material available before him.

6.3. For detailed reasons cited as above, intimation issued u/s.143(1) of the Act by CPC for AY.2018-19 does not warrant any interference on facts and in law. Therefore, the ground Nos. 1, 2, 3 and 4 of the appeal taken by the appellant are dismissed.”

5. Feeling aggrieved with the order of Ld. CIT(A), now the assessee is in appeal before us, contending that the revenue authorities erred in not allowing any claim towards the expenditure incurred in earning its income and treating the gross receipts as its income. The Ld. AR submitted that inadvertently the return of income has been filed by the assessee in a wrong ITR form i.e. return of income has been filed in ITR-7 instead of ITR-

6. Due to this the CPC treated the gross receipts of the assessee as income without allowing any deduction towards the expenditure incurred in earning the said income. The Ld. AR requested that the net income of the assessee should be subject to Income Tax and not the gross receipts and prayed before the Bench to allow the deduction on accounts of the expenditure incurred in earning the said income.

7. Per contra, Ld. DR placed heavy reliance on the order of the authorities below and opposed the grant of any relief to the assessee.

8. We have heard the rival contentions and also gone through the record in the light of the submission made by the either side. There is no dispute about the fact that the assessee was not required to file their return of

income u/s. 139(4A)/139(4C) of the Act and hence was required to file its return of income in ITR-5. However, the assessee filed its return of income in ITR-7. Due to this the CPC treated the gross receipts of the assessee as income without allowing any deduction towards the expenditure incurred in earning the said income. As per the principle of natural justice, in our considered opinion the assessee should be taxed at net income and not on the gross receipts. Hence, we restore the matter to the file of the Ld. AO with a direction to consider the assessee's claim for the deduction of expenditure incurred towards the earning of the income to the extent the same are allowable under the Act. Needless to say, the Ld. AO shall grant a reasonable opportunity of being heard to the assessee before finalising the assessment. Accordingly, the appeal of the assessee is allowed for statistical purposes.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 10.6.2024.

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Sd/-

(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad,
Dated: 10.06.2024.

* Reddy gp

Copy of the Order forwarded to :

1. Sri Sai Educational Society, D.No.1-4-130/18,
Sana Complex, Opp. Govt. Hospital,
Mahabubnagar-509 001
2. Income Tax Officer, Ward 1, Mahabubnagar.
3. The CIT(A) ADDL/JCIT(A)-10, Hyderabad..
4. Pr. CIT, Hyderabad.
5. DR, ITAT, Hyderabad.
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Assistant Registrar)
ITAT, Hyderabad