

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपीलसं./ITA No.: 624/Chny/2024

निर्धारणवर्ष / Assessment Year: 2014-15

Income Tax Officer
(Exemptions),
Ward -4,
Chennai.
The Theosophical Society,
v. 1, Adyar,
Chennai – 600 020.
[PAN: AAATT-0479-Q]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/Appellant by : Shri. N. Sanjay Gandhi, JCIT
प्रत्यर्थी की ओरसे/Respondent by : Ms. G. Vardini Karthik, Advocate

सुनवाई की तारीख/Date of Hearing : 10.06.2024

घोषणा की तारीख/Date of Pronouncement : 10.06.2024

आदेश / ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2014-15 dated 12.01.2024.

2. The revenue has filed the following grounds of appeal:

"1. Whether the Id.CIT(A) was right in holding that the Assessing Officer was not justified in invoking section 13(1)(c)

of the Act when the assessment order passed by the Assessing Officer clearly established the fact that there was violation of provisions of section 13(1)(c) of the Act and two parties, who had contributed to the assessee trust exceeding fifty thousand rupees, upto the end of the relevant financial year, were specified persons u/s. 13(3)(b) of the Act?

2. The Id.CIT(A) erred in deleting the addition made by invoking provisions of section 13(1)(c) when the guest house of the assessee trust was let out to the interested parties at an inadequate rent.

3. Whether the Id.CIT(A) was right in relying on CBDT Circular No. 557 dated 19.03.1990, when the exemption is claimed u/s. 11 and not u/s. 10(23C)(iv) in the ITR."

3. The Assessee is a society notified under Sec.10(23C)(iv) vide Notfn. No.S.O.3455, dated 30.06.1977 and also registered U/s. 12A(a) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") vide order No. 212(205)/73, dated 21/12/1975. The Assessee filed the return of income on 26.09.2014 admitting NIL income after claiming exemption u/s.11 of the Act. The Gross receipt of the Society was Rs.3,85,17,209/- and it had claimed Rs.2,96,17,962/- and Rs.26,78,512/- as revenue and capital expenditure respectively. The Assessee had a short fall of application of fund of Rs.1,05,99,352/- during the year and it exercised an option as per clause (2) of explanation to section 11 to accumulate the same.

4. The case was selected for scrutiny assessment and issued statutory notices to the assessee and concluded the assessment u/s.143(3) of the Act, by the Assessing officer on 29.12.2016, by denying the exemption u/s.11 of the Act on account of violation of sec. 13(1)(c) of the Act and made the following additions / disallowances :

- Interest transferred to various funds - Rs.99,18,117/-
- Funds received & taken to Balance sheet Rs.1,35,94,395/-
- Expenses spent for charitable objects-Rs.33,76,431/-
- Depreciation claimed -Rs.7,36,669/-

Aggrieved by the order of the Assessing officer, the assessee preferred an appeal before the Ld.CIT(A).

5. Before the Ld.CIT(A), the assessee had raised various grounds and the Ld.CIT(A) considering that the society is Notified u/s. 10(23C)(iv) of the Act from the assessment year 1977-78, allowed all the grounds of appeal of the assessee by passing an order on 12.01.2024 by holding as under :

"3. The assessing officer found that two individuals who have made donations to the society had stayed in lodging facilities of the society by paying nominal maintenance charges. So provisions of Section 13(1)(c)(ii) was invoked on the ground that the guest house of the society has been let out to interested

persons at an inadequate rent and hence exemption u/s 11 was revoked. During appeal proceedings the society uploaded details of interested persons. It is seen that those individuals are providing services to the society without remuneration and their stay in guest house was for theosophical work. It is debatable whether donors to society will be qualified as interested persons. People staying in society lodgings to serve the society are obviously not benefitting from society as such. Even if it was so, then such instance would only affect the case of an assessee within the meaning of sections 11 to 13 and could not be imported to deny exemption under section 10(23C). This position of law is based on CBDT Circular No. 557, dated 19-03-1990 which held that provisions of section 11 will not be applied and provisions of sections 11 and 13 relating to 'interested person' will not be applicable while examining the claim for exemption under section 10(23C)(iv). This was reiterated by IT AT Lucknow in the case of Virendra Singh Memorial Shiksha Samiti [2010, 35 SOT 1].

4. In the case of Seethakathi Trust [2007] 295 ITR 520 (Madras), the Assessing Officer denied the exemption under section 10(22) of the Act and also denied the benefits of sections 11 and 12 of the Act holding that the assessee violated the provisions of section 11(5) read with section 13(1)(d) of the Act. ITAT dismissed revenue appeal stating that as the assessee is entitled to exemption under sections 10(22), 10(22A) and 10(23C) of the Act and in which case, it is not necessary to pass an order in respect of the alternative plea of the assessee-trust in regard to the deduction under section 11 of the Act. The jurisdictional Madras High Court held in this case that the Central Board of Direct Taxes, themselves, issued a circular bearing No. 712 dated July 25, 1995, (see [1995] 215 ITR (St.) 3), to the effect that the educational institutions are entitled to exemption under section 10(22) of the Act and consequently, the benefit conferred under section 10(22) cannot be denied on the ground of violation of section 11(5) of the Act. On the basis of above discussions, it is held that the assessing officer cannot raise a demand on the basis of disallowance u/s 11 as the appellant was granted exemption u/s 10(23C)(iv). The appellant has also disputed additions made by the AO on commercial principles. It is seen that the jurisdictional ITAT in appellant's own case has decided the issue pertaining to depreciation claimed on fixed assets in favour of assessee. Anyway, once exemption is available as per discussion above, other additions will not cause any grievance to the appellant. Disallowances of expenses by AO would only add to the

*surplus of the society but could not become basis for denying exemption. As a result, the appeal is fully **allowed.**"*

Aggrieved by the impugned order of the Ld.CIT(A), the revenue is before us.

6. The Ld.DR assailed the impugned action of the Ld.CIT(A) and prayed for quashing the order and restore the order of the Assessing Officer, as the appeal allowed is bad in law.

7. Per contra, the Ld. AR of the assessee took us through the paper book consisting of 1 to 74 pages filed and written submission made before the Ld.CIT(A), wherein the assessee stated that, it is a society notified u/s. 10(23C)(iv) vide Notfn. No.S.O.3455, dated 30.06.1977 and also registered u/s. 12A(a) of the Act vide order No. 212(205)/73, dated 21.12.1975. Therefore, the provisions of section 11 to 13 relating to 'Interested person' are not applicable to the assessee as per the circular of CBDT No.557, dated 19.03.1990, which was reiterated by ITAT Lucknow Benches in the case of Virendra Singh Memorial Shiksha Samithi [2010, 35 SOT 1].

8. The Ld.AR took us through the Paper book page Nos.31 & 32 for having notified the society u/s. 10(23c)(iv) of the Act and renewed upto date and thereby the income of the society needs to be excluded from the total income as per Section 10(23C)(iv) of the Act. Further, the Ld.AR stated that, the Ld.CIT(A) has considered the entire facts and circumstances of the case and allowed the appeal of the assessee and prayed for dismissal of the appeal filed by the revenue.

9. We have gone through the rival contentions and perused the facts. It is an admitted fact that society has been registered u/s. 10(23C)(iv) of the Act along with the registration u/s.12A(a) of the Act. The Assessee is a charitable society and hence the conditions prescribed u/s. 13 of the Act are not applicable to it as per the CBDT circular No.557, dated 19.03.1990, once the society is notified u/s. 10(23C) of the Act.

10. Similarly, the Assessing Officer cannot make any disallowance u/s.11 of the Act, as the society is an organization having notified u/s. 10(23C)(iv) of the Act. Considering the entire facts and circumstances of the case, we

are of the view that, there is no infirmity in the order of Id.CIT(A) in allowing the appeal of the assessee and therefore, there is no need for us to interfere and hence, we are inclined to dismiss the appeal of the Revenue.

11. In the result, the Appeal of the Revenue dismissed.

Order pronounced in the Open court on 10th June, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

Sd/-
(एस. आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 10th June, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF