

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.3174/Del/2023  
(ASSESSMENT YEAR 2021-22)**

The Masonic Fraternity of New Delhi Freemasons Hall Janpath New Delhi-110001 PAN-AAEFT5131H <b>(Appellant)</b>	Vs.	Income Tax Officer Ward-52(1) New Delhi  <b>(Respondent)</b>
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Assessee by	Shri K.V.S Gupta, Adv.
Department by	Shri Om Prakash, Sr. DR

Date of Hearing	25/06/2024
Date of Pronouncement	27/06/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

**1.** This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-12, Mumbai ["Ld. CIT(A)", for short], dated 15/09/2023 for Assessment Year 2021-22.

**2.** The brief facts of the case are, the assessee filed its return of income on 28/02/2022 declaring the income as NIL. The return was filed by the assessee by claiming the exemption u/s 11 of the

Income Tax Act, 1961 ('the Act' for short) and the return was processed u/s 143(1) of the Act. While processing the return of income u/s 143(1), the Assessing Officer rejected the claim of the assessee u/s 11 of the Act, as the assessee has not filed the registration certificate u/s 12A of the Act and observing that assessee is not a registered Trust, he brought to tax total receipt of the assessee of Rs.16,27,273/-.

**3.** Aggrieved with the above order, the assessee preferred an appeal before Ld. CIT(A) and Ld.CIT(A) sustained the addition with the observation that the registration of claim u/s 11 of the Act is not proper within the mandate of Section 143(1) of the Act. Further, he observed that the assessee has stated that it is a non-profit organization and the contributions received by it are exempt in view of the principle of mutuality concept. Even though the assessee has submitted the details and relied on the several decisions in support of the claim in terms of doctrine of mutuality, however, he observed that the assessee has not provided any

cogent material like mandatory forms 10B/10BB in support of its claim for exemption u/s 11 as mandatorily required.

**4.** Aggrieved, with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

*“1. The action of the Ld. ADDL/JOINT CIT (A)'S in Rejecting Exemption of income assessed disregarding Principle of Mutuality by relying on no Mandatory Forms filed namely 10B/10BB in Support of claim of Exemption u/s.11 & not deciding whether income is exempt on principle of Mutuality or not is illegal arbitrary unwarranted uncalled for & against the facts and circumstances of the case.*

*2. The action of the Ld. ADDL/JCIT (A)'s in not deciding whether the Income of the Appellant is Exempt under Principle of Mutuality and rather erroneously referring to sections 11 and 12 is illegal, arbitrary, unwarranted, uncalled for & against the facts and circumstances of the case.*

*3. The action of the Ld. ADDL/JCIT (A)'s in not deciding ground No. 3 is illegal, arbitrary. Unwarranted, uncalled for & against the facts and circumstances of the case.*

*4. The action of the Ld. ADDL/JCIT (A)'s in basing her order on filing ITR in ITR Form 7 & not independently applying her mind is illegal arbitrary, unwarranted uncalled for and against the facts and circumstances of the case.*

*5. On facts & in law the Ld. ADDL/JCIT (A)'s erred in not deciding the issue of taxability of income as per law & not giving any opportunity of hearing to the appellant.*

*6. The Ld. ADDL/JCIT (A)'s erred in law as well as on facts without considering the past history of the appellant where Income has been exempted by revenue Authorities on principle of mutuality.*

*7. In law as well on facts the Ld. ADDL / JCIT (A)'s erred in not repelling the submission made that in Schedule ER the application of income to the extent of Rs. 23,64,753/- has been exempted which is contrary to final disallowance thereby violating Principle of Natural justice.*

8. *The action of the Ld. ADDL/JCIT (A)'s in Upholding action of the Ld. AO.*

*a) In making adjustment under section 143(1) and disallowing the entire expenditures of Rs.23,64,753.00 being highly debatable, is illegal arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

*b) In making disallowance under section 143(1)(a) of entire expenditure claimed in the return amounting to Rs.23,64,753.00 is illegal arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

*c) In not allowing expenditure claimed under the head Income from Other Sources against receipts is illegal arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

*d) In not computing the Income of the Appellant by allowing the expenditures claimed against receipts declared as application of income in the ITR is illegal arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

*e) In not providing any reasonable opportunity before making adjustment to Income returned is illegal arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

*f) In not giving credit of TDS of Rs.1,582.00 is illegal arbitrary, unwarranted, uncalled for and against the facts and circumstances of the case.*

*g) The appellant reserve the right to add/alter/withdraw or modify any ground of appeal.*

*h) The above grounds are without prejudice to each other.”*

**5.** At the time of hearing, the Ld. AR submitted that the assessee prefers to press only ground No.3 and all other grounds are not pressed. In this regard, he submitted that the assessee is a Company incorporated under Section 26 of the Indian Companies

Act, 1913 on 23<sup>rd</sup> December, 1925 as non profit – no loss company. The consultant has filed the return of income wrongly claiming deduction u/s 11 of the Act, however, he submitted that assessee is not a registered concern u/s 11 of the Act, therefore, the assessee cannot claim any benefit u/s 11 of the Act, since, the Assessing Officer has brought to tax the gross receipt as income of the assessee. He prayed that the taxable income has to be net income not the gross receipt. Accordingly, he prayed that this issue may be remitted back to the Assessing Officer to determine the taxable income as per law.

**6.** On the other hand, the Ld. DR objected to the submissions of the Ld. AR and submitted that the assessee is not registered beneficiary u/s 11 of the Act, therefore, the findings of the lower authorities are proper and relied on them.

**7.** Considered the rival submissions and material placed on record, I observed that even though the assessee has claimed exemption u/s 11 without proper documentation and it is admitted fact that assessee is not registered u/s 12A of the Act, therefore, the claim of the assessee in its return of income u/s 11

are rejected by the tax authorities. As per the records submitted before us, the assessee is a non profit-no loss company registered under the Companies Act, 1913. This institution is in existence since then and no records were filed before us relating to previous method of accounting and claim made by the assessee. However, as per the fact available on record, I observed that the Assessing Officer has rejected the claim made by the assessee in return of income claiming exemption u/s 11 of the Act and proceeded to make the addition only the gross receipts earned by the assessee as their income, however, as per law the gain/profit earned by the assessee alone should be brought to tax and not the gross receipts, therefore, in the similar facts on records, the ITAT, Bangalore has decided and held as under:-

*“7. I have heard the rival submissions and perused the material on record. During the course of hearing, on query by the Bench, it was mentioned by the learned AR that assessee does not have registration under section 12AA nor under section 10(23C) of the Act. In the absence of the registration under the aforesaid sections, there cannot be any application of income. However, the gross receipts cannot be taxed in the hands of the assessee-trust. The income earned by the assessee and expenditure relatable to the earning of such income is to be allowed as a deduction. The Bangalore Bench of the Tribunal in the case of HMV Educational Cultural and Social Trust (supra) restored the matter to the AO with a*

*direction to assess only the net income and not the gross. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:*

*"7.3 The assessee has not raised the plea before the Income-tax Authorities that it has to be given deduction u/s 57 of the I.T. Act, in respect of expenditure for earning the interest income. However, in spite of such plea not being raised before the lower authorities, we are of the view that since the fundamental principle under Income-tax Act being that only net income has to be taxed (i.e.. gross receipt minus allowable expenditure), this plea of the assessee has to be necessarily entertained, especially in the light of the judgment of the Hon'ble Jurisdictional High Court in the case of Totagars Sale Co-operative Society Ltd. v. ITO [2015] 58 taxmann.com 35 (Kar.). Accordingly, the issue of deduction u/s 57 of the I. T. Act is restored to the files of the AO. The AO is directed to examine whether assessee has incurred any expenditure for earning interest income which is assessed under the head 'Income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the IT. Act. The assessee is directed to co-operate with the department and furnish the necessary evidence for expeditious disposal of the matter. It is ordered accordingly."*

*8. In light of the order of the Bangalore Bench of the Tribunal, I restore the matter to the AO. The AO is directed to examine the financials of the assessee and allow the expenditure which have been incurred for earning the income of the assessee. I make it clear that since in the absence of registration under section 12AA of the Act, there is no question of any application of income. It is observed accordingly."*

**8.** Respectfully following the same, I am inclined to remit this issue back to the file of Jurisdictional Assessing Officer to re-do the assessment *denovo* after giving proper opportunity of being heard. I direct the Assessing Officer to bring on to tax only net profit/margin earned by the assessee from the operation and not

the gross receipts. Even, the Assessing Officer may consider the concept of mutuality in this case as per law considering the fact that it is non profit-no loss entity, serving its own members. Accordingly, ground No.3 raised by the assessee is allowed for statistical purposes. Other grounds are not pressed before us, therefore, all other grounds are dismissed as such.

9. In the result, the appeal filed by the assessee is partly allowed as indicate above.

Order pronounced on 27<sup>th</sup> June, 2024.

Sd/-  
**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 27/06/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI