

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.1141/Bang/2023
Assessment year : 2016-17

Vijayanagar Educational Trust, No.6, 2 nd Main, 9 th Cross, Hampinagar (RPC Layout), Bengaluru – 560 040. PAN : AAATV 4152E	Vs.	The Income Tax Officer, Exemption Ward 2, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.03.2024
Date of Pronouncement	:	21.03.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against order dated 18.08.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17.

2. There is a delay of 68 days in filing appeal before the ITAT. The assessee filed application for condonation of delay stating that the auditor was busy with audit and filing returns. Documents for filling appeal of assessee was sought, which could not be furnished in time to the auditor. Later the appeal was filed on 04.11.2023. It is submitted that there is no malafide intention in belatedly filing the appeal and

assessee was prevented by reasonable cause in filing appeal within time. Therefore, condonation of delay is requested.

3. After hearing both the parties, it is observed that there is reasonable cause for the delay and following the judgment of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs. MST. Katiji and Others (1987) 167 ITR 471, delay in filing the appeal before the Tribunal is condoned.

4. The sole issue raised by the assessee is regarding ex parte order passed by the CIT(Appeals) denying the benefit of exemption u/s. 11 of the Act.

5. The assessee filed return of income on 19.01.2017 declaring gross total income of Rs.4,90,07,250 after claiming exemption u/s. 11(1). The AO noted that there is revenue expenses of Rs.2,83,45,888 excluding depreciation u/s 11(6) of the Act and assessee claimed capital expenditure of Rs.4,45,85,749. The AO noted that details submitted by assessee is insufficient and asked to assessee on 04.12.2018 for documents in regard to unsecured loan, bank statement, copies of trust deed and details of amended deed made by the trust along with other pending details within 7 days from date of receipt of notice. However the assessee submitted few information only on 17.12.2018. The AO also got information from the Office of DIT (Inv.) that civil criminal cases are pending and assessee submitted reply on 04.12.2018. The AO noted that the assessee has not submitted reply on questionnaire issued on various issues. He further noted that assessee is a public trust and has been subjected to various litigation of

civil and criminal nature which throw light on the way of conducting the affairs of public trust. The trustees committed a breach of statutory requirements imposed under the law. The act of amendment without the approval of CIT(Exemption) and carrying activities at the will of the trustees is defeating the income tax provisions on amendment and on administration of public trust. The assessee failed to substantiate the same in spite of opportunities provided. Hence the AO concluded that the assessee is not entitled to exemption u/s. 11 of the Act relying on Director of Income Tax v. Bharat Diamond Bourse (2003) 259 ITR 280 and treated the surplus income of Rs.2,06,61,362 as income.

6. Aggrieved by the above order, the assessee filed appeal before the CIT(Appeals). The CIT(Appeals) issued various notices on six instances, however, there was no reply from the assessee's side. Accordingly the CIT(Appeals) decided the issue on merits on the basis of documents available and dismissed the appeal of the assessee. Against this, the assessee is in appeal before the ITAT.

7. The case was heard qua the assessee. The Id. DR submitted that various opportunities were granted by the CIT(Appeals) and there was no response from the assessee. Hence ex parte order was passed by CIT(Appeals) on merits on the basis of material on record.

8. After considering the rival submissions, we note that after filing of appeal against the assessment order, the case was migrated to NFAC in terms of Notification No.76/2020 dated 25.09.2020. After issue of various notices, the Id. CIT(Appeals) has passed the ex parte order for want of non representation from the assessee side. In the interest of

justice, we deem it fit to grant another opportunity to the assessee to substantiate its case before the CIT(Appeals). Accordingly the appeal is remitted back to the CIT(Appeals) for fresh consideration and decision as per law. The assessee is directed to update its email id, communication address tel./mobile number on the income tax portal and also intimate the same to the revenue authorities. The assessee is also directed to produce all necessary documents in support of its case before the CIT(Appeals) and not seek unnecessary adjournment for early disposal of the case.

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

Pronounced in the open court on this 21st day of March, 2024, as per Rule 34 of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 14th May, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.