

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 67/Ind/2024
Assessment Year : 2008-09

Maharana Pratap Social Research and Education Society, H.No.6, Sector, Vidya Nagar, Hoshangabad Road, Bhopal, Huzur University S.O., Bhopal	<u>बनाम/</u> Vs.	C.P.C., Bengaluru
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAAAM9428K		
Assessee by	Shri Pankaj Shah, CA and Shri Soumya Bumb, C.A.	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	10.07.2024	
Date of Pronouncement	18.07.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 06.12.2023 passed by learned Addl./JCIT(A)-1, Lucknow [First Appellate Authority "FAA"] which in turn arises out of intimation of assessment dated 10.07.2021 passed by learned CPC, Bengaluru ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for

Assessment-Year ["AY"] 2020-21, the assessee has filed this appeal on following grounds:

1. *That the assessee has been engaged in charitable activities since 2007 and has been fulfilling all criteria, condition for claiming exemption u/s 11 of the Income-tax Act, 1961.*
 2. *That for the assessment year 2020-21 the extended deadline for filing a revised return was May 31,2021. The notice of intimation of demand was issued on 10.07.21, the assessee was unaware of the error in the return until the notice was served. Due to the time limit of revised return being lapsed the assessee could not revise the return and eventually revised Form 10B.*
 3. *That the revised Form 10B is in conformity with the audited financial statements wherein the total application of income as per audited financial statements 85 percent and the amount of income accumulated or set apart for application to charitable or religious purposes is 15 per cent. Thus, the requirement of application of income of minimum 85 percent of total receipt to get an exemption u/s 11 has been fulfilled.*
 4. *That the assessee has made a clerical error while filing the income tax return, the benefit of the exemption u/s 11 of the Act should not be denied merely on the basis of a clerical error on part of the assessee.*
 5. *That there has been a genuine hardship on the assessee for denying the assessee of exemption u/s 11 merely on the basis of clerical error."*
2. Heard the learned Representatives of both sides and case records perused.

3. It emerged during hearing that the assessee is a society registered by revenue u/s 12A of the Income-tax Act, 1961 and hence eligible for exemption u/s 11/12. For AY 2020-21, the assessee derived gross-receipts of Rs. 3,21,42,131/- and applied funds to charitable purposes to the tune of Rs. 2,77,43,466/- which was claimed as exemption under first part of section 11(1)(a) and allowed by AO. The audited accounts of assessee, the audit report (Form No. 10B) dated 29.12.2020 and the return of income u/s 139 were filed to Income-tax Department. However, in the audit-report (Form No. 10B) so filed, the auditors of assessee inadvertently mentioned "No" in Column 3 instead of "Rs. 43,98,666/-" [maximum upto 15% of gross receipts of Rs. 3,21,42,131/-] being the amount of exemption available to assessee by way of accumulation or set apart for charitable use under second part of section 11(1)(a). This also led to a spiral mistake in filing of return of income by assessee without claiming exemption of Rs. 43,98,666/- under second part of section 11(1)(a). This further led the AO to compute assessee's total income at Rs. 43,98,665/- and create demand of tax plus interest in the intimation u/s 143(1) dated 10.07.2021.

4. Ld. AR for assessee submitted that when the assessee, after receiving intimation u/s 143(1), came to know about the mistake that had taken place, the assessee filed revised audit report (Form No. 10B) dated 09.04.2022 to AO showing the exemption of Rs. 43,98,666/- in Column 3, copy of revised audit report is filed at Page No. 8 of Paper-Book for our perusal. However, the assessee could not file revised return of income

because of expiry of time for filing of revised return by then. But the impugned exemption of Rs. 43,98,666/- is a statutory claim available to assessee. Therefore, the same cannot be denied to assessee. Further, the non-claiming of exemption in the original return had happened as a consequence of auditor's mistake in Form No. 10B for which the assessee cannot be punished. Ld. AR submitted that the section 2(45) of the Income-tax Act, 1961 prescribes that the 'total income' of assessee has to be computed according to the provisions of Income-tax Act, 1961 and therefore the impugned statutory exemption has to be allowed to assessee to arrive at correct 'total income' in accordance with law. Ld. AR submitted that the CIT(A) has dismissed assessee's first-appeal by stating that the AO cannot admit a new claim not asserted in the return as per *Goetze (India) Ltd. Vs. CIT (SC)* but while saying so, the CIT(A) has not considered that the *Goetze (India) Ltd. Vs. CIT (SC)* bars the AO but does not impinge upon the power of appellate authority to allow a statutory claim of assessee. Therefore, the CIT(A) ought to have admitted the statutory claim of assessee and directed the AO to allow the same. With these submissions, Ld. AR prayed this Bench to give appropriate relief to assessee. Ld. DR for revenue left the matter to the wisdom of Bench.

5. After a careful consideration, we find a strong merit in the arguments of Ld. AR as narrated above. So far as legal provision is concerned, the section 11(1)(a) has two parts, namely first part allows exemption based on 'actual application' made by assessee to charitable purpose and the second

part allows exemption for 'accumulation or set apart of income' upto 15% of gross-receipts. In present case, the gross-receipts of assessee at Rs. 3,21,42,131/- have been assessed by AO after giving the first part of exemption at Rs. 2,77,43,466/- as mentioned in original Form No. 10B and claimed in original return. However, it is only the second part of same provision of section 11(1)(a) which entitled the assessee to claim exemption of Rs. 43,98,666/-, which had not been allowed to assessee due to inadvertent mistake by auditors in Form No. 10B. The mistake also stands rectified by assessee by filing revised Form No. 10B. There can hardly be any dispute by revenue that the impugned second part of exemption u/s 11(1)(a) amounting to Rs. 43,98,666/- is a statutory claim of assessee. Thus, the exemption u/s 11(1)(a) is already claimed by assessee in original return, the only mistake which occurred was in mentioning the amount of second part of exemption. In any case, it is also a judicial view that a legal claim of assessee can be allowed by appellate authorities, if not by AO, and the decision of Hon'ble Supreme Court in *Goetze (India) Ltd. Vs. CIT (SC)* does not come in the way of appellate authorities. Therefore, taking into account the facts of assessee's case in the light of provision of law and judicial view as narrated hereinbefore, we are of the considered view that in present case the assessee's claim of exemption of Rs. 43,98,655/- under second part of the section 11(1)(a) has to be considered by AO. Accordingly, we direct the AO to allow the claim of assessee after verifying the revised Form 10B filed by assessee.

6. Resultantly, this appeal is allowed in terms mentioned above.

Order pronounced in open court on 18.07.2024.

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 18.07.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore