

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA.No.2310/Mum./2024
Assessment Year 2014-2015

Goenka & Associates Educational Trust, Yashodham High School Bldg., General A.K. Vaidya Marg, Goregaon East, Mumbai – 400 063. Maharashtra. PAN AAATG1248E	vs.	The DCIT (Exemption) Circle-1(1), Cumballa Hill, MTNL Bldg., Peddar Road, Mumbai – 400 026. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Aamod Prabhudesai
For Revenue :	Shri Dr. Kishor Dhule, CIT-DR

Date of Hearing :	22.07.2024
Date of Pronouncement :	24.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal for assessment year 2014-2015 arises against the order of the learned CIT(A)-National Faceless Appeal Centre, Delhi's DIN & order no.ITBA/NFAC/S/250/2023-24/1063460720(1), dated 27.03.2024,

in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive ground in the instant appeal :

1. *In the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming the action of the Ld. AO of disallowing the excess application of income for the year of Rs.4,41,82,654/-. The Ld CIT(A) ought to have held that excess application of income for the year is eligible to be carried forward and be part of application of income of subsequent year(s) and ought to have directed the Ld. AO accordingly. In view of the same, it is humbly prayed that the Ld. AO be directed to allow the excess application of income for the year to be carried forward as an application of income of subsequent years.*
2. *In the facts and in the circumstances of the case and in law, the LD, CIT(A) erred in confirming the action of the*

Ld. AO of not allowing provisions for gratuity of Rs.3,48,00,124/ as an application of income u/s. 11(1)(a). The Ld. CIT(A), for the purpose of application of income u/s.11(1)(a), ought to have held that any sum should be considered as an application of income based on method of accounting regularly employed and accordingly, ought to have directed the Ld. AO to allow the provision for gratuity of Rs.3,48,90,124/- as an application of income u/s.11(1)(a). In view of the same, it is humbly prayed that the Ld. AO be directed to allow the provision for gratuity of Rs.3,48,90,124/- as an application of income u/s. 11(1)(a).

3. In the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have directed the Ld. AO to add back donation paid of Rs.2,01,600/- in computing the income for the purpose of computing the exemption at 15% of income u/s.11(1)(a) of the Act and consequently, the exemption u/s.11(1)(a) ought to have been granted at Rs.2,09,33,930/- instead of Rs.2,09,03,690/-.

Without prejudice to Ground No. 1 to 3 above and in the alternate :

4. In the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have allowed accumulation of income u/s.11(2) of the balance income and consequently, ought to have directed the Ld. AO to assess the total income at Rs. Nil.

5. It is humbly prayed that the reliefs as prayed for hereinabove and/or such other reliefs as may be justified by the facts and circumstances of the case and as may meet the ends of justice should be granted.

6. The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.”

3. Learned counsel's first and foremost arguments raised during the course of hearing is that the CIT(A)-NFAC has nowhere provided any effective opportunity of hearing before confirming the assessment findings disallowing/ adding "deficit" for the purpose of sec.11 exemption proceedings etc., as follows :

“1. In ground no.1, the assessee objects to disallowance of excess application of income of Rs.44182654. Due to the reason stated by the AO in para 3.3.1 of the assessment order, disallowance of claim of deficit is approved. The assessee 's ground on this issue is dismissed.

2. Ground no. 2 disputes disallowing provision for gratuity amounting to Rs.34890124. The AO has passed a speaking order. The reason stated by the AO in para no.4.1, on this issue is approved and confirmed. The action of the AO is justified. Due to the reasons stated in para 4.1 disallowance of provision of gratuity is confirmed. Assessee's ground on this issue is dismissed.

3. Income set apart or accumulated u/s 11(1)(a)@15% at Rs.20903690 is confirmed. The assessee's contention in ground no.3 is not supported by any evidence. Hence the action of the AO is confirmed.”

4. Learned CIT-DR could hardly dispute that the CIT(A)-NFAC's foregoing detailed discussion has neither quoted any opportunity of hearing provided to the assessee nor he has ensured compliance to sec.250(6) of the Act requiring it to give points for determination followed by a detailed adjudication thereof. Faced with this situation, we deem it appropriate in the larger interest of justice to restore the assessee's instant appeal back to the CIT(A)-NFAC for its afresh adjudication, preferably within three effective opportunities of hearing, subject to the rider that it shall be the taxpayer's onus and responsibility only to file and prove all the relevant facts in consequential proceedings. Ordered accordingly.

5. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 24.07.2024

Sd/-
[OMKARESHWAR CHIDARA]
ACCOUNTANT MEMBER

Mumbai, Dated 24th July, 2024
VBP/-

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "G" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.