

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 337/Mum/2024 (A.Y. 2015-16)

Saraswati Mukund Education Society Plot No. 15, Jeal Park Bhayander East Thane-401 105. PAN : AAFTS4158Q (Appellant)	Vs.	ITO Exemption 208-209, 2 <sup>nd</sup> Floor Qureshi Mansion, Teen Hath Naka, Opp Malhar Talkies Thane(W)-400602. (Respondent)
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Assessee by	Shri Bhuvanesh Kankani
Department by	Shri R.R. Makwana
Date of Hearing	06.06.2024
Date of Pronouncement	26.07.2024

ORDER

1. This appeal is filed by Saraswati adjudication society for assessment year 2015 – 16 aggrieved with the appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) dated 11/12/2023 wherein in appeal assessee challenges the assessment order passed under section 143 (3) of the income tax act, 1961 (the act) by the income tax officer (exemption) Thane dated 30/12/2017, was dismissed.
2. Assessee has raised following grounds of appeal: –
  - i. on the facts and circumstances prevailing in the case and as per provisions and scheme of the act it be held that the addition of ₹ 4,003,540/- made by the learned AO and upheld by the learned CIT (A) is not in accordance with the facts and provisions of the act. Accordingly, the addition so made and that upheld be kindly deleted and appellant be granted just and proper relief in this respect.

- ii. Without prejudice to other grounds, on the facts and circumstances prevailing in the case and as per provisions and scheme of the act, it be held that the addition of ₹ 2,040,000/- so made by learned AO and that upheld by learned CIT – A by invoking provisions of section 13 (1) (c) of the act is incorrect and not in accordance with the provisions of section 13 of the act stop accordingly the addition so made and that upheld be kindly deleted and appellant be granted just and proper relief in this respect.
- iii. Without prejudice to the other grounds, on facts and circumstances prevailing in the case and as per provisions and scheme of the act to be had that the disallowance of claim under section 11 of the act of ₹ 9,063,538/- is incorrect and not in accordance to the provisions of the act. Thus the addition so made and that upheld be kindly deleted and the appellant be granted just and proper relief in this respect.
- iv. Without prejudice to other grounds, on the facts and circumstances prevailing in the case and as per the provisions and scheme of the act it be held that the order passed by learned CIT – A is without using the submissions made by the appellant and without applying his mind, leading to passing of a non-speaking order. Thus the order of the learned CIT – AB kindly nullified and appropriate relief be granted to the appellant in this regard.
- v. Without prejudice to other grounds, on the facts and circumstances prevailing in the case and as per the provisions and scheme of the act in case the additions made under section 13 (1) (c) of the act are upheld the appellant be allowed to claim 15% of the total receipt as free accumulation as per provisions of section 11 of the act and accordingly, the learned AO be kindly directed to recompute the income.

- vi. Without prejudice to other grounds, on facts and circumstances prevailing in the case and as per the provisions and scheme of the act it be held that the learned AO and learned CIT – A order in making additions on a ground which was beyond the scope of reasons given under the limited scrutiny selection of cases under CASS no permission was taken by the principal CIT – CIT to convert the case to complete scrutiny. Thus the addition so made of ₹ 9,063,538/–, being disallowance of claim under section 11 of the act, be kindly deleted and appropriate relief be granted to the appellant.
3. Assessee is a charitable trust filed its return of income on 28/9/2015 at rupees Nil. The case was selected for limited scrutiny. Notice under section 143 (2) was issued on 25/7/2016. The learned assessing officer asked for the certain details which were partly submitted on 15/6/2016 in tapal. By this submission assessee merely furnished the personal income tax return details of the specified person. The AR failed to file an justify or establish the genuineness of the payment made to specified person has referred to in section 13 (3) of the act summons under section 131 of the income tax act was issued to the managing director of Dastoor Ceramics private limited namely Mr. Deepak More , Smita More and Suchitra More.. The summons were not responded to none attended and therefore one more summons were issued under section 131 to all these three parties and they failed to appear. This time adjournment was requested which was granted. On the appointed date also none appeared. Ultimately on 16/8/2017 the statement of Mr. Deepak More was recorded but during the course of summons he complained about the uneasiness and headache , therefore the statement was postponed. Against on that date he failed to appear. Therefore fresh summons were once again issued on 25/10/2017. On that date, he sought adjournment. Therefore as there was a time constraint a final opportunity was given by the assessing

officer to appear before him, instead of that once again adjournment was requested. After that assessee sent an email and stated that Mr. Deepak More is unfit, unwell and therefore unable to appear. The AO issued detail show cause notice. Once again a letter was submitted giving certain details. Ultimately on 28/12/2017 the statement of Mr. Deepak More was recorded he could not answer many questions and once again sought time. Ultimately some details were submitted. Therefore, on the basis of the above facts the learned assessing officer proceeded to make the assessment in case of the assessee trust.

4. During the course of assessment proceedings it was found that Mr. Deepak has leased cars to school without owning a taxi and thus even if he gave a car on rent the same is ultra virus transaction both for Mr. Deepak More and trust as it violated motor vehicles act which states that only taxi permit can be rented. Mr. Deepak has claimed expenses on taxi hiring business which are paid in cash and are unverifiable. The assessee claimed to have made payment of ₹ 45,000 in cash to Mr. Mr. Yadav getting taxi job in some IT company he was not able to give the name of IT company or identify Mr. Dinesh. Therefore the learned assessing officer noted that money received from trust by Sri Deepak is in violation of the fiduciary relationship between trust and trustee in guise of leasing of car which was never given to the trust on rent. In view of this fact, the assessee has violated the provisions of section 13 (1) (C) (ii) by making a payment to a person referred to in section 13 (3). Therefore the learned assessing officer withdrew the benefit of section 11 as the payment of Rs 480,000/- to Mr. Deepak More as payment for leasing of car of the trust.
5. Mrs. Smita More was paid salary of ₹ 760,000/-. She is a person covered under section 13 (3) of the act. The learned AO questioned about the payment of the sum. It was stated that she is a qualified professional holding post-graduation qualification and has working experience of 8 years. She is managing the nursery division as well as

Events and activities of the school. Miss Mare has years of experience in managing similar kindergarten divisions. Agreement between the parties and the trust was submitted. On examination, it was found that she has undergone knee surgery and therefore advised rest. The learned assessing officer noted that she was nearly 12th passed, for last 5 – 6 years she was suffering from serious illness which renders her incapacitated to even move freely. And therefore he held that the above payment made by the assessee Mrs. Smita of ₹ 760,000 is in violation of the provisions of section 13 (c) of the act. Assessee was denied exemption under section 11 to the same.

6. Mrs. Suchitra More was the another person who has been paid remuneration of ₹ 8 lakhs. It was further stated that Syria qualified professional is holding post-graduation qualification and has working experience., The learned assessing officer noted that the person to whom the payment is made could not explain the reasons of the payment and what kind of services she has rendered to the trust. Accordingly he disallowed the same and denied exemption under section 11 to the act.
7. Accordingly an assessment order under section 143 (3) of the act was passed on 30/12/2017 wherein the total income of the assessee was determined at ₹ 4,003,538 wherein the benefit of section 11 was denied to the trust.
8. Assessee aggrieved with the same preferred an appeal before the learned CIT – A wherein certain additional evidences were produced, the remand report was sought and thereafter an opportunity to the assessee was granted and then appellate order was passed dismissing the appeal of the assessee. Therefore assessee is in appeal before us raising above grounds.
9. The learned authorized representative filed a paper book containing 180 pages wherein the response filed by the assessee before the learned assessing officer, documents in relation to services rendered by

Smita More (Saraswati enterprises) such as copy of the agreement, Ledger copies, corresponding bills , computation of total income and Salary expenses incurred by Saraswati enterprises. Some affidavits were also filed. In case of payment made to Suchitra More (SM Corporation) identical details were also filed. With respect to the car hire charges paid to Mr. Deepak More ,car expenses incurred by the assessee and by the recipient of such payment is also filed. Some affidavits were also filed with respect to the use of the car. The learned authorized representative also relied upon several judicial precedents that if a particular violation of the section is found then only hat income which violated the provisions of the law could be considered for withdrawal of the exemption under section 11 and same cannot be applied to the whole of the income earned by the assessee. He referred to the decision of the honourable Karnataka High Court in 44 taxmann.com 275 which was upheld by the honourable Supreme Court in 51 taxmann.com 378.

10. The learned departmental representative vehemently submitted that assessee is a charitable trust running a school in Bhayander (East) in Thane district of Maharashtra. It has been granted registration under section 12A of the act. No doubt, it is carrying on the activities of the education. But here the assessee has paid a car rent of Rs 480,000, professional fees of ₹ 1,560,000 to specified persons which does not have any substance and same is paid to the persons covered under section 13 and therefore the exemption to that extent is rightly denied. It was stated that if the income is not applied for the purposes for which registration is granted or applied wrongly, the assessee loses exemption of section 11 and 12 and therefore there is no infirmity in the order of the learned lower authorities. He further submitted that one must look at the conduct of the assessee wherein several summons were issued none of them were responded, lately, some information was given, the assessee is running away from the assessment

proceedings in providing the details with respect to these items therefore it cannot be looked into in isolation from the conduct of the assessee about the genuineness of these expenditure. It is not the case that these expenses are paid to the concerned specified persons but the doubt is with respect to the genuineness of the payment made by the assessee. He submitted that when there are no services rendered by those persons to the assessee, there is no question of allowing exemption to the assessee on the whole of the income.

11. We have carefully considered the rival contentions and perused the orders of the lower authorities. The fact shows that assessee is a charitable trust registered under section 12 A, running a school at Bhayander ( E ) Thane. During the course of assessment proceedings, the learned AO found that assessee has paid car rent of Rs 480,000, professional fees of ₹ 1,560,000, to three persons, which are specified persons under section 13 of the act, assessee has failed to give the complete details of such expenses and therefore AO did not grant exemption under section 11 of the act to the trust on the whole of the income.
12. The claim of the assessee with respect to the car hire charges is that assessee society has hired 3 cars [ I20, Swift and Winger and paid car rent of ₹ 4,080,000/- to Mr. Deepak More. For this proposition an agreement dated 1/4/2013 was placed wherein three cars were mentioned and assessee paid ₹ 40,000 per month for all these three cars. The model, make, registration number was provided in the agreement. The recipient of the income has shown this income and has shown net profit only of ₹ 14,684 on car hiring income of ₹ 480,000. Some fuel bills of the same vehicle are also produced before us which are paid by cheque by the person to whom the car rent was paid. The assessee has submitted the bills of unique filling point for the whole year for the petrol bills and also the copy of the Ledger account of the person received the income. Drivers salary was also stated to be paid of

₹ 168,000. However when the statement of the driver was recorded he refused to identify the person creating serious doubt that whether he was the real driver who operated the vehicle or not. Assessee has produced his cash voucher for payment of salary. Several other details are produced but that does not inspire confidence as all these information was with respect to car owned by Mr. Deepak More who has incurred certain expenditure. But that does not establish that these cars were run for the activities of the assessee trust and for that services the payment is made. There is also no evidence that whether the amount of car hire charges paid by the assessee to him was at market rate or not.

13. Further with respect to the salary and professional fees paid to Smita more and Suchitra More, These were backed by the agreement with respective parties namely Saraswati enterprises and SM Corporation. As per the agreement the nature of services provided however it is apparent that as per the statement of Mrs. Suchitra More the person who provided the services is not well, before the assessing officer she did not appear despite several summons. The assessee has produced the copy of the account of payment made to this party however the bills are provided to the trust on quarterly basis. Merely providing the bills does not show that the services have been rendered to the trust. Assessee has to prove that trust has received the services from the specified person, the payment to the specified person is at market rate and not excessive.
14. Similarly for payment made to Suchitra More and agreement is produced placed at paper book page number 31 for payment of services of ₹ 8 lakhs for the year. The assessee has produced invoices raised on the assessee trust, the financial statement and the Ledger account of the service provider. Affidavit of some person that the services have been rendered. However there is no evidence that in fact services have

been rendered to the trust, at market rate, by the specified person, and therefore assessee does not loses the exemption.

15. According to the provisions of section 13 (1) (2) if any part of the income of the trust is paid by way of salary, or for services to a specified person out of the resources of the trust for services rendered by that person any sum paid in excess of what may be reasonably paid for such services, loses the exemption and be deemed to have been used or applied for the benefit of the person referred to in subsection (3) of the act.
16. It is not denied before us that assessee has made payment to Mr. Deepak More of car rent of ₹ 480,000/-, to Mrs. Smita More , professional fees of ₹ 760,000/- to Miss Suchitra More professional fees of ₹ 8 lakhs. It is also not denied that these are the specified persons covered under section 13 (3) of the act. The learned assessing officer issued several summons, which were either partly complied with or not complied with. The details provided before the learned assessing officer were scanty and not relevant. The assessee has to prove that services have been rendered by these persons to the trust for which payment has been made. If the renditions of the services are not proved, it would have different ramifications. But if assessee proves that it has received the services from these parties, then the question of verification whether such payment is excessive or not would arise. If any excess payment is made in terms of section 13 (2) (c) of the act, the same deserves to be considered as not eligible for exemption under section 11 of the act. Even the additional evidences presented before the learned CIT – A are not with respect to the services provided by these persons to the assessee but the expenses of recipient of the income who incurred certain expenses. Same are not relevant at all. The offering of the income by the recipient of the income does not make the case of the assessee that such payment has been made at the market rate, if the services are rendered.

17. As the assessee has failed to show the services rendered by the specified persons to the trust, and during the course of assessment proceedings the assessee did not produce the person in response to summons under section 131 of the act and also not furnished the complete information, in the interest of justice, we direct the assessee to produce before the learned assessing officer the proof of evidence of rendition of services to the assessee trust by these persons, and to show that there is no excess payment made to these parties, by producing cogent evidences and responding to all the enquiries made in the original assessment order completely. The learned AO may examine the case and verify whether the services have been rendered by these persons to the assessee, the services rendered are remunerated at market rate, if excess payment is made to that person, then only such excess payment will lose exemptions under section 11 of the act. In view of this ground number 1 of the appeal is partly allowed, ground number 2 – 6 of the appeal are restored back to the file of the learned assessing officer with a direction to the assessee as indicated above.
18. In the result appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26.07.2024.

Sd/-  
(Prashant Maharishi)  
Accountant Member

Mumbai : 26.07 .2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

*PS*

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai