

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.2050/Del/2024, A.Y. 2015-16

Jawahar Lal Nehru Sr. Secondary School, Gudha Road, Behind Kath Mandi Gohana, Haryana PAN: ABAJ3629C	Vs.	ITO, Ward-1, Sonipat
(Appellant)		(Respondent)

Appellant by	Shri Naveen Gupta, Advocate
Respondent by	Shri Om Prakash, Sr. DR

Date of Hearing	05/08/2024
Date of Pronouncement	08/08/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM:

The appeal filed by the assessee for the Assessment Year (In short, the 'AY') 2015-16 is directed against the order dated 30.03.2024 passed by the Additional/Joint Commissioner of Income Tax (Appeals)-Aurangabad [In Short, the JCIT(A)].

2. Following grounds are raised in this appeal: -

"1. That the order of the Ld. JCIT(Appeals) is against law and facts.

2. That the Ld. JCIT (Appeals) erred in confirming addition of Rs. 1,04,83,778/- made by the Ld. AO/CPC to the total income of the appellant by disallowing all the revenue and capital expenditure claimed by the appellant in its return of income.

3. That the Ld. JCIT (Appeals) erred in confirming addition of Rs. 1,04,83,778/-made by the Ld. AO/CPC while processing the return u/s 143(1), although the issues on which disallowances/ additions were made are highly debatable issues and it is not allowable to make such debatable disallowances/additions u/s 143(1).

4. That the appellant craves leave to add, alter, modify, amend or withdraw any of the ground of appeal at the time of hearing.”

3. The facts of the case, in brief, relevant for deciding this appeal are that the appellant/assessee, a society who runs a school, filed its Income Tax Return (In short, the 'ITR') declaring NIL income in Form No. 7 after claiming deduction under section 11 of the Income Tax Act, 1961 (In short, the 'Act'). The ITR filed by the appellant/assessee was processed, by the Assessing Officer (CPC-ITR) [In short, the 'AO'], under section 143(1) of the Act on 27.03.2017. The AO disallowed entire expenses claimed in the Income & Expenditure Account annexed/mentioned in the ITR on the reasoning that the appellant/assessee was not entitled for claiming deduction under section 11 of the Act as it was not a registered trust under section 12AA of the Act. In other words, the entire gross receipts of Rs.1,04,83,778/- of the appellant/assessee was taxed as an income. Aggrieved, the appellant/assessee filed appeal before the First Appellate Authority. The Ld. JCIT(A) dismissed the appeal vide order dated 30.03.2024 on the reasoning that the assessee was not entitled for claiming exemption under section 11 or expenses of capital nature as it was neither registered as a Trust under section 12AA nor notified under section 10(23C) of the Act.

4. The Ld. Counsel submitted that the AO had erred in disallowing the expenditure (revenue & capital expenditure), in entirety, claimed in the ITR which had been incurred exclusively to earn income. Such disallowance under section 143(1) of the Act was not warranted as such disallowances, being disputable as non-prima facie adjustments, could not be disallowed in the processing of return under section 143(1) of the Act. It was admitted by the Ld. Counsel that the appellant/assessee was not a registered Trust under section 12AA of the Act. The Ld. Counsel prayed that the income of the appellant/assessee should be assessed under the head 'Income from Other Sources' and consequential deduction should be allowed in accordance with the Section 57 of the Act. In support of the argument, the Ld. Counsel placed reliance on the decision of the Hon'ble Delhi High Court in the case of Petroleum Sports Promotion Board, 362 ITR 235.

5. The Ld. Senior Departmental Representative (In short, the 'Sr.DR') placed emphasis on the finding of the JCIT (A).

6. We have heard both the parties and have perused the material available on the record. We find force in the contention /submission/arguments of the Ld. Counsel that the income of the appellant/assessee should be assessed under the head 'Income from Other Sources, in accordance with the provisions of Section 56 read with Section 57 of the Act. The ITR filed by the appellant/assessee in Form No. 7 in absence of the proof of registration as trust under section 12AA of the

Act has been treated as a valid ITR and that is why the same was processed under section 143(1) of the Act. Here in this case, instead of taxing income imbedded in the gross receipts, the entire receipts have been taxed as income. Keeping in view the facts in entirety, we are of the considered opinion that the disallowance of entire expenses in processing under section 143(1) of the Act is not only against the accounting principle but also against the provisions of the Act. The impugned order of the JCIT(A), in para 6.4 of the order, has categorically held that the appellant/assessee is not eligible to claim exemption u/s 11 or expenses of capital nature. For proper appreciation of facts of the case, the para 6.4 of order of the JCIT(A) is reproduced as under:

“6.4 As mentioned in the notice, the appellant has filed ITR-7, which is meant for trust and also filed form 10B, however, the appellant is not registered u/s 12A or 10(23C), hence, it is not eligible to claim exemption u/s 11 or expenses of capital nature. In view of the above, the CPC was justified in denying exemption u/s 11 and the action of the CPC is hereby confirmed. Accordingly, the grounds of appeal raised by the appellant are dismissed.”

7. The JCIT(A) has nowhere held in the impugned order that the revenue expenditure claimed by the appellant/assessee to earn income are not allowable expenditure. The JCIT(A) has categorically held that the appellant/ assessee is not eligible to claim exemption u/s 11 or expenses of capital nature. We are of the considered view that the finding ‘it is not eligible to claim exemption under section 11 of the Act’ does not mean that the appellant/assessee is not eligible to claim revenue expenditure incurred exclusively to earn income. We are of the firm view that at most,

in this case, the income embedded in the gross receipts can be taxed and not the entire gross receipts as such. We are of the considered view that the AO has to assess the income of the appellant/assessee under the head 'Income from Other Sources' in accordance with the provisions of Sections 56 and 57 of the Act. Therefore, the revenue expenditure incurred exclusively to earn income along with the depreciation on assets has to be allowed as expenditure in accordance with the provisions of Section 57 of the Act. Thus, the AO is directed to allow all expenses/deductions in accordance with the provisions of Section 57 of the Act against the receipts of Rs.1,04,83,778/- taxable under section 56 of the Act. Accordingly, we order so. The matter is therefore, restored back to the AO for doing needful as above.

8. In view of the above, the appeal of assessee is allowed for statistical purposes.

Order pronounced in open Court on 8th August, 2024.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated: 08/08/2024
Binita Rukhaiyar, Sr. Ps.

- Copy forwarded to:
1. Appellant
 2. Respondent
 3. CIT
 4. JCIT(Appeals)
 5. CIT-DR, ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI