



**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW**

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.343/LKW/2023
Assessment Year: 2017-18

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| Lodge of Harmony No.438EC C/o P.C. Agarwal 15/296, Govind Niwas Civil Lines, Kanpur TAN/PAN:AAATL2285Q (Appellant) | v. | The Assessing Officer Exemption Ward Kanpur (Respondent) |
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|------------------------|-----------------------------------|----|------|
| Appellant by: | Shri Rakesh Garg, Advocate | | |
| Respondent by: | Shri Sanjeev Krishna Sharma, D.R. | | |
| Date of hearing: | 09 | 05 | 2024 |
| Date of pronouncement: | 05 | 08 | 2024 |

ORDER

This appeal has been preferred by the assessee against the order dated 29.09.2023 passed by the Addl/JCIT(A)-3, Chennai for assessment year 2017-18.

2.0 The brief facts of the case are that the assessee is a charitable institution, but was not registered under section 12A of the Income Tax Act, 1961 (hereinafter called 'the Act') during the captioned assessment year and it enjoyed income from rent and interest from bank, during the year under consideration. The return was filed as an AOP, declaring income at Rs.13,93,243/-. The assessee computed tax liability as applicable to AOP and paid tax of Rs.2,50,261/- (inclusive of TDS, advance tax and self-assessment tax). However, the Central Processing Centre (CPC), Bangalore, while processing the return

of income, computed the tax liability at Rs.4,62,720/- and raised a further demand of Rs.2,12,460/-.

2.1 Aggrieved, the assessee approached the Id. First Appellate Authority, challenging the tax demand and submitted before the Id. First Appellate Authority that the basic exemption available to an AOP was to be allowed. It was the submission of the assessee before the Id. First Appellate Authority that since the assessee was purely a charitable institution and no part of the surplus was to be distributed amongst the members and that further the entire surplus accumulated was to be applied for charitable purposes as and when the need arose. The assessee also submitted that the CPC had travelled beyond its scope by applying the Maximum Marginal Rate (MMR) of tax to the income of the institution for the reason that such kind of adjustment was neither provided for nor permissible in terms of section 143(1) of the Act.

2.2 However, the assessee's appeal came to be dismissed by the Addl/JCIT(A)-3, Chennai by observing that since the assessee had reported its status as an AOP, the assessee had to adhere to the relevant instructions while filling in the columns in the return of income. It was further observed that as the assessee had only reported partial information in the ITR, the CPC had computed the tax liability at the Maximum Marginal Rate. It was further observed that the assessee had failed to identify all its members and their percentage of shares and, therefore, the shares of the members were indeterminate and unknown and, therefore, the tax was to be levied at the Maximum Marginal Rate only.

2.3 Now, the assessee has approached this Tribunal, challenging the dismissal of its appeal by the Addl/JCIT(A)-3, Chennai by raising the following grounds of appeal:

1. Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has arbitrarily held that the assessee being an AOP is not eligible for basic exemption against the income earned for the year under consideration, the order passed is bad in law, the basic exemption as claimed be allowed.

2. Because the CIT(A) has failed to appreciate the facts of the case and has erred in interpreting the provisions of Act, has arbitrarily held that the assessee being an AOP is to be assessed on its entire income at MMR as against the rate of tax as applicable to individuals, AOPs, body of individuals, the order passed by the CIT(A) denying basic exemption being bad in law, be set aside.

3. Because the CIT(A) has failed to appreciate that in all cases of AOP there need not be the motive of earning profit which is an essential ingredient for the purposes of forming an AOP hence, MMR is not applicable, the order passed by the CIT(A) in holding that MMR is applicable is contrary to the provisions of law, the order be set aside.

4. Because in any order passed by CIT(A) is bad in law be set aside.

3.0 The ld. authorized representative for the assessee submitted that the CPC had allowed the basic exemption available to an AOP, i.e. of Rs.2,50,000/- in earlier years to the assessee and he reiterated that Maximum Marginal Rate could not have been applied. It was further submitted by the ld. authorized representative for the assessee that the status of the assessee was more 175 years old and that the members come together for a common purpose, i.e., charity. He reiterated that

the surplus arising has never ever been distributed amongst the members or applied for the benefit of any of the members. The ld. authorized representative for the assessee submitted that the number of members might keep on varying but the ownership of the property and the income vests with the institution only.

3.1 My attention was drawn to the copies of the intimations passed by the CPC in the case of the assessee for assessment years 2014-15, 2013-14, 2012-13 and 2011-12, wherein the Income Tax Department had accepted the returns of income as filed by the assessee and had allowed the benefit of basic exemption to the assessee. My attention was also drawn to CBDT Circular No. 320 [F.No.131(31)/81-TP(Pt.)] dated 11.1.1982 and it was submitted that as per the Circular, in case of registered societies, trade and professional associations, social and sports clubs, charitable or religious trusts, etc., where the members or trustees are not entitled to any share in the income of the association of persons, tax will be payable at the rate ordinarily applicable to the total income of an association of persons and not at the Maximum Marginal Rate inspite of provisions of section 167A of the Act. The ld. authorized representative for the assessee also placed reliance on the order of ITAT, Ahmedabad Bench in the case of Lodge Hamilton 26 vs. Income Tax Officer reported in 66 ITD 609 (Ahmd.) and submitted that the Ahmedabad Bench of the ITAT had also placed reliance on the above mentioned CBDT Circular and had held that section 167A of the Act was applicable only where the individual shares of the members of an AOP were indeterminate and/or unknown and that it would not apply to those cases

where the members were not entitled at all to any share in the income of the AOP.

3.2 The ld. authorized representative of the assessee submitted that the Department was bound to follow the directions as laid down in the Circular and submitted that since the provisions of section 167A/167B of the Act were not to be attracted in the case of the assessee, tax will be payable at the rate ordinarily applicable to the total income of an AOP and not at the maximum marginal rate. The ld. authorized representative of the assessee prayed that the appeal of the assessee should be allowed.

4.0 Per contra, the ld. Sr. D.R. placed reliance on the observations made by the Addl/JCIT(A)-3, Chennai in the impugned order and submitted that since the assessee himself had reported the status as AOP and had not filled in the relevant columns correctly in the ITR, the charging of tax at Maximum Marginal Rate was completely in order. The ld. Sr. D.R. submitted that the impugned order had been passed keeping all the aspects of the case in mind and all the arguments made by the assessee before the ld. First Appellate Authority had been duly dealt with in the impugned order and therefore, no interference was required. He prayed that the appeal of the assessee be dismissed.

5.0 I have heard the rival submissions and have also perused the material on record. The only question for determination before me is whether the assessee should be allowed benefit of basic exemption while calculating the tax due or not. In this regard, it is seen that in earlier assessment years i.e. assessment years 2011-12, 2012-13, 2013-14 and 2014-15,

the returns of income filed by the assessee were duly accepted without denying basic exemption available to the assessee. Further, it is also to be noted that although the assessee might have filed its return of income as an AOP, as per the bylaws of the assessee, no member can avail any monetary benefit/share of profit of the said institution. It is undisputed that no portion of the surplus of the institution is to be distributed or parted way with in favour of any member and/or surplus is to be accumulated for the purpose of being applied to charitable purposes as and when the need arises. The Id. Authorized Representative for the assessee has rightly drawn my attention to the CBDT Circular No. 320 [F.No.131(31)/81-TP(Pt.)] dated 11.1.1982, wherein it has been specifically provided that in case of registered Societies, trade and professional associations, social and sports clubs, charitable or religious trusts, etc., where the members or trustees are not entitled to any share in the income of the association of persons, provisions of section 167A of the Act will not be attracted and accordingly tax will be payable at the rate ordinarily applicable to the total income of an AOP and not at the Maximum Marginal Rate.

5.1 At this juncture, it is also necessary to bring out that section 167A of the Act was omitted w.e.f. 1.4.1989 and a new section 167B of the Act was introduced and subsequently w.e.f. 1.4.1993 section 167A of the Act was again inserted in the Income Tax Act. Thereafter, a new section 167B of the Act was inserted which is applicable to association of persons and body of individuals. In my considered opinion, the above mentioned Circular would be applicable to section 167B of the Act. The CPC

has made disallowance in terms of section 167B of the Act only in the instant appeal.

5.2 Therefore, looking into the past history of the assessee as well as the provisions of above mentioned Circular and also the order of the ITAT Ahmedabad Bench in Lodge Hamilton 26 vs. Income Tax Officer (supra), I hold that the assessee is entitled to benefit of exemption and accordingly the impugned order of the Addl/JCIT(A)-3, Chennai is set aside and the Assessing Officer is directed to allow the benefit of basic exemption to the assessee and not charge Tax at the Maximum Marginal Rate.

5.3 In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open Court on 05/08/2024.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:05/08/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar