

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA no. 2931/Mum./2024
(Assessment Year : 2018-19)

ITA no. 2930/Mum./2024
(Assessment Year : 2019-20)

ITA no. 2929/Mum./2024
(Assessment Year : 2020-21)

&

ITA no. 2928/Mum./2024
(Assessment Year : 2021-22)

Shrirang Anand Ashram

343, 1, Jasua House, Kapurbawadi,
Majiwade, Thane (W)
PAN-AAFTS8647G

..... Appellant

v/s

ADIT, CPC, BENGALURU

Room No. 208, 2nd Floor, Quereshi Mansion,
Gokhale Road, Naupada, Near Teen Hath Naka,
Thane (W)- 400602

..... Respondent

Assessee by : Shri Subodh Ratnaparkhi
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing – 08/08/2024

Date of Order – 28/08/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the separate impugned orders dated 26/03/2024 and 29/03/2024 passed under

section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Addl./Joint Commissioner of Income Tax (Appeals)-2, Gurugram, [*"learned Addl./Joint CIT(A)"*], for the assessment years 2018-19 to 2021-22.

2. Since these appeals pertain to the same assessee and involve similar issues arising out of a similar factual matrix, these appeals were heard together and are being decided by way of this consolidated order. With the consent of the parties, the appeal for the assessment year 2018-19 is taken up as a lead case and the decision rendered therein shall apply *mutatis mutandis* to the appeals for the assessment years 2019-20 to 2021-22.

ITA No. 2931/Mum./2024
Assessee's appeal – A.Y. 2018-19

3. In this appeal, the assessee has raised the following grounds: –

"1. The Hon. CIT(A) erred in upholding the action of the ADIT, CPC, Bengaluru in

a. denying the appellant deduction claimed u/s 11(1)(a) of the I. T. Act, 1961 in respect of actual revenue expenditure of Rs.18,38,491/- debited to the Income and Expenditure Account and

b. disallowing the claim for exemption u/s 11(1)(a) on account of accumulation of income to the extent of Rs. 1,631/-, as and by way of prima facie adjustment, which being impermissible u/s 143(1)(a) of the I. T. Act, 1961, the resultant additions may kindly be deleted.

2. The Hon. CIT(A) erred in upholding addition of Rs. 18,38,491/- made on account of disallowance of actual revenue expenditure incurred by the appellant trust as debited to the Income and Expenditure Account and for which deduction was claimed in the ITR u/s 11(1)(a) as amount actually applied towards the objects of the trust, not appreciating that what is taxable under the Income Tax Act is the net income of any assessee and not the gross receipts and therefore denial of deduction of Rs.18,38,491/- is not justified and may kindly be deleted.

3. The Hon. CIT(A) erred in upholding the addition of Rs.1,631/-, being denial of claim u/s 11(1)(a) on account of accumulation of income to the extent of 15 percent of gross receipts, which addition is not justified by law and therefore the consequent addition of Rs. 1,631/- may kindly be deleted.

4. The Hon. CIT(A) erred in not appreciating that the actual surplus of the appellant trust for the year under appeal was Rs.1,631/- only and therefore

income in any case could not be determined over and above this amount, as undisputedly deduction for actual expenditure incurred was required to be granted while determining taxable income.

5. The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal at any time before the decision of the appeal."

4. The sole grievance of the assessee is against the denial of deduction of actual revenue expenditure incurred by the assessee and debited to the income and expenditure account.

5. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case as emanating from the record are that the assessee is a public trust registered under the Bombay Public Trust Act, 1950 under registration No. E-1461. The assessee trust is engaged in running old persons' homes for destitute and homeless persons at the trust premises. The assessee is registered under section 12A of the Act. For the year under consideration, the assessee filed its return of income on 31/07/2018 declaring a total income of Rs. Nil. The return filed by the assessee was processed under section 143(1) of the Act, wherein the deduction claimed under section 11 on account of revenue expenditure incurred by the assessee trust to the extent of Rs.18,28,491 was denied. Similarly, the exemption claimed under section 11(1)(a) of the Act amounting to Rs.1,631, being an accumulation of income to the extent of 15% of gross receipts, was also denied. Accordingly, vide intimation dated 08/02/2020 issued under section 143(1) of the Act, the total income of the assessee was assessed at Rs.18,41,753.

6. The learned Addl./Joint CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that the contention of the assessee is not

acceptable since the assessee being a trust is obligated to file Form No.10B, which is mandatory. It was further held that Form No.10B can be assessed and submitted online and must be filed no later than the specified date mentioned in section 44AB of the Act, which is on or before the due date for submitting the Income Tax Return under section 139(1) of the Act. However, the assessee has not filed Form No.10B for the year under consideration. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the assessee trust is registered under section 12A of the Act and gets its accounts audited, however did not upload Form No. 10B before the due date for filing the return of income. Thus, it was submitted that the assessee is not claiming accumulation under section 11(1)(a) of the Act and the same may not be available to it. However, its income in such a scenario should be computed as per general commercial principles and only its net profit from the operations should be brought to tax and not the gross receipts.

8. We find that while considering a similar issue, the coordinate bench of the Tribunal in *Annadaneshwara Charitable Trust v/s ITO*, [2023] 156 Taxmann.com 270 (Bang-Trib.), observed as under: -

*"7. I have heard the rival submissions and perused the material on record. During the course of hearing, on query by the Bench, it was mentioned by the learned AR that assessee does not have registration under section 12AA nor under section 10(23C) of the Act. In the absence of the registration under the aforesaid sections, there cannot be any application of income. However, the gross receipts cannot be taxed in the hands of the assessee trust. The income earned by the assessee and expenditure relatable to the earning of such income is to be allowed as a deduction. The Bangalore Bench of the Tribunal in the case *H M V Educational Cultural and Social Trust (supra)* restored the matter to the AO with a direction to assess only the net income and not the gross. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:*

"7.3 The assessee has not raised the plea before the Income-tax Authorities that it has to be given deduction u/s 57 of the I.T. Act, in respect of expenditure for earning the interest income. However, inspite of such plea not being raised before the lower authorities, we are of the view that since the fundamental principle under Income-tax Act being that only net income has to be taxed (i.e., gross receipt minus allowable expenditure), this plea of the assessee has to be necessarily entertained, especially in the light of the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Sale Co-operative Society Limited v. ITO [2015] 58 taxmann.com 35 (Karnataka). Accordingly, the issue of deduction u/s 57 of the I.T.Act is restored to the files of the A.O. The A.O. is directed to examine whether assessee has incurred any expenditure for earning interest income, which is assessed under the head 'income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the I.T.Act. The assessee is directed to co-operate with the department and furnish the necessary evidence for expeditious disposal of the matter. It is ordered accordingly."

8. In light of the order of the Bangalore Bench of the Tribunal, I restore the matter to the AO. The AO is directed to examine the financials of the assessee and allow the expenditure which have been incurred for earning the income of the assessee. I make it clear that since in the absence of registration under section 12AA of the Act, there is no question of any application of income. It is ordered accordingly."

9. We find that similar findings are rendered by the coordinate bench of the Tribunal in the following cases: –

- (a) Masonic Fraternity of New Delhi v/s ITO, [2024] 164 Taxmann.com 325 (Del-Trib.)
- (b) Saroj Gopal Education Society v/s ITO, [2023] 154 Taxmann.com 625 (Raipur- Trib.)

10. In the present case, it is evident from the record that the assessee's claim under section 11 and section 11(1)(a) of the Act was denied, as the assessee failed to file Form No. 10B on or before the due date for submitting the return of income under section 139(1) of the Act. Accordingly, the CPC disallowed the deduction of actual expenditure incurred by the assessee as well as the accumulation to the extent of 15% of receipts. However, there is no dispute regarding the fact that the assessee incurred the expenditure to carry out its

object, being mainly towards medical treatment and providing food and lodging to old destitute homeless persons. Accordingly, respectfully following the decisions of the coordinate bench cited supra, we restore this issue to the file of the jurisdictional AO for *de novo* adjudication with a direction to bring to tax only the net profit/margin earned by the assessee from its operations and not the gross receipts, after necessary verification of the financials of the assessee. Needless to mention no order shall be passed without affording reasonable opportunity of hearing to the assessee. With the above directions, grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal by the assessee for the assessment year 2018-19 is allowed for statistical purposes.

ITA No. 2930/Mum./2024 (Assessee's appeal – A.Y. 2019-20)

ITA No. 2929/Mum./2024 (Assessee's appeal – A.Y. 2020-21)

ITA No. 2928/Mum./2024 (Assessee's appeal – A.Y. 2021-22)

12. The sole grievance of the assessee, in these appeals, is against the denial of deduction of actual revenue expenditure incurred by the assessee and debited to the income and expenditure account. Since a similar issue has already been decided in the assessee's own case for the assessment year 2018-19, therefore our findings/conclusions rendered therein shall apply *mutatis mutandis* to these appeals. Accordingly, with similar directions as rendered in assessee's appeal for the assessment year 2018-19, the grounds raised by the assessee in its appeal for the assessment years 2019-20, 2020-21 and 2021-22 are allowed for statistical purposes.

13. In the result, the appeal by the assessee for the assessment years 2019-20, 2020-21 and 2021-22 is allowed for statistical purposes.

14. To sum up, all appeals by the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 28/08/2024

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 28/08/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Shubham P. Lohar

Assistant Registrar
ITAT, Mumbai