

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 118/Ind/2024
Assessment Year: 2019-20

Shri Rishabh Devji Kesarimalji Jain SH MP DT S. Sangh, Bajaj Khana, Ratlam	बनाम/ Vs.	CPC Bengaluru/ CIT(A)/Addl. JCIT-(A)-11, Mumbai
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAETS2561C		
Assessee by	Shri Harsh Vijayvargiya, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	03.09.2024	
Date of Pronouncement	09.09.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 29.12.2023 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT (A)-11, Mumbai [CIT(A)] which in turn arises out of intimation of assessment dated 08.02.2021 passed by learned CPC, Bengaluru ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2019-20, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The background facts leading to present appeal are such that the assessee is a registered trust formed on 30.04.1979. For relevant AY 2019-20, the assessee filed return u/s 139(4) in Form No. ITR-7 declaring a total income of Rs. Nil. The assessee's return was processed by AO u/s 143(1) vide intimation dated 08.02.2021 wherein the total income had been determined at Rs. 23,51,989/- after making certain additions/disallowances and creating demand of tax and interest accordingly. Aggrieved, the assessee filed first-appeal to CIT(A) but did not get any relief. Now, the assessee has come in next appeal before us.

3. We have heard learned Representatives of both sides and perused the case-record including the orders of lower-authorities and considered submissions made before us.

4. The facts of case, issue involved and prayer made before us require a limited mention without much elaboration. Ld. AR submitted that the assessee is a trust not having any registration u/s 12A/12AA of Act and therefore not entitled to exemption u/s 11/12 of the Act. He further submitted that since inception, the assessee had been filing return in the status of "AOP" reporting taxable income without claiming any exemption u/s 11/12. But, however, for the relevant AY 2019-20 under consideration, the assessee inadvertently filed return in Form No. ITR-7 as applicable to the entities registered u/s 12A/12AA in place of correct Form No. ITR-5. Further, in the return so filed, the assessee submitted figures of gross

receipts and corresponding expenses/deductions/applications, etc. as per columns/space provided in Form ITR-7 which included exemption u/s 11/12 also. The AO, while processing return, disallowed assessee's entire claim of expenses/deductions/applications/exemption u/s 11/12 and taxed gross-receipts of Rs. 23,51,989/- as total income. Ld. AR submitted that it is true that there was a wrong filing of Form of return by assessee but that had occurred for the first time and due to inadvertence only. He submitted that the assessee is an "AOP" and liable to pay tax as applicable to "AOP" on the "total income" after giving deduction of expenses incurred for earning income as permissible under law. Therefore, Ld. AR's ultimate prayer is to remand this case back to the file of AO for assessment afresh and assessing assessee's total income in the status of "AOP" after giving deduction of expenses incurred for earning income in accordance with provisions of Act. Ld. AR submitted that the assessee is also ready to file a revised return before AO, if the AO so desires. Ld. DR for revenue submitted that he has no objection if the case is remanded back to AO for a fresh consideration.

5. After a careful consideration, we find that the assessee is not having registration u/s 12A/12AA and therefore not eligible for exemption u/s 11/12 of the Act. However, the assessee is entitled to get the benefit of expenses/deductions incurred for earning income as per provision of the Act. Needless to mention that under section 4 of the Act, tax is payable on "total income" and in terms of provision of section 2(45), the "total income"

has to be computed in the manner laid down in Act. The AO cannot charge tax on gross receipts. Therefore, the present case must be revisited by AO for a proper assessment. Learned Representative of both sides are also in agreement for remanding this case back to the file of AO for a fresh assessment. In that view of matter, we restore this matter to AO for assessment afresh after giving necessary opportunity to assessee. The assessee is also directed to present full and true picture of all its receipts including donations/corpus donations and expenses/deductions, etc. to AO for a proper determination of "total income" and tax liability in the status of "AOP". This appeal is accordingly allowed in these terms.

6. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court on 09.09.2024
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Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

दिनांक /Dated : 09.09.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

By order
Assistant Registrar
Income Tax Appellate Tribunal

Shri Rishabh Devji Kesarimalji Jain SH MP DT S. Sangh, Ratlam
ITA No. 118/Ind/2024 - AY 2019-20

Indore Bench, Indore