



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

**BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.267/LKW/2024  
Assessment Year: 2018-19

Lodge of Harmony No.438EC C/o P.C. Agarwal 15/296, Govind Niwas Civil Lines, Kanpur	v.	The Assessing Officer Exemption Ward Kanpur
TAN/PAN:AAATL2285Q		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate		
Respondent by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	04	07	2024
Date of pronouncement:	30	08	2024

**ORDER**

This appeal has been preferred by the assessee against the order dated 27.03.2024 passed by the Addl/JCIT(A)-3, Chennai for assessment year 2018-19.

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.15,60,510/-. The assessee computed tax liability as applicable to AOP and paid tax of Rs.3,30,590/- (inclusive of TDS and advance tax). However, the Central Processing Centre (CPC), Bangalore, while processing the return of income, computed the tax liability at Rs.5,12,983/- and raised a further demand of Rs.3,61,148/-.

2.1 Aggrieved, the assessee approached the ld. First Appellate Authority, challenging the tax demand and submitted before the ld. First Appellate Authority that the basic exemption available to an AOP was to be allowed. However, the assessee's ground relating basic exemption from tax liability came to be rejected by the Addl/JCIT(A)-3, Chennai by observing that the tax liability at Maximum Marginal Rate (MMR) applied by the Assessing Officer is justified, as the assessee failed to furnish Members' details making it challenging to determine whether the shares of Members were determinate or indeterminate.

3.0 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 the CIT(A) as well as the AO has erred in not allowing the credit of TDS of Rs.1,78,800/- claimed by the assessee, which should ought to have been allowed.

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

4.0 The ld. authorized representative for the assessee submitted that the facts of the case are identical as in assessee's own case for assessment year 2017-18, which was also before this Tribunal and had already been heard.

5.0 The ld. D.R. agreed to the submission of the ld. authorized representative for the assessee.

6.0 I have considered and perused the material available on the record. I find that the issue relating to basic exemption from tax liability is squarely covered in favour of the assessee by the order of this Bench of the Tribunal in the assessee's own case for assessment year 2017-18 in ITA No.343/LKW/2023, vide order dated 5.8.2024, wherein it was held as under:

*"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 ld. 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.*

7.0 In the light of aforesaid order and on identical facts, 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. Accordingly, grounds No.1 to 3 of the assessee are allowed.

7.1 Vide ground No.4, the assessee is aggrieved by the orders of the authorities below in not allowing the credit of TDS of Rs.1,78,800/- claimed by the assessee. In this regard, we find that the Addl/JCIT(A)-3, Chennai, while allowing the ground, viz. ground No.3 raised by the assessee, has directed the Assessing Officer to allow TDS credit of Rs.1,78,800/-. The relevant portion of the order of the Addl/JCIT(A)-3, Chennai is reproduced below:

*“4.4 Ground No. 3:- The appellant stated that the AO(CPC) has erred in not allowing the credit of TDS of Rs.1,78,800/- claimed by the appellant which should ought to have been allowed. In this regard, the Jurisdictional Assessing Officer is directed to allow the TDS credit of Rs.1,78,800/- after ensuring that the corresponding income is offered for taxation for the A.Y. 2018-19. The appeal on this ground is allowed.”*

7.2 Since the issue, in this regard, raised by the assessee has been resolved in their favour by the Addl/JCIT(A)-3, Chennai, during the appeal process, the assessee should not have any grievance. As a result, the taxpayer should theoretically have no reason to be dissatisfied or pursue further legal action on that particular ground. I, therefore, reject ground No.3 of the appeal of the assessee.

8.0 In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 30/08/2024.

Sd/-  
[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER

DATED:30/08/2024

JJ:

Copy forwarded to:

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

By order

Assistant Registrar