

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 294/Kol/2024
Assessment Year: 2011-12**

**Chhabil Dass Agarwal,
Singtam Bazar, Singtam,
East Sikkim - 737132
[PAN: ACWPA2590H]**

.....**Appellant**

vs.

**DCIT, Circle 3(2),Gangtok,
Sikkim**

..... **Respondent**

Appearances by:

Assessee represented by : D.C. Garg, C.A.

Department represented by : A.K. Dutta, Addl. CIT

Date of concluding the hearing : September 03, 2024

Date of pronouncing the order : September 06 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2011-12 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 20.12.2023 arising out of Assessment Order dated 27.12.2018, passed under Section 144/147/143(3) of the Act.

2. The Assessee has raised the following grounds of appeal:

"1. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming income determined by the AO at Rs.

28,98,800/- under presumptive taxation against return filed by the Assessee at business income of Rs. 8,92,431/-.

2. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming action of the Assessing Officer in issuing notice under section 148 on the basis of incorrect facts.

3. That the assessment order dated 27-12-2018 passed by the Assessing Officer is invalid being framed without issuing mandatory notice under section 143(2).

4. That Learned National Faceless Appeal Centre (NFAC), Delhi, has grossly erred in law as well as on facts in confirming income determined by the Assessing officer without appreciating the facts correctly.

5. That the Assessee is otherwise not liable to be taxed in view of the Judgment of Hon'ble Supreme Court of India dated 13-01-2023 in Writ Petition (C) no. 59/2013 titled Association of Old Settles of Sikkim & Others Vs Union of India, being resident of the State of Sikkim.

6. The appellant craves leave to add, amend or vary from the aforesaid grounds of appeals at or before the time of hearing."

3. At the time of hearing, the Ld. Authorised Representative stated that the certain additions were made in the case of the assessee while framing the assessment order under Section 144/147 of the Act vide order dated 27.12.2018.

4. Aggrieved by the above order, the assessee went in appeal before the Ld. CIT(A). However, assessee's appeal was dismissed by sustaining the addition made by Assessing Officer. Aggrieved by the above order, the assessee is in appeal before this Tribunal, although the assessee has raised multiple grounds but the Ld. Authorised Representative stated that the assessee would argue first on the ground No. 5 of the appeal by which Ld. AR stated that assessee is exempt from payment of tax in view of the order passed by the Hon'ble Supreme Court in Writ Petition (C) No. 59 of 2013 as in the case of Association of Old Settlers of Sikkim and Ors. Vs. Union of India and Anr. on the issue of applicability of section 10(26AAA) of the Act.

The relevant para of the said judgment of the Hon'ble Supreme Court has stated as under:

"13.1 It is to be noted that as such the purpose of Section 10(26AAA) is to grant exemption to the residents of Sikkim from payment of income tax under the Income Tax Act. Therefore, all such Indians/citizens, who have settled in Sikkim prior to the merger of Sikkim with India on 26.04.1975 are to be treated at par and they form the same group/class and are entitled to the exemption under Section 10(26AAA) of the Income Tax Act. As such, there is no difference and/or distinction between those "Sikkim Subjects", whose names are recorded in the register maintained under the Sikkim Subjects Regulations, 1961 and those Indians, who have settled in Sikkim prior to the merger of Sikkim, but whose names were not recorded as "Sikkim Subjects" in the register maintained under the Sikkim Subjects Regulations, 1961. All are "Sikkimese". Merely because at the relevant time and when the Sikkim Subjects Regulations, 1961 was enacted, the Indians settled in Sikkim did not surrender their Indian citizenship or their fathers/forefathers' names were not entered into the register maintained under the Sikkim Subjects Regulations, 1961, by itself, it cannot be said that they cease to be the "Sikkimese". All of them are similarly situated with those "Sikkimese" / "Sikkim Subjects", who all have settled in Sikkim prior to the merger of Sikkim with India on 26.04.1975. As observed above, the object and purpose of Section 10(26AAA) is to grant benefit of exemption from payment of income tax under the Income Tax Act to the residents of Sikkim. Therefore, there is no nexus sought to be achieved in excluding the Indians, who have settled in Sikkim prior to the merger of Sikkim with India on 26.04.1975 but their names are not recorded as "Sikkim Subjects". The Union of India has failed to satisfy any reasonable classification and/or nexus to exclude such class of Indians, who, in fact, have settled in Sikkim prior to 26.04.1975. Therefore, exclusion of old Indian settlers, who have settled in Sikkim prior to the merger of Sikkim with India on 26.04.1975 from the definition of "Sikkimese" in Section 10(26AAA) is arbitrary, discriminatory and violative of Article 14 of the Constitution of India."

5. Assessee's another limb of argument the ground No. 2 is that the assessment order dated 27.12.2018 passed by the Assessing Officer is invalid being framed without issuing of mandatory notice under Section 143(2) of the Act, while passing the impugned order, the Ld. CIT(A) did not look into the fact by simply dismissed the appeal of the assessee by sustaining the addition made by the Assessing Officer. Therefore, the impugned order passed by the Learned CIT(A) is not in accordance with law and liable to be set aside.

6. On the other hand, the Learned Departmental Representative states that the issue challenged before the Bench in the Ground No. 5 of this appeal was never brought into the notice of the Learned CIT(A) on the part of the assessee. Although the impugned order challenged by the assessee was passed on 20.12.2023 and the Hon'ble Supreme Court had passed the order on 13.01.2023 which was quite prior to the passing of the impugned order. Also the necessary certificate proving the domicile of the assessee from a specified time in Sikkim state was not presented before any of the authorities below. Therefore, it is necessary to remand back the issue to the file of Ld. CIT(A) for considering the documents furnished by the assessee before the Bench and examine the issue in terms of the Hon'ble' Apex Court order passed regarding allowability of exemption as claimed by the assessee as in the case of Association of Old Settlers of Sikkim and Ors. Vs. Union of India and Anr. (supra).

7. We after hearing the rival submissions of the parties and perusing the material available on record and respectfully considering the Hon'ble Supreme Court verdict passed in the case of Association of Old Settlers of Sikkim and Ors. Vs. Union of India and Anr. (supra). It is necessary to remand back the whole issue to the file of Learned CIT(A) with a direction to examine the issue afresh after considering the judgment rendered by the Hon'ble Supreme Court regarding the issue relating to applicability of exemption claimed by the assessee and the connected domicile certificate issued by the District Authorities. We also direct the Learned CIT(A) to examine the other issues along with the above relating to assessment framed by the Assessing Officer without issuing mandatory notice under Section 143(2) of the Act to the assessee, doing so reasonable opportunity of being heard to the assessee should be provided. In terms of the above, assessee's appeal is allowed for statistical purposes.

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

Kolkata, the 6th September, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd-
[Sonjoy Sarma]
Judicial Member

Dated: 06.09.2024.
AK, PS

Copy of the order forwarded to:

- 1 Chhabil Dass Agarwal
- 2.DCIT, Circle 3(2),Gangtok, Sikkim
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches