

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री यस यस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI SS VISWANETHRA RAVI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1809/Chny/2024
निर्धारण वर्ष /Assessment Year: 2015-16

Park Trust,
36, KPN Colony, First Street,
Tirupur – 641 601.
[PAN: AAATP 3240M]

Vs. The Dy. Commissioner of
Income Tax (Exemptions),
Coimbatore.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Shri G. Tarun, Advocate for
Shri T. Vasudevan, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri J. Premanand, CIT

सुनवाई की तारीख/Date of Hearing

: 21.08.2024

घोषणा की तारीख /Date of Pronouncement

: 20.09.2024

आदेश / **ORDER**

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2015-16 arises out of the order of Learned Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 09.05.2024.

2. The effective grounds in this appeal of assessee are against disallowing claim of exemption u/s. 11 of the Income-tax Act, 1961 (hereinafter "the Act") on the ground that the assessee has committed

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violation u/s. 13(1)(c) of the Act by paying excess salary to one of the trustee and disallowing interest payment of Rs. 1,40,95,279/- as not for the purpose of trust, in computing the total income.

3. The brief facts of the case are that the assessee is a charitable trust registered u/s. 12AA of the Act. The assessee has paid salary of Rs. 25,20,000/- annually to its CEO, Mrs. R. Anusha. Smt. R. Anusha, is the daughter of founder Managing Trustee, Dr. P.V. Ravi and herself is a Trustee and therefore, she is a specified person as per Section 13(3)(cc) and (d). The A.O has found the salary excessive and therefore, held salary to the extent of Rs. 7,50,000/- appropriate and balance of Rs. 17,70,000/- as excessive and deemed to have been applied for the benefit of persons referred in Section 13(3)(c). The A.O has also disallowed interest of Rs. 1,40,95,279/- @ 12% of the sum advanced to M/s. Park ED Trust of Rs. 4,01,71,568/-, Park Hospital Ltd. Rs.7,18,36,076/- and VP Trust Rs. 54,53,018/- on the ground that the assessee trust is paying heavy interest on unsecured loans, but not charging any interest from the above parties. The Ld. CIT(A) in ex-parte order upheld the above as under:

"In this case, several opportunities of being heard given to the appellant. Opportunities were given vide issue of notices u/s 250 of I.T. Act which were sent to the registered email address (es) available with the Department on various dates as mentioned above.

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Though the above notices were issued and delivered to the registered email address of the appellant, the appellant has not responded to any of the notices. Considering the non-compliance by the appellant as detailed above, it appears that the appellant is not interested in pursuing his/its appeal.

The appellant owes a duty to be Vigilant of his rights and is also expected to be equally vigilant about judicial proceedings pending with the Income Tax Authorities against him or initiated at his instance. After filing the appeal or requesting for adjournment, the litigant cannot go off to sleep and not respond to the notices at all. In this regard, I rely on the decision of Hon'ble Delhi High court in Moddus Media Pvt Ltd vs. M/s. Scone Exhibition Pvt Ltd {RFA 497/201 dated 18 May 2017}.

The Hon'ble Supreme Court in Basawaraj vs. The Spl Land Acquisition Officer (Civil Appeal No. 6974 of 2013, dated 22.08.2013) observed as under (emphasis supplied):

"13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches."

Further, an appellant who is not availing opportunities given cannot allege contravention of principles of natural justice as held in the case of PN, Balasubramaniam (AP) 112 ITR 512. Therefore, the appeal of the appellant is liable for dismissal. Reliance is placed on the following judicial pronouncements:-

1. Hon'ble Supreme Court in the case of CIT Vs. B.N. Bhattacharjee and another, reported in 118 ITR 461 (relevant pages 477 and 478) wherein their Lordships have held that:-

"An appeal means an effective appeal. An appeal withdrawn is an appeal non est as judicial thinking suggests. Purposefully interpreted, preferring an appeal means more than formally filing it but effectively prosecuting it.."

2. Hon'ble M.P. High Court in the case of Estate of Late Tukojirao Folkar vs. CWT, 223 ITR 480 (MP), while dismissing the reference made at the instances of the assessee in default made following observation in their order:

"If the party, at whose instance the reference is made, fails to appear at

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the hearing or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference."

However, in the interest of natural justice, the case of appellant was examined on merit in the light of grounds of appeal and Statement of Facts fled. It is found that the issues raised by the appellant through grounds of appeal have been considered by the A.O during the assessment proceedings but the same could not be contested or rebutted during the appeal proceedings in view of the fact that the appellant has failed to avail of the opportunities provided. In the absence of any substantiation of any documentary evidence filed in support of grounds of appeal, it can only be Concluded that the appellant has no evidence or explanation to offer in respect of the additions made in the assessment order that is the subject matter of appeal. I have carefully considered the facts of the case and the order u/s. 271(1)(c) of the Act and the applicable law in this regard. The appellant has concealed his particulars of income and also furnished inaccurate particulars of income by not disclosing true facts. I am satisfied that the appellant's case is a fit case for levy of penalty u/s.271(1)(c) and accordingly I hold that the Id.AO has rightly levied the necessary penalty u/s. 271(1)(c). Hence I uphold the penalty order u/s. 271(1)(c). Thus this appeal is dismissed."

4. The Ld. Authorized Representative (A.R) of the assessee has contended that the Ld. CIT(A) has passed order without giving an opportunity and therefore, it is against the natural justice, and the case should be set aside to Ld. CIT(A).

5. The Ld. Departmental Representative, on the other hand, supported the orders of the authorities below.

6. We have heard the rival submissions, and perused the materials available on record. The Ld. CIT(A) has issued notice on 07.02.2020, 09.03.2020, 06.01.2021 and final notice on 10.04.2024 and passed ex-

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parte order. It is seen that the notices were issued during Covid period and the assessee has contended that proper opportunity was not given. We are of the opinion that keeping in view the principles of natural justice, the assessee be provided with another opportunity of hearing to substantiate his case before the Ld. CIT(A). Accordingly, we set aside the order passed by the Ld. CIT(A) and remit the matter back to the file of the Ld. CIT(A) to adjudicate this appeal afresh in accordance with law, after giving reasonable opportunity to the assessee. We also direct the Assessee to appear before the Ld. CIT(A) on the date of hearing without fail. In view of the above, the appeal filed by the assessee is allowed for statistical purposes.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 20th September, 2024.

Sd/-
(यस यस विश्वनेत्र रवि)
(SS Viswanethra Ravi)
न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 20th September, 2024.

EDN/-

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आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF