

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

HEARING THROUGH: HYBRID MODE
श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA No. 429/Chd/2024
निर्धारण वर्ष / Assessment Year : 2017-18

Bhagwati Education Society, VPO Jamal, Sirsa-125055 Haryana	बनाम	The ITO Sirsa
स्थायी लेखा सं./PAN NO: AABAB3099E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Kartik Garg, Advocate
राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 17/09/2024
उद्घोषणा की तारीख/Date of Pronouncement : 25/09/2024

आदेश/Order

PER VIKRAM SINGH YADAV, AM:

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/NFAC, Delhi dt. 10/08/2022 pertaining to Assessment Year 2017-18.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

"1. Because on the facts and the circumstances of the case, the Ld. Assessing had erred in concluding the assessment proceedings mere on the grounds that the appellant doesn't furnishes the explanation claimed u/s 10(23)(iiid). As per the facts, all the details and the audited financials was held with the auditor and it was very difficult for the appellant to extract the financials from the auditor" as there was no effective communication happened with the auditor [also disclosed the same before Hon'ble CIT(A)]. The background of the case is that the appellant has inadvertently declared their net surplus amounting INR 3,47,180/- under the head of income from other sources wherein the whole income is exempt under section 10(23)(iiid). This is the case of the clerical mistake as the appellant neither have any intention to declare under wrong head nor have intention to not to submit the financials during the assessment proceedings and hence the appellant has a reasonable cause of failure of non-submission of the audited financials during the proceeding and further the audited financials for FY 2016-17 are enclosed herewith as Annexure - 5.

2. Because on the facts and the circumstances of the case both Ld. assessing officer and Ld. CIT(A) has erred in determining that the appellant in his own case for the AY 2016-17 had done the same clerical mistake by selecting the income under wrong head, wherein after participating in the assessment proceedings submitted the required documents, the Ld. assessing officer has

accepted the contention of the appellant and passed the assessment order without making any adverse addition. The copy of the assessment order dated 22.08.2018 for AY 2016-17 is enclosed herewith as Annexure - 6.

3. Further the appellant carves the leave of the Hon'ble Tribunal to add, alter, delete or modify any other grounds of law at the time of arguments."

3. Briefly the facts of the case are that the assessee filed its return of income on 11/08/2017 declaring total income at NIL. The case of the assessee was selected for compulsory scrutiny. Thereafter notice under section 143(2) and 142(1) were issued and after issue of show cause dt. 14/12/2019 wherein the assessee was asked to justify that the institute is eligible for claim of exemption under section 10(23c)(iiiad) and income shown under the head "income from other sources" amounting to Rs. 3,47,180/- have been utilized for education purposes and in absence of any explanation submitted by the assessee, assessment proceedings were completed by the AO under section 144 by bringing the tax income of Rs. 3,47,180/- and by denying the exemption claimed under section 10(23c)(iiiad) of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) and during the appellate proceedings, the assessee was specifically asked to provide the receipt and payment account, income and expenditure account and statement of affairs for the purpose of examining its eligibility of claim of exemption under section 10(23c)(iiiad). However the assessee failed to submit any of the documents hence, the addition of Rs. 3,47,180/- so made by the AO was confirmed.

5. Against the said findings and directions of the Ld. CIT(A), the assessee is in appeal before us.

6. During the course of hearing, the Ld. AR submitted that the assessee society is registered under Haryana Society Act and running an Educational

Institute in the name and style of Kurgaram Degree College for Girls at Village Jamal. It was submitted that in the return of income, the assessee has inadvertently declared the net surplus of the Education Institute amounting to Rs. 3,47,180/- under the head "income from other sources" wherein the whole income was exempted under section 10(23c)(iiiad) of the Act. It was submitted that during the course of assessment proceedings, the assessee could not produce the relevant details and the audited financials as all the documents were in possession of the Auditor who refused to part with the said documents and a complaint has also been filed against the Auditor at local Police Station, Sirsa. It was submitted that it was due to non availability of the relevant financial statements with the assessee, the necessary submissions and supporting documents could not be submitted before the AO. It was submitted that similar situation persisted even during the appellate proceedings resulting in the dismissal of the appeal by the Id CIT(A). It was submitted that the assessee has since got the possession of the audited financial statement which has been placed on record and on perusal of the same, it may be noted that there are total receipt of Rs. 46,81,472/- in terms of fee receipt and other miscellaneous receipt by the Education Institute and after deducting the expenses, the net surplus Rs. 3,47,180/- has been arrived at and which has been claimed exempt under section 10(23c)(iiiad) of the Act. It was further submitted that for the preceding A.Y., the same AO i.e; ITO, Ward-1, Sirsa has accepted the claim of exemption under section 10(23c)(iiiad) of the Act and in this regard, our reference was drawn to the order so passed by the ITO, Ward-1, Sirsa dt. 22/12/2018 pertaining to Assessment Year 2016-17 and the relevant contents thereof read as under:

"The assessee is running an educational institute in the name and style of Kurgaram Degree College for Girls at Village Jamal. Return declaring income amounting to Nil/-was e-filed by the assessee on 06.09.2016, vide acknowledgement number 437297780060916. Form 10B along with account details also e-filed. This return was processed u/s 143(1) of the Income Tax Act (Hereinafter 'the Act') at the same income. It has been brought notice of this office that the assessee had applied for grant of registration u/s 12AA of the Act,

which was rejected by the Commissioner of Income Tax (Exemptions), Chandigarh. Thereafter, the case was selected for compulsory scrutiny. The statutory notice u/s 143(2) of the Act was issued on 28.09.2017 and sent through email. Notices requiring the assessee to file certain information were issued on 08.11.2018 & 12.12.2018 through ITBA and sent through email. In response to these notices the assessee filed online reply and furnished the details and other documents as required from time to time. It has been noticed that the assessee is running an educational institute, without motive to earn profit. Hence, income of the assess is exempt u/s 10(23C) of the Act. Information & details as called for have been furnished, examined and print out of the same are placed on records and nothing adverse came into notice.

3. In view the above and after considering all the facts and material and reply submitted by the assessee, the returned income of the assessee is accepted."

7. It was accordingly submitted that the assessee be allowed the necessary exemption so claimed and necessary relief be provided to the assessee.

8. Per contra, the Ld. DR has relied on the order so passed by the lower authorities. It was submitted that both during the assessment as well as the appellate proceedings, the assessee has failed to submit the necessary financial statements to corroborate the fact that the receipt and the expenditure are in relation to the running of the Education Institute and even in the return of income, it has shown the income under the head "income from other source". Therefore basis the information and the material available on the record, the AO has rightly brought the income to tax and which has been rightly sustained by the Ld. CIT(A). It was further submitted that the assessee has produced the financial statements for the first time before the Tribunal and where the Bench so decide, the matter may be set-aside to the file of the AO to examine the same.

9. We have heard the rival contentions and pursued the material available on record. We find that the assessee was prevented by sufficient cause from submitting the audited financial statements before the lower authorities as the documents were in possession of the Auditor who refused to part with the said documents and a complaint has also been filed against the Auditor at local

Police Station, Sirsa, a fact which has not been disputed by the Id DR. In view of the same, we believe that the assessee deserve an opportunity to submit the relevant information/documentation in support of its claim of exemption u/s section 10(23c)(iiid) of the Act. The matter is accordingly set-aside to the file of the AO to examine the said claim a fresh as per law after providing reasonable opportunity to the assessee.

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

(Order pronounced in the open Court on 25/09/2024)

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य / ACCOUNTANT MEMBER

AG

Date: 25/09/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File