

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
BEFORE DR. BRR KUMAR ACCOUNTANT MEMBER**

**ITA No.1071/Ahd/2023
Asstt.Year : 2014-15**

Shree Saurashtra Vishal Shremali Soni Anyonya Shhayak Pragai Mandal, Vadodara 12/04 Mandal, Roopak Talkies Harni Rod, Vadodara Gujarat. PAN : AAATS 7576 H	Vs	DCIT (CPC) Bangalore (Now ITO Ward-Exemption) Vadodara.
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(Applicant)		(Responent)
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Assessee by :	Shri Bhavin Marfatia, AR
Revenue by :	Shri Ravindra, SR.DR

सुनवाई की तारीख / **Date of Hearing** : **09/10/2024**

घोषणा की तारीख / **Date of Pronouncement**: **09/10/2024**

आदेश/ORDER

This is assessee's appeal against the order of the Id.Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Delhi dated 18.10.2023 for the Asst.Year 2014-15 passed under section 250 of the Income Tax Act, 1961 ("the Act" for short).

2. In the appeal, the assessee has raised various grounds which reads:

“1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [“CIT(A)"] erred in fact and in law in confirming the action of the learned Deputy Commissioner of Income Tax, Central Processing Cell (CPC), Bangalore (“the AO”) in charging gross receipts of Rs.14,42,454 to tax.

2. The learned CIT(A) erred in fact and in law in confirming the action of the Id.AO in assessing total income of the Appellant at Rs.14,42,454.

3. The learned CIT(A) erred in feet and in law in confirming the action of the learned AO in not granting exemption u/s 11 of the Act.

4. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in disallowing application of income of Rs.24,52,329.*

5. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in disallowing the sum of Rs.24,52,329 without appreciating the fact that same was applied towards the objectives of the trust.*

Without prejudice to the above:

6. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in disallowing expenses of Rs.9,60,355 without appreciating the fact that same was incurred for the purpose of earning income.*

7. *The learned CIT(A) erred in fact and in law in confirming the action of the learned AO in disallowing the expense without appreciating the provisions of section 57(iii) of the Act in proper perspective.*

3. The assessee is a charitable trust registered under the Bombay Public Trust Act, 1950. The assessee has claimed exemption which was denied by the ld.CIT(A) holding as under:

6.2 Held:- I have considered the submission of the appellant and perused the order of the AO. The appellant is trust registered under Bombay Public Trust Act, 1950 with Charity Commissioner, Gujarat. The appellant is running marriage hall from which it earns income in the form of trust. For the year under consideration, the appellant has filed ITR-7 wherein it has been mentioned that the appellant is not having registration u/s 12A. Further, in the written submission reproduced above, the appellant has stated that it was not registered u/s 12 for the year under consideration. The appellant has filed Income Expenditure account and has claimed an amount of Rs. 24,52,329/- on account of amount applied to charitable purposes. Since, the appellant is not having the 12A registration, thus the provisions of section 11 & 13 are not applicable in the case of the appellant. In the scheme of the Act, the expenses incurred towards objectives of the trust are allowable only if the trust is having registration u/s 12A. The appellant has further claimed that it should be treated as AOP u/s 28 to 44. In order to claim the expenses incurred, the appellant ought to have filed profit & loss account. Since, the appellant has filed income expenditure account and not the profit & loss account, the expenses incurred cannot be allowed. In view of the above, I do not find any reason to interfere with the order of the AO. Therefore, the grounds of appeal nos. 1 and 2 are dismissed.

4. Aggrieved, the assessee filed appeal before the ITAT.

5. I have gone through the records and the orders of the Revenue authorities. The ld.counsel for the assessee has heavily relied on the CBDT Circular No.01/2015 dated 21-5-2015, which reads as under:

“8. Applicability of the registration granted to a trust or institution to earlier years

8.1 The provisions of section 12A of the Income-tax Act, before amendment by the Act, provided that a trust or an institution can claim exemption under sections 11 and 12 only after registration under section 12AA of the said Act has been granted. In case of trusts or institutions which apply for registration after 1st June, 2007, the registration shall be effective only prospectively.

8.2 Non-application of registration for the period prior to the year of registration caused genuine hardship to charitable organisations. Due to absence of registration, tax liability fastened even though they may otherwise be eligible for exemption and fulfil the substantive conditions. However, the power of condonation of delay in seeking registration was not available.

8.3 In order to provide relief to such trusts and remove hardship in genuine cases, section 12A of the Income-tax Act has been amended to provide that in a case where a trust or institution has been granted registration under section 12AA of the Income-tax Act, the benefit of sections 11 and 12 of the said Act shall be available in respect of any income derived from property held under trust in any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of sue registration, if the objects and activities of such trust or institution in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted.

6. I have gone through the circular of the CBDT, the order of the Co-ordinate Bench of the Tribunal and the Hon'ble High Courts viz. (i) Shree Bhanushali Mitra Mandal Trust Vs. ITO, (2016) 68 taxmann.com 250 (ITAT-Ahd), (ii) CIT Vs. Karnataka State Students Welfare Fund, (2022) 141 taxmann.com 419 (Kar-HC), and (iii) Shivom Vidyapeeth Shiksham Samiti Vs. ITO, (2023) 150 taxmann.com 440 (ITAT-Raipur).

7. A perusal of the above CBDT Circular No. 01/2015 (supra), it transpires that in order to remove hardships in genuine cases caused due to non-application of registration for the period prior to the year of registration, the same comes to the rescue of the assessee for a period prior to the year of registration. On carefully scrutinizing the aforesaid CBDT Circular No. 01/2015 (supra), I find that as pursuant to the amendment to section 12A of the Act vide the Finance Act, 2007 w.e.f. 1-6-2007, in a case where registration is applied after 1st June, 2007 the benefit arising therefrom is to be allowed only prospectively,

therefore, the legislature in all its wisdom had carved out an exception to the same as per which the benefit of sections 11/12 of the Act would be available to an assessee for a period prior to the year of registration despite the fact that no application for registration for the said period had been filed. The only rider/precondition which is required to be satisfied for bringing a case within the realm of the CBDT Circular No.01/2015 (supra) is that the assessment proceedings for the said earlier assessment year are pending before the A.O on the date of registration u/s.12AA of the Act.

Therefore, the exemption under section 11 of the Act cannot be denied to a trust if it got registration during the pendency of the appeal.

8. In the result, the appeal of the assessee is allowed.

Dictated on the Open Court, typed and pronounced on 9th October, 2024.

Copy of this order be given to the assessee. The Registry is directed to dispatch as per procedure.

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Ahmedabad, dated 09/10/2024