

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH MUMBAI

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 1946/MUM/2024
Assessment Year: 2021-22**

Sarvajanik Seva Trust, Bombay House, 24, Homi Mody Street, Fort, Mumbai - 400 001 (PAN : AAATS1012N)	Vs.	Deputy Commissioner of Income Tax, Circle - 26(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Sukhsagar Syal and Shri Atul Suraiya
Revenue : Dr. Kishor Dhule, CIT DR

Date of Hearing : 19.08.2024
Date of Pronouncement : 29.10.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), Thiruvananthapuram, vide order no. ITBA/APL/S/250/2023-24/1061369460(1), dated 23.02.2024 passed against the assessment order by the Assessing Officer, Central Processing Center, u/s. 143(1) of the Income-tax Act (hereinafter referred to as the "Act"), dated 13.10.2022 for Assessment Year 2021-22.

2. Grounds taken by the assessee are reproduced as under:

"1. The order passed by Ld. CIT(A) is bad in law, as the opportunity of being heard as requested has not being granted and hence the order of NFAC be quashed.

2. A) *On the facts and circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [Ld CIT(A)] erred in not allowing the appeal of the Appellant challenging Intimation u/s 143(1) of the Income-tax Act, 1961 (Act') and applying provisions of section 115TD of the Act and charging the tax at Maximum Marginal Rate on accreted income despite the fact that provision of section 115TD of the Act was introduced by Finance Act 2016, w.e.f. 01.06.2016 and the registration of the Trust was surrendered on 20.03.2015. The said Intimation u/s 143(1) of the Act erroneously calculates:*

a) Tax at maximum marginal rate of 30% on the total income of the Appellant resulting into a total tax of Rs 15,02,532/- instead of Rs 13,15,032/- returned by the Appellant at slab rates specified by Finance Act 2021 resulting into additional tax of Rs 1,87,500/;

b) Surcharge on the increased tax amount of the Appellant amounting to total surcharge of Rs 5,55,937/- instead of Rs 5,908/- returned by the Appellant resulting into additional demand of Rs 5,50,029/-;

c) Cess at higher level consequent to increase in tax and surcharge,

d) Interest u/s 234A, 234B and 234C increased consequent to increase in tax, surcharge and cess.

B) On the facts and circumstances of the case in law, the Id. CIT(A) erred in invoking the provisions of section 115TD of the Act when it had no jurisdiction to do so, and in any event, the said provisions could not have been invoked in the present assessment year. In doing so, the Ld CIT(A) erred, in law and on facts, in disregarding the ITAT judgement dated 24.03.2021 in Trust's own case in FFA No 72404MUM/2019 wherein it has been categorically held that it shall be considered as deregistered from March 2015 and accordingly the provisions of section 115TD of the Act cannot be applied to it.

2.1. Issue involved in the present appeal is in respect of applicability of provisions of section 115TD and charging tax at Maximum Marginal Rate (MMR) on accreted income when the provisions of section 115TD were introduced by Finance Act, 2016 with effect from 01.06.2016 and when registration of the trust was surrendered for cancellation by it on 20.03.2015.

3. Brief facts of the case are that assessee is a public charitable trust created by trust deed dated 14.02.1975. It was registered under section 12A(a) of the Act on 10.03.1976 with registration number as TR/10904 issued by the Income-tax Department. Later assessee filed

an application on 12.03.2015 before the ld. CIT(E), Mumbai for discontinuing to avail the benefits of registration taken by it in 1976. Pursuant to this, a show cause notice dated 13.03.2015 was issued by ld. CIT(E), Mumbai for which the proceedings were recorded in the order sheet on 20.03.2015 with the noting 'heard'. Matter travelled before the coordinate bench of ITAT Mumbai for Assessment Year 2019-20 in assessee's own case vide appeal no. ITA 7240/Mum/2019 with various grounds relating to cancellation of registration of the Trust including ground on application of section 115TD when matter for its cancellation of registration was heard on 20.03.2015. The said order was pronounced on 24.03.2021 wherein in para 6 it was held that order for cancellation of registration of the Trust will have effect from 20.03.2015 i.e. the date on which hearing in respect of show cause notice requiring the assessee to show cause as to why registration under section 12A not be cancelled, was concluded.

3.1. Thus, cancellation of registration was held to be effective from 20.03.2015. While holding so, reliance was placed on the decision of another trust Navajbai Ratan Tata Trust v. PCIT in ITA No. 7238/Mum/2019.

3.2. Identical issues as in the present case, came up before coordinate bench of ITAT Mumbai in the case of Tata Education Trust v. DCIT in ITA No. 1221/Mum/2024 dated 08.08.2024 which inter alia relied on the decisions in its own case in ITA No. 7241/Mum/2019 dated 24.03.2021 and Navajbai Ratan Tata Trust (supra). It was held that once the registration of Trust is cancelled w.e.f. 20.03.2015, the Trust lost its status of a registered Trust and therefore, tax on total income has to be calculated at slab rates

applicable to an individual and not at MMR. Similarly, surcharge and cess have to be calculated at prevailing rate.

4. Both the parties were heard. Material placed on record is perused. Thoughtful consideration given to the submissions made before us, including judicial precedents referred above. In the present case, facts are undisputed and uncontroverted. Assessee had filed its return of income in form ITR-5 on 29.09.2021, reporting total income at Rs.50,08,440/-. In the said return, tax on total income was calculated at slab rates at Rs.13,15,032/-. Surcharge was calculated at the rate of 10% amounting to Rs.1,31,503/- which was restricted to Rs.5,908/- after considering the benefit of marginal relief under the Act. Cess was calculated at 4% amounting to Rs.52,838/-. Credit for taxes paid was claimed, interest u/s 234A, 234B and 234C was levied and net tax payable was arrived at Rs.4,94,746/-. Self-assessment tax of Rs.7,35,000/- was paid and a refund of Rs.2,40,250/- was claimed.

4.1. Intimation u/s 143(1) dated 13.10.2022 was issued by the Department on processing of return wherein the total income reported was accepted as such but tax liability including surcharge and cess was computed at MMR, resulting into demand payable by the assessee.

4.2. Assessment year in the present case is 2021-22 and assessee had surrendered its registration in financial year 2014-15 whereas section 115TD became effective from Assessment Year 2016-17. Issue in the present case in the given set of facts is squarely covered by the assessee's own case whereby cancellation of registration was held to be effective from 20.03.2015. Further, in another case of Tata Education Trust (supra), it is held that once the registration of Trust is

cancelled w.e.f. 20.03.2015, the Trust lost its status of a registered Trust and therefore, tax on total income has to be calculated at slab rates and not at MMR. Similarly, surcharge and cess have to be calculated as prevailing rate. Respectfully, following the aforesaid judicial precedents, ground no. 02 raised by the assessee on the issue of applicability of section 115TD is held in its favour, i.e. the said ground is allowed. Other ground is rendered academic and does not need separate adjudication.

5. In the result, appeal of the assessee Trust is allowed.

Order is pronounced in the open court on 29 October, 2024

Sd/-

(Kavitha Rajagopal)
Judicial Member

Sd/-

(Girish Agrawal)
Accountant Member

Dated: 29 October, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai