

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 1134 & 1135/JPR/2024
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

Vivek Shiksha Samiti Jobner Road, Kalwar, VIA Jhotwara, Jaipur.	बनाम Vs.	The ITO, Exemption-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTV0361Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Mukesh Khandelwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Gatum Singh Choudhary (JCIT)

सुनवाई की तारीख / Date of Hearing : 09/10/2024
उदघोषणा की तारीख / Date of Pronouncement : 18/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals are filed by the above named assessee because they were aggrieved with the order of the Learned ADDL/JCIT-Appeals-4 Mumbai [for short CIT(A)] both dated 24.07.2024 & 23.07.2024 for assessment years 2014-15 & 2016-17 respectively. That order was passed because the captioned named assessee challenged the intimation order dated 19.10.2017 passed under section 143(1) of the Income Tax Act [for short Act], by AO, CPC, Bangalore [for short AO].

2. In these appeals assessee challenged the orders of the CPC, Bangalore which were passed u/s 143(1) of the Act, wherein the grievance of the assessee is that the CPC, while processing the respective year return charged the tax on the income of the assessee at Maximum Marginal Rate [for short “MMR”]. Even the Id. CIT(A) did not considered the contentions of the assessee trust.

3.1 ITA No. 1134/JPR/2024 relates to the assessment year 2014-15 wherein the assessee has raised following grounds: -

“1. That under the facts and circumstances of the case the Ld. CIT(A) has erred seriously in dismissing the appeal in limine by not condoning the delay occurred in filing the appeal without properly appreciating the reasons stated in the appeal memo.

2. That without prejudice to ground No. 1, the action of Ld. AO (CPC) in charging tax on returned income at MMR is unjustified and is beyond law.”

3.2 ITA No. 1135/JPR/2024 relates to the assessment year 2016-17 wherein the assessee has raised following grounds: -

“1. That under the facts and circumstances of the case the Ld. CIT(A) has erred seriously in dismissing the appeal in limine by not condoning the delay occurred in filing the appeal without properly appreciating the reasons stated in the appeal memo.

2. That without prejudice to ground No. 1, the action of Ld. AO (CPC) in charging tax on returned income at MMR is unjustified and is beyond law.”

Since the issue involved in these two appeals of the assessee’s are almost common on grounds as well as on facts, therefore,

were heard together with the agreement of the parties and are being disposed off by this consolidated order.

4. At the outset, the Id. AR has submitted that the matter in ITA No. 1134/JPR/2024 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount of tax disputed in other cases. Therefore, for the purpose of the present discussions, the case of the assessee in ITA No. 1134/JPR/2024 is considered as a lead case and is disposed by taking lead case facts, grounds, and arguments from the folder in ITA No. 1134/JPR/2024.

5. Succinctly, the fact as culled out from the records is for the year under consideration the assessee filed the return of income 08.06.2015. In the said return of income so filed the assessee had paid tax for Rs. 64,865/- on declared income of Rs. 6,64,880/- on the basis of the tax at slab rates as applicable to Individuals (Paper book page 1-2). The assessee is in education institution solely engaged in imparting education. The income returned was accepted by the CPC but while doing so CPC intimated that the tax to be paid at Maximum Marginal Rate [MMR] thereby resulting into

a net demand of Rs. 2,02,220/-. The intimation was processed on 11.10.2016. This intimation so issued was not came to the notice of the assessee-appellant, while visiting the portal online in May-June, 2022. Hence the assessee applied for copy of intimation before the JAO on 13.06.2022 and the same day assessee filed an appeal before the Id. CIT(A), and delay was bonafide on account of the non receipt of the intimation and similar issue was rectified in the A. Y. 2013-14.

6. As the assessee challenged that intimation though belated served on the assessee before the Id. CIT(A), who has not condoned the delay in filling that appeal filed by the assessee by observing as under:

“4. Decision:

4.1 After taking into account the decision of the Hon'ble Apex Court in 441 ITR 722 by which period of limitation to file appeal were extended for a further period of 90 days for the appeal for which limitation period expired between 15/03/2020 to 28/02/2022, still there is further delay (after excluding the period for which Hon'ble Apex Court has provided relief) of 2 years and 5 months.

4.2 During the course of appellate proceedings, the appellant has submitted that two rectification application have been filed on 27.11.2017 and 01.02.2019 respectively before the AO and the appellant was under belief that the error would be rectified by the AO and the appellant was waiting for favourable action from the AO, therefore, not filed the appeal in stipulated time and when the rectification order was not passed by the AO, the appellant preferred this appeal.

4.3 I have carefully considered the explanation. The said contention is not acceptable. Further, it is also pertinent to point out that the pendency of rectification application does not tantamount to sufficient cause for not filing of appeal within limitation time as provided in section 249(3) of the Act. In this regard, the reliance is placed in the decision of the Hon'ble Punjab and Haryana High Court in the case of Amar Shakti Co-operative Labour & Construction Society Ltd. vs Commissioner of Income Tax, Bhatinda, [2009] 2 taxman.com 62 wherein the similar facts and circumstances were involved and the Hon'ble Court has held as under:

"Section 260A of the Income Tax Act, 1961, read with section 5 of the Limitation Act, 1963- High Court - Appeal to Whether merely because rectification application under section 254(2) against order of Tribunal was filed and remained pending before Tribunal, same cannot be termed to be a good ground for condonation of delay in filing appeal before High Court against original order of Tribunal-Held, yes"

In the given facts and circumstances of the case, the undersigned is of the considered opinion that there was no sufficient cause which prevented the appellant from filing of the appeal within the limitation date and hence the reasons which have been put forward to explain the delay, are not sufficient.

In this regard, reliance is placed on the decision of the Hon'ble Apex Court in the case of MajjiSannemma V. Reddy Sridevi 2021 SSC online SC 1260 dated 16/12/2021 wherein the court has held as under:-

"The expression "Sufficient Cause" cannot be liberally interpreted if negligence inaction or lack of bonafides is attributed to the party. Even though limitation may harshly affect rights of a party, but it has to be applied with all its rigour when prescribed by the statute. If the court starts condoning delay where no sufficient cause is made out by imposing conditions, then that would amount to violation of statutory principle and showing utter disregard to logistics."

Recently, the Hon'ble Supreme Court in the case of Ajay Dabra vs Pyare Ram &Ors arising out of SLP (C) No. 15793/2019 dated 31/01/2023 dismissed the delay condonation applications filed under Section 5 of the Limitation Act, 1963, declining to condone a delay of 254 days, because the reasons were not sufficient reasons for condonation of the delay.

I am further fortified by the decision of the Hon'ble Supreme Court in the case of Balwant Singh (Dead) vs Jagdish Singh &Ors, dated 08/07/2010, where it has held in para 6 that "Law of limitation may harshly affect a

particular party but it has to be applied with all its rigour when the statute so prescribed and the courts have no power to extend the period of limitation on equitable grounds".

4.4 In the present case, the appellant has not adduced any reasonable cause which prevented it from filing the appeal for 2 years and 5 months. Unless and until it demonstrated that there was sufficient cause that prevented the appellant from exercising its legal remedy of filing appeal within that prescribed period of 30 days, delay thereafter cannot be condoned. From the facts of the case, it is clear that the statutory right to appeal which was vested with the appellant was not exercised within the stipulated time u/s 249(3) of the Act. Thus, this clearly is a case of laches and is directly the result of deliberate inaction on part of the appellant.

4.5 In view of above, the delay in filing of appeal in this case is not condoned as no "sufficient cause" has been shown under section 249(3) of the Income Tax Act for the appellant's failure to file the appeal within prescribed period of limitation u/s 249(2) of the Income Tax Act r.w.s 5 of the Limitation Act. Since, the delay in filing of appeal has not been condoned, consequently the appeal of the appellant becomes non-est and therefore the same is not admitted.

4.6 In view of the above, the appeal is not admitted for adjudication on account of delay in filing the e appeal.

5. The appeal is Dismissed."

7. As is evident from the finding of the Id. CIT(A) that reasons advanced by the assessee- appellant was not considered by Id. CIT(A) while dealing with the appeal of the assessee and thereby dismissed the appeal filed by the assessee. Aggrieved with that finding assessee submitted that they have sufficient reasons and thereby the delay ought to have been condoned by the Id. CIT(A) and thereby the present appeal. The assessee further advanced

the reasons that similar issue was arise in A. Y. 2013-14 and the Id. AO has rectified that intimation of charging the MMR to Individual tax rate. In the year under consideration even the intimation was not served to the assessee on the portal and therefore, they obtained the copy from the JAO and thereafter filed the appeal though belated. Therefore, this itself is sufficient reasons for condoning the delay in filling the appeal before the Id. CIT(A) for about 4 years, 6 months and 15 days. The assessee prayed to condone the delay in filling the appeal before the Id. CIT(A) and since the revenue has on similar facts allowed the rectification as per provision of section 154 of the Act for A. Y. 2013-14. The assessee should be given a chance to be heard on merits of the case.

On merits of the case and in support of the grounds so raised the Id. AR of the assessee, has filed the written submissions which reads as follows :

“Written Submissions :

In both the cases the intimation u/s 143(1) issued by CPC is under challenge. Both the appeals have been dismissed by the Id. CIT (A) on account of non condonation of delay occurred in filing the appeal before him. The facts and reasons leading to delay in filing the appeal before CIT (A) is as under :-

AY : 2014-15

The ITR was filed on 08.06.2015 vide acknowledgement no 576019570080615. In the ITR the assessee had paid tax for Rs.64865

on declared income of Rs. 6,64,880 on the basis of tax at slab rates as applicable to individuals (APB 1-2). The assessee is an education institution solely engaged in imparting education. The return was processed by CPC vide intimation dated 11.10.2016 accepting the returned income but the tax was calculated at MMR on the declared income resulting into a demand of Rs. 2,02,220. The said intimation could not come to the notice of the appellant. However during May- June 2022 while visiting the online account it was noticed that demand had been created against the appellant for this year. Hence the appellant applied for a certified copy of the intimation from the JAO which was granted on 13.06.2022 and hence appeal before CIT (A) could be filed on 13.06.2022 itself. There was a delay of around 2041 days. All such reasons of such delay were duly mentioned in form 35 and even in the submissions dated 07.12.2023 filed before him. However the Id. CIT (A) did not consider the same and rejected the appeal of the assessee by not condoning the delay as no sufficient reason was alleged to have been submitted.

AY : 2016-17

The assessee had filed its return on 27.03.2017 vide acknowledgement no 700983960270317 declaring a taxable income of Rs. 198430 (APB 5-6). The assessee is an education institution solely engaged in imparting education. In the ITR the appellant had worked tax liability as per slab rates applicable to individuals. The return was processed on 19.10.2017 wherein although the returned income was accepted but the tax was worked out at MMR. The said intimation was received by the appellant on same day and considering this to be a rectifiable mistake application u/s 154 was filed on 28.11.2017 and on 01.02.2019 but were not disposed off by the Id. AO. Similar action was taken by CPC for the AY 2013-14 against which the appellant had filed application u/s 154 and after discussions the appellant was quite hopeful for getting a rectified order and with his hope the appellant also tried to get this mistake rectified by Id. AO for this year also. But the Id. AO did not pass any order for the year under consideration, although on similar grounds the intimation u/s 143(1) for AY 2013-14 was rectified by the Id. AO (APB 9). In view of non disposing off the rectification application of the appellant the appellant was forced to file appeal before the Ld. CIT (A) with a delay of 1657 days which was requested to be condoned. An Affidavit was also filed to the Id. CIT (A) explain reasons for delay (APB 7-8). However the Id. CIT (A) without considering the genuineness of the reasons declined to condone the delay and dismissed the appeal in limine.

Submissions :-

Common Grounds :

Ground No. 1 :

That under the facts and circumstances of the case the Id. CIT (A) has erred seriously in dismissing the appeal in limine by not condoning the

delay occurred in filing the appeal without properly appreciating the reasons stated in the appeal memo and subsequent communications.

The Id. AO failed to properly appreciate the genuine reasons for the delay so occurred. For the AY 2014-15 it was only due to non receiving the intimation u/s 143(1) of the Income tax Act, 1961 that the appellant had applied for a certified copy and after receiving the same on 13.06.2022 the appellant immediately filed appeal to the CIT (A) on 13.06.2022 itself. The Id. CIT (A) has not considered the contents of form 35 properly and even in his order also he has narrated the facts wrongly. As the CIT (A) hearing both the appeals together, he copied the submission of the appellant in both the cases without caring for contents of each case.

In the matter for AY 2016-17 the delay occurred due to the reason that based on the on going discussions with the Id. AO for rectifying similar mistake for the AY 2013-14 the appellant was quite hopeful for getting the mistake rectified through application u/s 154 of the Income Tax Act, 1961 and thus the appellant kept waiting for favorable action from the Id. AO but since no order was passed by the Id. AO the appellant was forced to file the appeal with delay.

Although it is matter of discretion of the appellate authority whether to condone delay or not but merits of each case must also be considered before deciding such petitions of the appellant. In this case the appellant is a charitable institution as fully engaged into education wherein there is no clause of any distribution of surplus of the institution amongst the trustees of the institution and therefore MMR is not chargeable on the residual income of the institution and also in view of application of normal rates in the case of the assessee institution for the AY 2013-14 through passing of an order u/s 154 (APB 9) such view had merits in the appeal and same was liable to be considered for taking a decision about condonation of delay, which has not been done .

There have been various precedents of Hon`ble courts wherein the matter relating to condonation of delay was challenged and in most of the cases the courts have held the following propositions in connection with condonation of delay :-

1. The condonation application must be considered liberally and discretion of granting condonation must be used by considering the circumstances due to which such delay has taken place.
2. No delay must be condoned if the same has occurred due to negligence only and the circumstances were not genuine.
3. The delay period is immaterial while considering condonation request. Whether it is 1 days delay or 10 years delay the request must be decided after taking a conscious appreciation of the circumstances for such delay.

In this regard the appellant relies on the judgement of the Hon`ble Supreme Court in the case of Collector Land Acquisition, Anantnag v/s Mst. Katiji&Ors (1987 AIR 1353) vide order dated 19 February, 1987 wherein following principles were laid down :-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

The circumstances of the instant case also matches with the theory enunciated by the Hon`ble Supreme Court and hence it is sincerely requested that the order of the Id. CIT (A) may be set aside and the same may either be sent back to him or may kindly be decided by the Hon`ble Bench.

Ground No. 2 : That without prejudice to ground no. 1, the action of Ld. AO (CPC) in charging tax at MMR on the returned income is illegal and unjustified.

The appellant request your honour to kindly decide the matter involved in both these appeals instead of sending back the same to CIT (A) for reconsideration as the issue is squarely covered with the decision of the Hon`ble Jodhpur ITAT. If the matters are sent back to the Id. CIT (A) it would consume much of the time due to which the amount paid by the assessee to the extend of Rs. 3,50,000 against demand for both the years shallie with the department and the appellant would not be able to use the same for the charitable purposes. Therefore it is humbly

prayed that the issue involved in both the appeals may kindly be decided by your honors only.

The CPC seems to have processed the ITR possibly by applying the provisions of section 164(1) and section 167B of the Income Tax Act, 1961. Whereas in the case of an institution engaged into charitable activities wherein there is no motive to earn any profit and there is no provision about distribution of surplus amongst the members of the charitable institution, the provisions of section 164 (2) can only be applied and section 167B does not have any application. The appellant relies on the case of Shri Digambar Jain Mandir Trust, Charanwas v/s ITO, Ward 1, Makrana (ITAT Jodhpur Bench) (ITA Nos. 121 to 124/Jodh/2021 vide order dated 15.04.2024 (APB 14-27) wherein on similar facts it was held that in case of charitable institutions wherein there is no provision of distribution of profit amongst the members thereof provisions of section 164(2) are applicable which is a specific section for charging tax on charitable and religious trust and same is not governed by provisions of section 164(1) and it was held that in such institutions tax has to be applied as applicable on individuals and not on MMR basis. It was also held in this case of charitable or religious institutions MMR is to be applied only on the income as per section 13(1)(c) or section 13(1)(d) of the Income Tax Act, 1961.

Therefore the intimation of CPC may be modified by instructing for charging tax in parallel to individuals and not on MMR and oblige.”

8. Ld. AR of the assessee submitted a detailed paper book thereby relying on the following document in support of the written submission so filed:-

SN	Description	Page No.
1.	ITRV & Computation of total income for the A.Y. 2014-15	1-2
2.	Affidavit for condonation of delay filed before CIT(A), for the A.Y. 2014-15	3-4
3.	ITRV & Computation of total income for the A.Y. 2016-17	5-6
4.	Affidavit for condonation of delay filed before CIT(A), for the A.Y. 2016-17	7-8
5.	Order u/s 154 dated 09/06/2019 passed by ITO(E)-1, Jaipur for the A.Y. 2013-14	9
6.	Intimation u/s 143(1) dated 02.03.2015 for the A.Y. 2013-14	10-12
7.	Computation of Income for the A.Y. 2013-14	13
8.	Order of the Hon'ble ITAT Jodhpur Bench in the case of Shri Digambar Jain Mandir Trust Charanwas	14-27

9. The Id. AR of the assessee also argued that considering the fact that herein this case the beneficiary are the general public so there is no share of beneficiaries whether known or unknown as the assessee is trust. Thus, charging the assessee as per the provisions of section 164(1) as held by the Id. CIT(A) is incorrect and the facts of the case has not been appreciated that there is specific provision in section 164(2) to tax trust and the same should be charged based on that specific provision for charging the income of the trust. The Id. AR of the assessee also submitted that considering the facts of the case even the provision of section 164(2) will not be applicable and the Id CIT(A) has not appreciated the facts of the case of the assessee. When there is specific provision for charging the tax the general provision cannot be made applicable.

10. The Id. DR is heard who has relied on the findings of the lower authorities and supported the order in case of Air Force Navy Farm Owner Welfare vs. ITO in ITA No. 1992/Del./2019 dated 16.07.2020 and thereby Id. DR supported the orders of lower authority.

11. We have heard the rival contentions and perused the material placed on record. The bench noted that the assessee in the present appeal has raised effectively two grounds of appeals. Ground no. 1 relates to the grievance of the assessee that the Id. CIT(A) should have condoned the delay in filling that appeal belated with him. The facts related to the issue on hand is that the assessee filed the return of income 08.06.2015. In the said return of income so filed the assessee had paid tax for Rs. 64,865/- on declared income of Rs. 6,64,880/- on the basis of the tax at slab rates as applicable to Individuals (Paper book page 1-2). The assessee is in education institution solely engaged in imparting education. The income returned was accepted by the CPC but while doing so CPC intimated that the tax to be paid at Maximum Marginal Rate [MMR] thereby resulting into a net demand of Rs. 2,02,220/-. The intimation was processed on 11.10.2016. This intimation so issued was not come to the notice of the assessee-appellant, while visiting the portal online in May-June, 2022. Hence the assessee applied for copy of intimation before the JAO on 13.06.2022 and the same day assessee filed an appeal before the Id. CIT(A), and delay was bonafide on account of the non receipt of the intimation. The assessee challenged that intimation though

belated served on the assessee before the Id. CIT(A), who has not condoned the delay in filling that appeal filed by the assessee by observing that appellant assessee has not adduced any reasonable cause which prevented it from filling the appeal on time. The reasons advanced were not considered as sufficient reasons for condoning the delay as this clearly is a case of laches and is directly the result of deliberate inaction on part of the appellant. Based on these observations the delay in filing of appeal in this case was not condoned by the Id. CIT(A).

In this appeal the assessee for condonation of delay filed an affidavit stating that the intimation for A.Y. 2014-15 was never ever been received by them. The assessee also submitted that prior to the processing of the return for which the applies lie the assessee has filed the revised returned. The assessee was waiting for processing of the revised return. Since the facts supported by the assessee by way of an affidavit has not been controverted by the Id. DR. We have no reasons to hold that in the case of the assessee since the principles of natural justice is violated as the assessee cannot be expected to file the appeal without being served the copy of the order passed against the assessee. Considering that overall facts argued before us we condone the

dealy in filling the appeal before the Id. CIT(A). Based on these observations ground no. 1 raised by the assessee is allowed.

12. Ground no. 2 raised by the assessee relates to the charging of the assessee trust income at MMR. The Id. AR of the assessee submitted that since the issue being very small and of the trust instead of sending it back to the file of the Id. CIT(A) after condong the delay the matter be decided by the bench as the issue is already covered by the decision of the co-ordinate bench on the similar issue. As we note that the CPC seems to have processed the ITR possibly by applying the provisions of section 164(1) and section 167B of the Income Tax Act, 1961. Whereas in the case of an institution engaged into charitable activities wherein there is no motive to earn any profit and there is no provision about distribution of surplus amongst the members of the charitable institution, the provisions of section 164 (2) can only be applied and section 167B does not have any application. Similar issue has been decided in the case of Shri Digambar Jain Mandir Trust, Charanwas v/s ITO, Ward 1, Makrana (ITAT Jodhpur Bench) (ITA Nos. 121 to 124/Jodh/2021 vide order dated 15.04.2024 (APB 14-27) wherein on similar facts it was held that in case of charitable institutions wherein there is no provision of distribution of profit amongst the

members thereof provisions of section 164(2) are applicable which is a specific section for charging tax on charitable and religious trust and same is not governed by provisions of section 164(1) and it was held that in such institutions tax has to be applied as applicable on individuals and not on -MMR basis. In the similar case as relied upon by the assessee the co-ordinate bench has decided as under:

“11. We have heard the rival contentions and perused the material placed on record. From the facts argued by the Id. AR of the assessee the bench noted that the beneficiary in this case of the trust are the general public. So there is no share of beneficiaries whether known or unknown as the assessee is trust so charging the assessee as per the provisions of section 164(1) as held by the Id. CIT(A) is incorrect and the relevant facts has not been appreciated and since there is specific provision in section 164(2) the tax should be charged based on that specific section applicable to the trust assessee. The Id. AR of the assessee also submitted that considering the facts of the case even the provision of section 167B will not applicable and the Id CIT(A) has not appreciated the facts of the case of the assessee. When there is specific provision for charging the tax the general provision cannot be made applicable. Thus, we hold that when the provision of section 164(2) specially deals to charge the tax of those trust where the whole or any part of the relevant income is not exempt under section 11 and 12, the relevant provision of the Act is reiterated herein below :

Provision of section 164(2) of the Act

(2) In the case of relevant income which is derived from property held under trust wholly for charitable or religious purposes, or which is of the nature referred to in sub-clause (iia) of clause (24) of [section 2](#), or which is of the nature referred to in sub-section (4A) of [section 11](#), tax shall be charged on so much of the relevant income as is not exempt

under [section 11](#) or [section 12](#), as if the relevant income not so exempt were the income of an association of persons :

Provided that in a case where the whole or any part of the relevant income is not exempt under [section 11](#) or [section 12](#) by virtue of the provisions contained in clause (c) or clause (d) of sub-section (1) of [section 13](#), tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate.

So the Maximum Marginal Rate (MMR) is applicable if the clause (c) or clause (d) of sub-section (1) of [section 13](#). Thus, 13(1)(c) deals where the money spent for the related party and 13(1)(d) deals religious trust or institution. The Id. AR of the assessee submitted that the assessee subsequently already registered u/s. 12A with effect from 22.03.2022 and thus it does not come under the provision of section 13(1)(c) and (d) of the Act and therefore, based on that set of facts the assessee trust shall be charged to tax u/s. 164(2) at the rate as applicable to Individual and AOP. The term individual / person include as per section 2(31) and the same is reads as;

- (31) "person" includes—
- (i) an individual,
 - (ii) a Hindu undivided family,
 - (iii) a company,
 - (iv) a firm,
 - (v) an association of persons or a body of individuals, whether incorporated or not,
 - (vi) a local authority, and
 - (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

We further note that the tax rates applicable is specified in Sec. 2(37A) which states that “rate or rates in force” or “rates in force”, in relation to an assessment year or financial year, mean the rate or rates of income-tax specified in this behalf in the Finance Act of the relevant year, or as specified under specific sections, which includes Sec.164 and 167B also. The first schedule to the Finance Act reads;

“(I) In the case of every individual other than the individual referred to in items (II) and (III) of this Paragraph or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies.

Even the revenue department website also advise that the tax rate of the trust is as applicable to the Individual and the screen shot of the same is reproduced herein below as to strengthen the discussion so record:

Considering that aspect of the matter we are of the considered view that the decision of the Id. CIT(A) to charge the assessee u/s. 164(1) is not correct it should be charged based on the specific provision of the Act u/s. 164(2) of the Act and the tax rate as applicable to that 164(2) will apply to the rate of the AOP/Individual and the initial exemption is also available to such assessee. Based on these observations the ground no. 2 raised by the assessee is allowed.”

On being consistently to the finding so recorded herein above we considered the ground no. 2 raised by the assessee directing the Id. AO to charge the assessee as per the normal rates and not MMR. In the result ground no. 2 raised by the assessee stands allowed.

In terms of these observations, the appeal of the assessee in ITA no. 1134/JPR/2024 is allowed.

13. The Bench has noticed that the issues raised by the assessee in the A.Y. 2014-15 are similar to the case of the assessee for the A.Y. 2016-17 and it is not imperative to repeat the facts of the case being on similar set of grounds of appeal. Hence, the Bench feels that the decision taken by us in the case of the assessee for the A.Y. 2014-15 in ITA No. 1134/JPR/2024 shall apply mutatis mutandis in the case of the assessee for the A.Y. 2016-17 in ITA No. 1135/JPR/2024.

Based on these observations the appeal of the assessee in ITA no. 1135/JPR/2024 stands allowed.

Order pronounced in the open Court on 18/10/2024.

Sd/-

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

(राठौड़ कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 18/10/2024

*Ganesh Kumar, Sr. PS

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

1. अपीलार्थी / The Appellant- Vivek Shiksha Samiti, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO , Exemption-1, Jaipur.

3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1134 & 1135/JPR/2024 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar