

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1054/PUN/2024
निर्धारण वर्ष / Assessment Year: 2020-21

Satara Education Society, 148, Mangalwar Peth, Satara City, Tetali B.O., Tetali, Satara- 415002. PAN : AABTS9280K	Vs.	DCIT (E) Circle, Pune.
Appellant		Respondent

Assessee by : Shri Kishor Phadke
Revenue by : Shri Ajay Kumar Keshari
Date of hearing : 08.10.2024
Date of pronouncement : 06.12.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 20.03.2024 passed by Ld. Addl./JCIT(A), Thiruvananthapuram for the assessment year 2020-21.

2. The appellant has raised the following grounds of appeal :-

"1. The learned CIT(A) erred in laws and on facts in confirming the appellant's income assessed by the learned AO amounting to Rs.11,68,77,245/- instead of returned income of "Nil" as declared by appellant.

2. *The learned CIT(A) erred in law and on facts by not dealing with the contentions as raised by the appellant vide various submission in an appropriate manner. As such, the appellant contends that the learned CIT(A) has not passed a speaking order.*

3. *The learned IT authorities erred in law and on facts in passing order u/s 143(1) of the ITA, 1961; without issuing any notice for proposed adjustment and without granting opportunity to appellant to respond to the notice as per provision of section 143(1)(a) of the ITA, 1961; thereby violating the principal of natural justice. As such, the appellant contends that the order passed u/s 143(1) is bad in law and liable to be quashed.*

4. *The learned AO computed appellant's income of Rs.11,68,77,245/- without granting deduction for genuine and bonafide expenses incurred for the object of the trust amounting to Rs.12,66,51,596/-. As such, the learned CIT(A) erred in confirming the same and thereby failed to appreciate that taxing of gross receipts of the appellant (instead of the net income) is not permissible under the income-tax law.*

5. *The appellant craves leave to add/alter/clarify / explain/modify/ enhance / delete any or all of the grounds of appeal, and to seek any just and fair relief.”*

3. Facts of the case, in brief, are that the assessee is a charitable trust and is registered under the Bombay Public Trust Act, 1950. The assessee is also registered u/s 12A and 80G of the IT Act. The return of income was furnished on 31.03.2021 declaring Rs. Nil income after claiming of exemption u/s 11 and 12 of the IT Act. The Assessing Officer/CPC processed the return u/s 143(1) and intimation was issued on 24.12.2021. The assessee found that the Assessing Officer/CPC has disallowed the exemption claimed u/s 11/12 of the IT Act and determined taxable income of

Rs.11,68,77,245/- against the income returned by the assessee at Rs. Nil.

4. In first appeal, Ld. Addl./JCIT(A), Thiruvananthapuram primarily allowed the appeal of the assessee by saying that in the light of circular dated 23.04.2019 issued by the CBDT, the entities registered u/s 12AA/12A shall furnish the return of income within time allowed u/s 139 of the IT Act and accordingly Ld. Addl./JCIT(A), Thiruvananthapuram found that the return of income though furnished belatedly but was furnished within the time allowed u/s 139 of the IT Act. Subsequently, on 20.03.2024, Ld. Addl./JCIT(A), Thiruvananthapuram by an order passed u/s 154 of the IT Act dismissed the appeal of the assessee by observing that the exemption u/s 11/12 of the IT Act is allowable to the appellant subject to the condition that the audit report was filed within the due date prescribed u/s 44AB of the IT Act. It was found by Ld. Addl./JCIT(A), Thiruvananthapuram that the audit report in the instant case was not filed on or before the specified date referred to in section 44AB of the IT Act and, therefore, the assessee is not entitled to claim exemption u/s 11/12 of the IT Act. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR appearing from the side of the assessee submitted that the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram is not justified. Ld. Counsel of the assessee argued on all the grounds of appeal but specifically pressed ground nos. 3 and 4 raised in the appeal memo Form 36. It was pointed out by LD AR that the ground No 3 & 4 raised before Hon'ble Tribunal are same grounds which were raised in Ground no 2 & 3 in form 35 memo of appeal before LD CIT(A), but the same were not adjudicated by LD CIT(A) accordingly it was requested to set-aside the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram and further requested to remand the matter back to the file of Ld. Addl./JCIT(A), Thiruvananthapuram to decide the ground nos.2 and 3 raised before him in form 35 memo of appeal. Ld. Counsel of the assessee placed reliance on the following cases laws in support of his contentions :-

- (a) DCIT vs. Petroleum Sports Promotion Board, 362 ITR 235 (Delhi).
- (b) DCIT vs. Shri Vaishnav Polytechnic College Govn by VSK Market Tech Educational Society, 122 taxmann.com 287 (Indore – Trib.).
- (c) Shri Sanatan Dharam Mandir Sabha vs. ITO, ITA No.5791/DEL/2019, dated 13.04.2022.

- (d) Arham Pumps vs. DCIT, 140 taxmann.com 204 (Ahmedabad – Trib.).
- (e) Conference of Religious India vs. Ward Exemption 1 (3), 2022 (10) TMI 1158 – ITAT Delhi.
- (f) Bangarh Educational Welfare Trust vs. ITO, 2022 (1) TMI 1321 – ITAT Kolkata.
- (g) Shri Rajkot Vishashrimali Jain Samaj vs. ITO, 150 taxmann.com 361 (Rajkot – Trib.).
- (h) ITO vs. Camellia Educare Trust, 152 taxmann.com 304 (Kolkata – Trib.).
- (i) ITO vs. Debendra And Rohini Memorial Trust, 2023 (7) TMI 278 – ITAT Kolkata.

6. Ld. DR appearing from the side of the Revenue supported the orders passed by the subordinate authorities and requested to confirm the same. It was also pointed out that from a perusal of intimation issued u/s 143(1) it appears that the assessee has not filed any form i.e. specified audit report prior to filing of return of income or along with return of income. In support of its contentions Ld. DR relied on the order passed by a Co-ordinate Bench of this Tribunal passed in the case of Arya Kshatriya Samaj vs. ITO in ITA No.175/PUN/2023 order dated 23-03-2023. Wherein exemption claimed u/s 11/12 of the IT Act was disallowed on the ground of delayed filing of Return of income.

However he conceded that ground no 2 & 3 raised in memo of appeal Form no 35 has not been adjudicated by Ld. Addl./JCIT(A), Thiruvananthapuram.

7. We have heard Ld. Counsels from both the sides and perused the material available on record including case laws furnished by both the parties. The case law relied on by Ld. DR is not applicable to the facts of the case & the same cannot be considered, since it was decided *ex-parte* in the absence of the assessee. We find that the assessee is a public trust filed its return of income belatedly but within the time limit allowed u/s 139 of the IT act claiming exemption u/s 11/12 of the IT Act. We also find that the return was processed by CPC u/s 143(1) without allowing exemption claimed u/s 11/12 of the IT Act and whole of the receipt i.e. Rs.11,68,77,245/- was determined as taxable income without allowing deduction of expenditure of Rs.12,66,51,596/- which was claimed in the return of income. We also find that no notice for proposed adjustments u/s 143(1)(a) was issued to the assessee by the Assessing Officer/CPC. Apparently the adjustments u/s 143(1)(a) was made without any prior notice to the assessee. We also find that Ld. Addl./JCIT(A), Thiruvananthapuram dismissed the

appeal of the assessee by observing that audit report was not furnished before the specified date. It is the contention of the assessee that Ld. Addl./JCIT(A), Thiruvananthapuram has erred in not adjudicating the ground no.2 & 3 raised in the appeal memo i.e. Form No.35 and, therefore, the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram is not justified and accordingly needs to be remanded back to his file to adjudicate the ground no.2 & 3 raised in the memo of first appeal i.e. Form No.35.

8. We find some force in the arguments of counsel of the assessee that Ld. Addl./JCIT(A), Thiruvananthapuram failed to take note of ground no.2 and alternative ground no.3 which were specifically raised in grounds of appeal in Form No.35 of first appeal memo and since each and every ground raised by the assessee has not been specifically dealt/decided/adjudicated by Ld. Addl./JCIT(A), Thiruvananthapuram, the order becomes bad in law. Considering the totality of the facts of the case and without going into the merits of the case we deem it fit to set-aside the order passed by Ld. Addl./JCIT(A), Thiruvananthapuram and remand the matter back to him with direction to decide the appeal afresh deciding all the grounds raised in the appeal memo as per fact and

law after providing reasonable opportunity of hearing to the assessee. The assessee is also hereby directed to respond to the notices issued by Ld. Addl./JCIT(A), Thiruvananthapuram and produce the relevant documents/ evidences in support of grounds of appeal, otherwise Ld. Addl./JCIT(A), Thiruvananthapuram shall be at liberty to pass appropriate order as per law. Thus, the grounds of appeal raised by the assessee in this appeal are partly allowed.

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

Order pronounced on this 06th day of December, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 06th December, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Addl./JCIT(A), Thiruvananthapuram.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.