

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

Before Shri Sonjoy Sarma, Judicial Member and Shri Rakesh Mishra, Accountant Member

I.T.A. No.137, 170, 271 & 300/Kol/2024

Assessment Years: 2011-12, 2012-13, 2013-14 & 2014-15

Modella Caretaker Centre.....Appellant

27, Church Road, Siliguri-734001.

[PAN: AABTM0003G]

vs.

ACIT(OSD), Ward-2(1), Siliguri..... Respondent

Appearances by:

Shri Rip Das, AR, appeared on behalf of the appellant.

Shri S. B. Chakraborty, Addl. CIT and Somnath Das, Sr. DRs, appeared on behalf of the Respondent.

Date of concluding the hearing : December 18, 2024

Date of pronouncing the order : December 23, 2024

आदेश / ORDER

Per Sonjoy Sarma, Judicial Member:

The captioned appeals filed by the assessee against the order of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') pertaining to four assessment years i.e 2011-12, 2012-13, 2013-14 & 2014-15 respectively. Since, the issues involved in all these appeals arise from common set of facts except difference in figures and related to same party, therefore, these have been heard together and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity. The first appeal being ITA No.137/Kol/2024 for assessment year 2011-12 is taken as lead case.

2. Brief facts of the case are that assessee is a society registered under WB Registration of Societies Act, 1961. The society is running an educational institution namely Modella Caretaker Centre & School. In the case of assessee notice u/s 148 was issued for A.Y. 2011-12 after

recording the reasons for doing so and after obtaining sanction of notice u/s 151 of the Act. In response to the notice u/s 148 of the I.T. Act assessee filed its return of income in ITR 5 for A.Y. 2011-12 declaring total income as Nil. The ld. AO observed that assessee had not filed any return of income voluntarily before issuance of notice u/s 148 of the I.T. Act. The ld. AO further observed that total income declared in the return filed u/s 148 was Nil but in Schedule of the ITR, the assessee had claimed Rs. 7,50,255/- as an exempt income. Thereafter, the ld. AO issued statutory notice u/s 143(2) and 142(1) of AY: 2010-11 Modella Care Taking Centre the Act and in response to the notices, AR of the assessee appeared from time to time before the AO and the ld. AO discussed the matter with ld.AR of the assessee. However, the ld. AO was not convinced with the submission made by assessee and following additions were made in the hands of assessee by assessing the total income of Rs.21,72,490/-:

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed by observing in following manner:

“5.5 I have gone through the assessment order and the grounds of appeal and statement of facts.

6. I have gone through the assessment order and the grounds of appeal and statement of facts. As seen from the assessment order, the appellant is a society registered under West Bengal Society's Act 1961 and is running the educational institution. The appellant does not have registration u/s.12AA of the Act or approval u/s. 10(23C)(vi) of the Act. As the appellant was found to be claiming exemption for donations received and also on income over expenditure, the AO brought both these incomes to tax as the appellant did not have registration u/s. 12AA of the Act or approval for exemption u/s. 10(23C) of the Act. The Assessing Officer also made certain disallowance u/s. 40A(2)(a) of the Act. Aggrieved by the said additions, the appellant is in appeal and has raised 08 grounds which are adjudicated as under:-

6.1 Ground no.1 to 3 are regarding challenging of re-opening of the assessment u/s.147 of the Act. The grievance of the appellant is that the AO cannot reopen the assessment if approval u/s. 10(23C) of the Act is rejected by CIT(Exemption). The claim of the appellant is incorrect. When the application made u/s. 10(23C) of the Act is rejected by the CIT(Exemption), the appellant's income needs to be brought to tax as normal income of AOP and the appellant could not be eligible for any exemption u/s.10(23C) of the Act. The appellant had positive income which had escaped assessment by virtue of rejection of appellant's application u/s. 10(23C) of the Act. Hence, the reopening of the assessment in the case of the appellant after recording the reasons for reopening which is found to be on correct footing and accordingly it is sustained. Ground no.1 to 3 are dismissed.

7. Ground no. 4 to 7 are relating to taxing the amounts of donation of Rs.13,08,350/- and income of Rs.6,40,147/- and income of Rs.1,09,707/- and disallowance u/s.40A(2)(a) of the Act of Rs.82,017/- . The AO has taxed the amounts of donation and income or expenditure as income of the appellant as the registration u/s. 10(23C) of the Act was rejected by CIT(Exemption). During the appellate proceedings, as seen from the statement of facts, the appellant had appealed before ITAT against the decision of CIT (Exemption). However, no details about the order of CIT(Exemption) subsequent to the decision of ITAT has been filed during the appellate proceedings. In absence of any details that the

appellant's application u/s. 10(23C) of the Act is approved, the appellant cannot seek any relief from the additions made by the AO. Accordingly, the addition of Rs.21,72,490/- made by the AO is sustained. Ground No. 4 to 7 are treated to have been dismissed.”

4. Dissatisfied with the above order, assessee is in appeal before this Tribunal. At the time of hearing, ld. AR stated that against the rejection order passed by ld. CIT(E), Siliguri, assessee had preferred an appeal before ITAT, Kolkata Bench and Tribunal had passed an order in appeal Case No ITA No. 1002/Kol/2016 dated 16.10.2018 where the appeal was allowed for statistical purpose giving direction to review the matter by ld. CIT(E) and the said matter is still sub-judice before the ld. CIT(E) for grant of certificate to the assessee u/s 10(23C)(vi) of the Act for A.Y. 2010-11 to 2015-16. Therefore, he prayed before the bench that appeal may be set aside to the file of ld. CIT(A) for fresh adjudication since the matter is still pending for grant of exemption certificate to the assessee u/s 10(23C)(vi) of the Act for the assessment year in question.

5. On the other hand, ld. DR supported the decision rendered by the authorities below.

6. We after hearing the rival submissions of the parties and perusing the material available on record find that the issue relation to grant of exemption certificate u/s 10(23C)(vi) is still pending before ld. CIT(E). Therefore, the instant issues are set aside to the file of ld. CIT(A) for fresh adjudication in terms of any consequential order passed by ld. CIT(E) in relation with pending of grant of exemption AY: 2010-11 to 2015-16 Modella Care Taking Centre certificate to the assessee u/s 10(23C)(vi) of the Act. Thus, the appeal of the assessee is allowed for statistical purposes.

7. Since the facts and issues involved in I.T.A. Nos.170, 271 & 300/Kol/2024 are identical to that has been discussed in ITA No.137/Kol/2024, our findings/directions given above will mutatis mutandis apply to these appeals also. Hence, I.T.A. Nos.170, 271 & 300/Kol/2024 are also allowed for statistical purposes.

8. In the result, all the captioned appeals of the assessee are allowed for statistical purposes.

Kolkata, the 23rd December, 2024.

Sd/-

[Rakesh Mishra]

लेखा सदस्य/Accountant Member

Sd/-

[Sonjoy Sarma]

न्यायिक सदस्य/Judicial Member

Dated: 23.12.2024.

RS

Copy of the order forwarded to:

1. Modella Caretaker Centre

2. ACIT(OSD), Ward-2(1), Siliguri

3. CIT (A)-

4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches