

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER

ITA No.404/Ind/2024
Assessment Year:2018-19

Samarthan Centre for Development Support, 36, Green Venue, Kolar Road Huzur, Bhopal	<u>बनाम/</u> Vs.	DCIT (Exemption) Bhopal
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAATS3998P		
Assessee by	Shri Pradeep Ambastha & Ashish Goyal, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.01.2025	
Date of Pronouncement	31.01.2025	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by order of first appeal dated 06.03.2024 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 31.03.2021 passed by learned National e-Assessment Centre, Delhi ["AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on following grounds:

"1. On the facts and circumstances of the case, the order passed by the Ld. CIT(A) as well as the Ld. AO is bad in law, void ab initio, illegal, contrary to the facts and circumstances of the case and is liable to be annulled.

2. *That the Ld. CIT(A) has erred in law and facts by not adjudicating the ground no. 2, 3 and 4 of grounds of appeal, raised before him and to that extent, the order of the CIT(A) is incomplete and vitiated. Not adjudicating those grounds violates the principles of natural justice, and hence, the impugned order of the CIT(A) is contrary to the legal provisions and is liable to be annulled.*

3. *That the order of Ld. CIT(A) suffers from contradiction as the entire analysis/ discussion made by him supports the appellant's contentions on the issue under consideration, but in final para 4.6, the CIT(A) takes an abrupt turn, and infers against the appellant without giving any reasoning basis whatsoever and to that extent, the order of CIT(A) is non-speaking, and violates the principles of natural justice.*

4. *That the Ld. CIT(A) failed to appreciate that the impugned receipts aggregating to Rs. 1,88,17,012/-, even if categorized as "Receipts from Incidental Objects", were all clearly receipts from appellant trust's avowed objectives, as per consistent nature of activities for past all years and thus, in that sense, the Ld. CIT(A) and the AO has grossly erred in treating the receipts of Rs. 188,17,012/- as business receipts and in denying deduction/ exemption of provisions of section 11 and 12 of the Income Tax Act, 1961.*

5. *The Ld. CIT(A) was not justified in confirming the addition of Rs. 1,22,30,060/- without considering the facts and circumstances of the case.*

6. *The Ld. CIT(A) failed to appreciate that the TDS, if any, deducted by the payer does not determine/alter the basic nature of services rendered or objectivities performed by the appellant trust/deductee.*

7. *That the Ld. CIT(A) has erred in law and facts in confirming the initiation of penalty under section 270A of the Income Tax Act, 1961.*

8. *That the appellant craves leave to add to, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises."*

2. The background facts leading to present appeal are such that the assessee is a trust registered u/s 12A of Act from 10.04.1996. For AY 2018-19, the assessee filed its return declaring income of Rs. 11,10,81,622/- with deduction of exemption of equivalent amount u/s 11/12 based on strength of registration available u/s 12A and thereby reporting total income of Rs. Nil. The case of assessee was selected for scrutiny. During scrutiny proceeding, the AO observed that the assessee has declared receipts from

“incidental objects” at Rs. 1,88,17,012/- in Schedule AI of ITR. The AO treated these receipts as coming from business activities of providing professional and technical services in pursuance of contracts made with parties. The AO further observed that the assessee has claimed expenses of Rs. 65,86,951/- under the head Administration, Assignment and Training Centres. Accordingly, the AO worked net profit of Rs. 1,22,30,061/- [Rs. 1,88,17,012 (-) Rs. 65,86,951] and treating the same as income from business denied exemption u/s 11/12 to that extent and accordingly made addition. Aggrieved, the assessee carried matter in first appeal but did not get success. Now, the assessee has come in next appeal before us.

3. Ld. AR for assessee raised following contentions citing them as *without prejudice to each other*:

- (i) The AO did not give any show-cause notice to assessee *qua* the impugned addition made and that the AO's order is perverse as the same is passed without considering assessee's submission. Further, the CIT(A) has also not adjudicated Ground No. 1 & 3 of assessee in first-appeal raising these very grievances. According to Ld. AR, the CIT(A) has given a consolidated adjudication of Ground No. 1 to 4 raised before him without giving adjudication to these grievances of assessee.
- (ii) That neither the AO nor the CIT(A) has discussed the facts of the impugned receipts from incidental objects.

- (iii) That the impugned receipts are in the nature of "grants" received by assessee from parties. Simply because the parties have deducted TDS u/s 194J / 194C out of a part of those receipts, the AO cannot conclude that the receipts were towards professional or technical services. Ld. AR quoted the decision of Hon'ble Delhi High Court in ***Aroh Foundation Vs. CIT(Exemption) WP(c) 4365/2021 dated 05.02.2024*** wherein it was held that mere deduction of TDS by the givers cannot make the receipts in the nature of business receipts and the exemption u/s 11/12 cannot be denied.
- (iv) That the impugned receipts are very much part of assessee's core activities/objects as mentioned in Mission No. 1, 4 and Specific Object No. 1 / Page No. 7 & 8 of assessee's trust-deed (Paper-Book Page 9-10). However, the assessee has wrongly classified those receipts as coming from "incidental objects" for compilation of return of income. Ld. AR submitted that the requirement to report "receipts from incidental objects" in the return of income had come in effect for the first time from AY 2018-19 under consideration and hence such mistake occurred.
- (v) That the impugned receipts fall within specific purposes mentioned in the definition of "Charitable Purpose" u/s 2(15). They do not fall in the residual category of "the advancement of any other object of general public utility", therefore the restrictive proviso to section 2(15) is not attracted. Alternatively, even if they are held to fall in the residual

category of “the advancement of any other object of general public utility”, then also the assessee has benefit of exclusion from restrictive proviso because the twin-conditions prescribed therein are satisfied, namely (i) the activities from which the impugned receipts were made, were undertaken in the course of actual carrying out of advancement of any other object of general public utility, and (ii) the impugned receipts did not exceed 20% of the total receipts of previous year.

- (vi) That there was no “profit motive” in the impugned receipts and in any case the margin does not exceed 20% limit as permitted by **Hon’ble Supreme Court in ACIT Vs. Ahmedabad Urban Development Authority (2022) 143 taxmann.com 278** (Para No. 172).
 - (vii) That the assessments of earlier AYs 2013-14 and 2014-15 of assessee were also finalized by way of scrutiny u/s 143(3) and the AO has accepted all activities of assessee as charitable without drawing any adverse inference of business activity and granted exemption u/s 11/12 as claimed by assessee, the copies of assessment-orders are filed in Paper-Book. Therefore, following the rule of consistency, the AO should not have taken any different view in current year.
4. Per contra, Ld. DR for revenue raised following contentions:
- (i) In Para 4 of assessment-order, the AO has clearly mentioned that a notice dated 18.12.2020 was given to assessee. Therefore, it cannot be

said that the AO has not invited any explanation from assessee qua the impugned receipts.

- (ii) In Para 4.3 & 4.4 of assessment-order, the AO has categorically mentioned that the impugned receipts are fee from providing professional and technical services and for carrying out work in pursuance of contracts. The AO's observation cannot be said to be baseless or in air. The AO has very much considered the facts from assessee's reply and reached at such a conclusion.
- (iii) The CIT(A) has also given a vehement adjudication in Para 4.3 to 4.6 of impugned order.

5. We have considered rival contentions of both sides and perused the orders of lower-authorities as well as the material held on record to which our attention has been drawn. The controversy in present case relates to the denial of exemption u/s 11/12 by the AO to the receipts of Rs. 1,88,17,012/- from "incidental objects". The assessee's objects, as noted by Ld. AO in Para 2 of assessment-order, are developing community participation in sustainable management of water resources, enhancing livelihood opportunities of women in sanitation and construction sector, engaging with adolescent on reproductive health and life skills, preparing boys and girls on reproductive health, community based wash for open defecation-free status, strengthening service delivery system in health and nutrition, operation and maintenance of school toilets, developing climate

resilient water structures through MGNREGS and integrated watershed management, etc. We appreciate such activities undertaken by assessee for charitable purpose. The AO has also allowed exemption u/s 11/12 to assessee considering charitable purpose of activities but the denial of exemption is partial *qua* the receipts from "incidental objects". Admittedly, the assessee has himself reported the impugned receipts from incidental objects in the return of income filed. Further, before lower authorities, the assessee has also given a detailed Statement running over 4 pages giving party-wise details of all receipts with break-up under headings "main objectives" and "incidental objectives" (Paper-Book Page 132-135). Thus, the receipts from "incidental objects" are self-reported and self-admitted by assessee. Ld. AR though submitted repeatedly that the impugned receipts were in the nature of "grants" from givers and the assessee had wrongly classified the same as receipts from "incidental objects" but when we examined the detailed Statement during hearing, on a bare perusal we found that the receipts from many of the givers were in odd amounts. Generally, the grants are given in round figures, therefore we tried to dig further from Ld. AR as to why there were odd figures? Immediately, Shri Yogesh Kumar, office-bearer of assessee-trust who was also available with Ld. AR during hearing, intervened and explained that the assessee-trust had to make cogent estimates; submit proposal of estimates to givers, negotiate exact terms as well as amounts with the givers and ultimately arrive at concrete amounts with the givers; that is why there are odd amounts

received from givers. Thus, on one hand it is claimed that a wrong figure of receipts from incidental objects was reported in the return of income but on other hand there is a submission that the assessee received concrete amounts from givers after discussions and negotiations. During deliberations, it also surfaced that the assessee had also issued Invoices to the givers for collecting receipts. Shri Yogesh Kumar invited our attention to three sample Invoices dated 30.03.2018, 28.02.2018 and 25.01.2018 issued by assessee to the givers in an attempt to show that the receipts were not in the nature of business or commercial receipts. These Invoices are not a part of Paper-Book filed in terms of ITAT Rules, 1963 but produced separately during deliberations. When we asked Ld. AR as to whether these Invoices were available before AO, Ld. AR made a submission that there was no occasion to submit the same in absence of show-cause notice from AO. Ld. AR narrated that the AO has made impugned addition without looking into the documents of impugned receipts. Thus, from the deliberations took place during hearing, we found that the nature of impugned receipts had not been adequately examined at assessment level for whatever reason. We expressed this finding during hearing itself. Ld. AR also echoed our finding, although contending in favour of assessee for deletion of addition made by AO, that the AO has treated the impugned receipts as business receipts only because of reporting in assessee's return and because of deduction of TDS by givers but the AO has not examined the true nature of receipts. Being so, we are of the considered view that there is a strong need to examine the

nature of receipts aptly and also to give benefit of contentions raised by Ld. AR as noted in Para 4(iv)/(v)/(vi) above. Therefore, we remand this matter to the file of AO for a fresh adjudication. The AO shall give necessary opportunities to assessee and the assessee shall make detailed submission to AO qua the impugned receipts from incidental objects to enable the AO to reach a proper conclusion. Ordered accordingly.

6. Before parting we would like to address a technical issue raised by Ld. AR. It is claimed before us, as noted earlier, that since there was no denial of exemption in scrutiny assessments of earlier years, the AO is prohibited from taking a different view in current year because of "rule of consistency". This contention raised by Ld. AR is not acceptable to us. This is so because as argued by Ld. AR himself the separate reporting requirement of receipts from incidental objects had come into effect from AY 2018-19 for the first time. Moreover, the assessee has himself given a detailed Statement showing break-up of receipts attributable to "main objectives" and "incidental objectives". Hence, the AO is not prevented by "consistency rule" from examining the nature of "incidental objects" and take a call in accordance with law. The AO is well within his power to examine the nature of "incidental objects" self-reported and self-admitted by assessee and thereafter take a decision of making any addition as per law, if the facts warrant so. Hence, this technical contention is rejected.

7. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in open court / by putting up on notice board
as per Rule 34 of ITAT Rules, 1963 on 31/01/2025

Sd/-

(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 31/01/2025

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore