

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

SHRI B.M. BIYANI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

ITA No.288/Ind/2023
Assessment Year: 2011-12

Shree Jeenshashan Seva Shiksha Sanskar Sankul Trust, Abhudayapuran, Near Toll Naka, Barnagar Road, Ujjain	<u>बनाम/</u> <u>Vs.</u>	ITO (Exemption), Ujjain
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAMTS1801R		
Assessee by	Shri Pavan Ved, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	08.01.2025	
Date of Pronouncement	30.01.2025	

आदेश / ORDER

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

Feeling aggrieved by order of first appeal dated 29.05.2023 passed by learned Commissioner of Income-Tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 31.03.2011 passed by learned ITO, Exemption, Ujjain ["AO"] u/s 143(3) r.w.s. 147 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on following grounds raised in Form No. 36:

"1. The Id. CIT(A) erred in upholding validity of reopening. The reopening of assessment is invalid for various reasons.

2. The Id. CIT(A) erred in treating the appellant trust as unregistered when learned CIT(E) had already granted certificate u/s 12A after the trust had made necessary amendments.

3. Fresh claim: the Ld. CIT(A) erred in confirming Unsecured loan as income.

4. The Id. CIT(A) erred in not disposing all the grounds raised in the detailed submission of appeal.

5. The appellant reserves right to add amend or alter any or all the ground of appeal on or before the date of hearing"

2. The background facts leading to present appeal are such that the AO issued notice dated 07.06.2016 u/s 148 to assessee-trust for undertaking action u/s 147. In response, the assessee filed return of income on 13.09.2016. The AO also issued notices u/s 143(2)/142(1) which were duly complied by assessee. Finally, the AO completed assessment vide order dated 22.12.2017 u/s 143(3) r.w.s. 147 after making certain adjustments and thereby determining total income at Rs. 16,19,470/-. Aggrieved, the assessee carried matter in first-appeal but did not get any success. Now, the assessee has come before us in next appeal assailing the orders of lower-authorities.

3. Before us, Ld. AR for assessee/appellant raised a legal claim that the AO has undertaken proceeding u/s 147 through notice dated 07.06.2016 u/s 148 after recording reasons. But, however, the AO has not obtained any approval from higher authorities as mandated by section 151. Therefore, the issuance of notice u/s 148 itself was illegal and consequently the entire

assessment framed by AO u/s 147 was also invalid and unsustainable. Ld. AR submitted that this claim of assessee is a legal claim; goes to the root of the matter; does not call for any new evidence; and can be decided on the basis of material already held on record. Therefore, in view of the decision in ***National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)***, the assessee's claim must be admitted and adjudicated.

4. Ld. DR for revenue/respondent did not dispute the admissibility of assessee's claim for adjudication but, however, demanded time to call for a report from AO qua the approval u/s 151. Therefore, the hearings were adjourned from time to time and sufficient opportunities were given to the revenue for producing copy of approval. Ultimately, the Ld. DR for revenue could submit following letters of AO:

वित्त मंत्रालय
कार्यालय आयकर अधिकारी (छूट)
आयकर भवन, भरतपुरी, उज्जैन

फा.क./आ.अधि (छूट)/उ/2024-25/30

उज्जैन, दिनांक 26.04.2024

प्रति,

श्री जिनशासन सेवा शिक्षा संस्कार संकुल ट्रस्ट,
01, अभ्युदयपुरम, बडनगर रोड, टोल नाके के पास, बडनगर

महोदय,

विषय : निर्धारिती श्री जिनशासन सेवा शिक्षा संस्कार संकुल ट्रस्ट, बडनगर, स्थाई लेखा संख्या (PAN) : AAMTS1801R के प्रकरण में नि.वर्ष. 2011-12 के लिए वांछित दस्तावेज प्रदान करने बाबत ।

कृपया उपरोक्त विषय में आपके पत्र दिनांक 03.04.2024 का अवलोकन करने का कष्ट करें ।

उपरोक्त संदर्भित पत्र के द्वारा निर्धारिती जिनशासन सेवा शिक्षा संस्कार संकुल ट्रस्ट, बडनगर, स्थाई लेखा संख्या (PAN) : AAMTS1801R के प्रकरण में आपके द्वारा आयकर की धारा 148/147 के तहत निर्धारण प्रक्रिया के दौरान समर्थ पदाधिकारी से प्राप्त अनुमोदन एवं अनुमोदन हेतु भेजे गए प्रस्ताव की प्रति चाहि गई है ।

प्रकरण के अभिलेख को देखने से यह प्रतित होता है कि आपके द्वारा 28/01/2017 को पत्र के माध्यम से जो कि इस कार्यालय में 30/01/2017 को प्राप्त हुआ है इसमें कहा गया है कि :-

1. इस कार्यालय से 148 का नोटिस जो कि 07/06/2016 को जारी किया गया है मुझे 15/06/2016 को प्राप्त हुआ ।
2. दिनांक 20/12/2016 को 148 के तहत जारी नोटिस के अनुपालन में आयकर विवरणी दाखिल की गई है, साथ ही आपके द्वारा आयकर की धारा 148 का कारण की प्रति मांगी गई ।

उपरोक्त पत्र के जबाब में इस कार्यालय के पत्र दिनांक 29/05/2017 के द्वारा प्रकरण में पुनर्निर्धारण का कारण की प्रति आपको भेजी गई थी जिसमें उच्चाधिकारी से अनुमोदन पश्चात प्रकरण में आयकर की धारा 148 के तहत पुनर्निर्धारण चालु करने की बात कही गई है, जिससे प्रतित होता है कि प्रकरण मे सक्षम अधिकारी (competent authority) के अनुमोदन के पश्चात ही आयकर की धारा 148 के तहत पुनर्निर्धारण की कार्यवाही की गई है । चूंकि वर्तमान परिस्थिती में प्रकरण पुराना होने के कारण एवं निर्धारण मैनुअल होने के कारण system पर इसकी कोई जानकारी उपलब्ध नहीं है । अतः उक्त अनुमोदन की प्रति इस कार्यालय में मिलने के पश्चात् आपको उपलब्ध करा दी जाएगी ।

संलग्न- इस कार्यालय द्वारा दिनांक 29/05/2017 को जारी पत्र की प्रतिलिपी ।



भवदीय
कुमार लोरम
(कुमार सौरभ)
आयकर अधिकारी (छूट), उज्जैन

Shree Jeenshanshan Seva Shiksha Sanskar Sankul
ITA No. 288/Ind/2023 - AY 2011-12



Government of India
Ministry of finance (Dept. of Revenue)
Office of the Income tax Officer-(Exemption), Ujjain
Aaykar Bhawan, Bharatpuri Ujjain (M.P)
E-mail: ujjain.ito,exmp@incometax.gov.in

F.No-ITO (E)/UJN/Tech/2024-25 / 440

Dated.22.08.2024

To,

The Income tax Officer
O/o The Commissioner of Income tax (DR)
ITAT, C.G.O Building, 2nd Floor
A-Wing, White Church Road, Indore-452001

Sir,

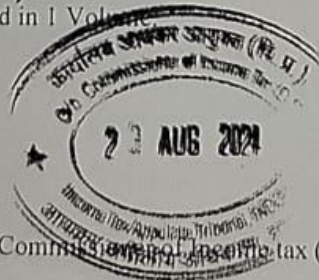
Sub:- Appellate proceeding in the case of Shree Jeenshanshan Seva Shiksha Sanskar Sankul Trust for A.Y 2011-12, Ujjain- ITA No.288/Ind/2023, for the A.Y 2011-12 PAN-AAAMTS1801R-Reg.

Ref:- F.No.CIT(DR)/ITAT/IND/2024-25/195 dated.22.08.2024.


Kindly refer to the above letter dated.22.08.2024 in which you have requested the case record of Shree Jeenshanshan Seva Shiksha Sanskar Sankul Trust (PAN-AAAMTS1801R) alongwith copy of approval u/s 151 of Pr.CIT for the Assessment Year 2011-12, to be submitted by 23.08.2024.

Kindly find enclosed herewith the case record for the aforementioned trust for A.Y 2011-12. The record consists of a single volume with a total of 173 pages (pages 01 to 173) and an order sheet (pages 01 to 05). Further, it is noted that the copy of the approval under section 151 of the Pr.CIT is not available in the case record. However, as per the assessment order dated 22/12/2017, it is stated that the notice under section 148 dated 07/06/2016, was issued after recording the reasons and obtaining approval from the competent authority.

Encl: Case record in 1 Volume



Yours faithfully


(Kumar Saurabh)
Income Tax Officer (Exemption)
Ujjain


Copy to :

1. The Joint Commissioner of Income tax (Exemption), Bhopal for kind information.

Income Tax Officer (Exemption)
Ujjain

Shree Jeenshanshan Seva Shiksha Sanskar Sankul
ITA No. 288/Ind/2023 - AY 2011-12

Dated.22.08.2024


Government of India
Ministry of finance (Dept. of Revenue)
Office of the Income tax Officer-(Exemption), Ujjain
Aaykar Bhawan, Bharatpuri Ujjain (M.P)
E-mail: ujjain.ito,exmp@incometax.gov.in

F.No-ITO (E)/UJN/Tech/2024-25 / 450 Dated.31.08.2024


To,
The Commissioner of Income tax (DR)
ITAT, C.G.O Building, 2nd Floor
A-Wing, White Church Road, Indore-452001

Sir,
Sub:- Request for adjournment of time for hearing in the case of Shree Jeenshanshan Seva Shiksha Sanskar Sankul Trust for A.Y 2011-12, Ujjain-ITA No.288/Ind/2023, for the A.Y 2011-12 PAN-AAMTS1801R-Reg.
Ref:- F.No.CIT(DR)/ITAT/IND/2024-25/195 dated.22.08.2024.

Kindly refer to the above letter dated.22.08.2024 in which you have requested the case record of Shree Jeenshanshan Seva Shiksha Sanskar Sankul Trust (PAN-AAMTS1801R) alongwith copy of approval u/s 151 of Pr.CIT for the Assessment Year 2011-12, to be submitted by 23.08.2024.

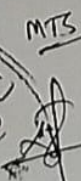
In response to the above letter, we have provided the requested case record and submitted a letter indicating that the approval letter under Section 151 is currently missing from the case file.


The above mentioned case has been fixed for hearing on 03/09/2024. Due to departmental examination which is going from 27/08/2024 to 06/09/2024 in which most of the staff of this office appearing in the said examination. Therefore, we could not thorough search of the documents mentioned above. It is therefore requested to kindly provide more time up to 20/09/2024 for find out the said documents.

Yours faithfully

(Kumar Saurabh)
Income Tax Officer (Exemption)
Ujjain

Copy to :

1. The Commissioner of Income tax (Exemption), Bhopal for kind information.
2. The Joint Commissioner of Income tax (Exemption), Bhopal for kind information.


Income Tax Officer (Exemption)
Ujjain


MTS
Keep with Case
Filer

Date 31.08.2024

Shree Jeenshashan Seva Shiksha Sanskar Sankul
ITA No. 288/Ind/2023 - AY 2011-12



Government of India
Ministry of finance (Dept. of Revenue)
Office of the Income tax Officer-(Exemption), Ujjain
Aaykar Bhawan, Bharatpuri Ujjain (M.P)
E-mail: ujjain.ito,exmp@incometax.gov.in

F.No-ITO (E)/UJN/Tech/2024-25 / 613

Dated.20.09.2024

To,

The Commissioner of Income tax (DR)
ITAT, C.G.O Building, 2nd Floor
A-Wing, White Church Road, Indore-452001

Sir,

Sub:- Appellate proceeding in the case of Shree Jeenshashan Seva Shiksha Sanskar Sankul Trust for A.Y 2011-12, Ujjain- ITA No.288/Ind/2023, for the A.Y 2011-12 PAN-AAMTS1801R-Reg.

Ref:- F.No.CIT(DR)/ITAT/IND/2024-25/223 dated.05.09.2024.

Kindly refer to the above.

Kindly refer to the aforesaid letter dated.05.09.2024 in which you have requested to furnish a copy of the approval letter U/s 151 of the Principal Commissioner of Income Tax in order to reopen the assessment on or before 23.09.2024.

In this regard, it is humbly submitted that we have not yet been able to locate the missing approval letter, despite our best efforts.

It is pertinent to mention here that during the 148 proceedings, the assessee vide its letter dated 28.01.2017, accepted that notice u/s 148 received on 15/06/2016 and filed its return of income in compliance with notice u/s 148 and also requested a copy of reasons recorded during the proceedings. Further, in this office letter dated 29.05.2017, a copy of the reason provided to the assessee society in which it has been mentioned that this notice is issued after taking approval of competent authority. It is pertinent to mention here that there is no objection raised by the assessee society before the then-assessing officer on issue of approval letter u/s 151 of the PCIT. Therefore, it is clear that the said proceedings were started after taking approval of competent authority.

Further, We have looked carefully through all related documents and files, but unfortunately, the letter remains untraceable. We understand the importance of this document and will continue to look for it. Thanking you.

Yours faithfully,

(Kumar Saurabh)
Income Tax Officer (Exemption)
Ujjain

Copy to :

1. The Commissioner of Income tax (Exemption), Bhopal for kind information.
2. The Joint Commissioner of Income tax (Exemption), Bhopal for kind information.

Income Tax Officer (Exemption)
Ujjain

5. Ld. DR read over the contents of these letters of AO in the open Court and narrated the reporting made therein by AO.

6. We have considered submissions of both sides. At first, we admit the legal claim raised by assessee in terms of **National Thermal Power Co. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)** that the approval u/s 151 was not obtained by AO from higher authorities. To adjudicate this claim, we refer the letters of AO re-produced above. The AO has clearly reported that the approval u/s 151 is not available/traceable in the records of revenue. Section 151 clearly prescribes that no notice u/s 148 shall be issued by AO without obtaining approval from prescribed higher authorities, on the reasons recorded, that it is a fit case for the issue of notice. Since the revenue authorities are unable to produce the approval u/s 151, the notice issued by AO u/s 148 become an invalid notice and consequently the entire assessment framed by AO u/s 143(3) r.w.s. 147 also becomes invalid. Therefore, in present case, agreeing with Ld. AR's submissions, we quash the assessment-order passed by AO. The assessee succeeds in its claim.

7. Since we have quashed the assessment-order itself, adjudication of other grounds/claims by us is not required. Even otherwise, neither side

Shree Jeenshashan Seva Shiksha Sanskar Sankul
ITA No. 288/Ind/2023 - AY 2011-12

has chosen to make any submission qua other grounds/claims during hearing, therefore also no adjudication is required from us.

8. Resultantly, this appeal is allowed.

Order pronounced by putting on notice board as per Rule 34 of ITAT Rules,
1963 on 30/01/2025

Sd/-

(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 30/01/2025
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