

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH 'SMC', JODHPUR

BEFORE: DR. MITHA LAL MEENA, AM & DR. S. SEETHALAKSHMI, JM

ITA No. 305/JODH/2024
Assessment Year :2017-18.

Shree Vishwakarma Sutradhar Sampati Trust, Sampati Trust Near Laxmi Nath Ji Mandir, Bikaner.	बनाम Vs.	Income-tax Officer, Exemption, Bikaner.
PAN/GIR No. AAETS9909E		
Appellant		Respondent

Assessee by :Shri Amit Kothari (CA)
Revenue by : Shri Karni Dan, Addl. CIT

Date of Hearing : 04/02/2025
Date of Pronouncement: 28 /03/2025

ORDER

PER DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of Id. Addl./JCIT (A)-4, Bangaluru dated 16.03.2024 passed under section 250 of the I.T. Act, 1961, for the assessment year 2017-18. The assessee has raised the following grounds of appeal :-

1. That order passed by the CIT (Appeal) u/s 250 of the Income Tax Act, 1961 for the AY 17-18 is bad in law and on the facts.
2. The CIT (Appeal) has wrongly countenanced to the arbitrary finding recorded in the assessment order by the Assessing Officer in facts and circumstances of the case. Therefore computing the income of the trust at Rs. 1,92,751/- instead of 1,04,581/- is not correct in the facts and circumstances of the case.

3. That CIT (Appeal) has wrongly upheld the chargeability of tax on the income computed by Assessing Officer at MMR instead of calculating tax as if it were an individual assessee in the facts and circumstances of the case.
4. The CIT (Appeal) has failed to adhere to the principles of natural justice in providing proper opportunity of hearing on the case in the facts and circumstances of the case.
5. That appellant prays for justice and may please be allowed to add/amend/alter further or any ground/s of appeal on or before hearing on the case.

2. The brief facts of the case are that the assessee is a public charitable trust and duly constituted under its constitution under Indian Trust Act. The assessee e-filed its return of income on 10.01.2018 in ITR-7 along with audit report in Form 10B declaring total income of Rs. Nil. The case was selected for scrutiny under compulsory criteria, accordingly first notice under section 143(2) of the IT Act, 1961 was issued on 24.9.2018 which stands served upon the assessee as per record. In response to the statutory notices, the assessee furnished written submissions and required information and documents through e-proceedings. Further, the ld. A/R of the assessee attended the proceedings and produced books of account consisting of cash book, ledger, donation receipts books, bill vouchers of expenses and bank statement etc. which were examined on test check basis and the case was discussed with him.

2.1 The return of income has been filed claiming exemption under section 11 of the IT Act, 1961. Further, it was found that gross receipts are of Rs. 6,97,204/- out of which revenue expenditure of Rs. 5,04,453/- has been claimed and Rs. 1,04,581/- has been accumulated or set apart under section 11(1)(a) of the IT Act, 1961. During assessment proceedings, the assessee was asked to justify the claim of such exemption under section 11 and also to furnish documentary evidence in support of its claim. In response, the assessee furnished the required

information and documents and also produced books of account. In respect of activities carried out during the year under consideration, it has been stated that the assessee trust is formed for various charitable purposes including running and maintenance of dharamshala, eradication of bad customs from society, to work for betterment and upliftment of women and weaker section of the society, to provide for water and sanitation etc. during “melas”. It was submitted that there are no change in objects and activities during the year under consideration and income has been applied towards charitable objects. The assessee Trust is duly registered with Rajasthan Public Trust Act, 1950.

2.2 However, in respect of registration under section 12A(a)/12AA, it was explained that the assessee had applied for registration but the same had been rejected by the CIT (E) and appeal is pending against the said order before the ITAT. The AO has observed that the trust has been constituted for the benefit of particular community. The Id. A/R submitted that no evidence to this effect has been brought on record by the AO before giving such an unfounded finding. The AO held that since registration under section 12AA is essential condition for claiming exemption under section 11, hence the assessee is not entitled to claim the exemption. The Id. A/R submitted that in absence of registration, at least revenue expenditure may be allowed. As per income and expenditure account, there are surplus of Rs. 1,92,751/- out of gross receipts of Rs. 6,97,204/- after claiming revenue expenditures of Rs. 5,04,453/- incurred to meet out the objects. Thus, the AO assessed the total income at Rs. 1,92,751/- taking the status of the assessee Trust as ‘AOP’ instead of ‘Trust’, to be taxed MMR and interest under section 234A and 234B have been charged as per the provisions of the IT Act, 1961. Aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) vide his order dated 16.03.2024 by upheld the order of the Assessing Officer, by observing as under :-

“6. Decision : I have gone through the facts of the case, the Grounds of appeal, and the submissions made by the appellant. The grounds of appeal raised in this appeal is that the Assessing Officer erred in denying the claim of exemption u/s 11 & 12AA of the Act and also the excess of income over expenditure has been brought to tax at MMR rate by wrongly applying the provisions of Section 13(8) of the Income-tax Act. The assessee's submission was carefully considered. As per the provisions of Section 11 and 12AA of the Income-tax Act, the registration of the trust under Section 12AA is mandatory in order to claim the exemption under Section 11 of the Act. In the absence of the registration u/s 12AA of the Income Tax Act, the assessee is not eligible to claim exemption under Section 11 of the Act.

6.1 On the above issue, the Hon'ble SC in the case of U.P. Forest Corporation v. Dy. CIT (2007) 165 Taxman 533 observed that a conjoint reading of sections 11, 12 and 12A makes it clear that registration under section 12A is a condition precedent for availing of benefit under sections 11 and 12. Unless and until an institution is registered under section 12A, it cannot claim the benefit of section 11(1)(a). Keeping in view the fact that the assessee had not been granted registration under section 12A, it was not entitled to claim exemption from payment of tax under sections 11(1)(a) and 12.

6.2 Further, in the case of Bhagawan Sree Mahayogi Lakshamma Educational Society, Adoni, 134 taxmann.com 310 (2022) – The ITAT, Hyderabad Tribunal held that appeal pending before CIT (Appeals) could not be termed as an assessment pending before Assessing Officer even if CIT (Appeals) had coterminous powers with that of Assessing Officer, Assessing Officer was justified in rejecting exemption under section 11. Since assessee society was not registered under section 12A/12AA, Assessing Officer was justified in rejecting exemption under section 11 and making addition treating corpus fund receipts/donations as income of assessee.

7. In view of the above decisions of the Hon'ble SC and thereafter by the Hon'ble ITAT, Hyderabad, the assessee is not eligible to claim exemption u/s 11

of the Income-tax Act for not having registered u/s 12AA of the Act. Therefore, the AO has rightly brought to tax the excess of income over expenditure amounting to Rs. 1,92,751/- to tax.

8. As regards, the computation of income on the excess of income over expenditure amounting to Rs. 1,92,751/- at MMR rate, the AO has clearly brought out in the order that a perusal of trust deed shows that the trust is working for the benefit of a particular community rather than for the public at large. On this aspect also, the AO has rightly brought to tax at MMR rate.

9. Therefore, the Assessing Officer has rightly disallowed the exemption claimed u/s 11 of the Act and brought to tax the excess of income of over expenditure at MMR rate for reasons discussed above. Accordingly, I am not inclined to interfere with the decision of the Assessing Officer. The grounds of appeal raised by the appellant are hereby dismissed.”

3. Being not satisfied with the order of Id. CIT (A), the assessee has preferred the present appeal before the Tribunal on the grounds as reproduced herein above. In support of the grounds raised by the assessee, the Id. A/R has filed the written submissions and the same are reproduced herein below :-

“ The assessee trust filed its ITR on 10.01.2018 for the AY 17-18 alongwith audit report in Form 10B declaring total income of Rs. NIL. The case was selected for scrutiny assessment and consequently completed u/s 143(3). The Assessing Officer in want of registration u/s 12A(a) denied the claim of exemption u/s 11 of the Income Tax Act, 1961. The CIT (Exemption) rejected the registration u/s 12A of the Act and against which assessee is in appeal before Hon’ble ITAT which is pending to be decided. The Assessing Officer mentioned in his order that trust is for the benefit of a particular community and caste, therefore there is violation of section 13(1)(b) of the Act. The Assessing Officer further mentioned that the said trust is not registered under any Act or Law. He further stated that provision of section 11 & 12 shall not operate in accordance

with the provisions of section 13(8) of the Act and income tax shall be computed at the MMR. The Assessing Officer assessed the income of the trust at Rs. 1,92,751/- after allowing revenue expenditure out of gross receipt and charged tax on the said amount at MMR. The Hon'ble CIT (A) while deciding the appeal u/s 250 countenanced the finding of the Assessing Officer in limine, the CIT (Appeal) decided the case exparte. Before deciding the case a communication on dated 10.11.2022 that window with the CIT (Appeal) has been enabled and thereafter first time he issued the notice u/s 250 on 02.02.2024 fixing the date 09.02.2024. The assessee could not comply with the first notice of fixation due to non service of the notice on the registered email but off late found on government portal. The CIT (Appeal) decided the case on dated 16.03.2024 upholding the order of the Assessing Officer.

The first finding that the assessee trust is not registered under any Act is not correct. Assessee trust is duly registered with Rajasthan Public Trust Act, 1950. Second aspect of the matter is that trust has not been formed for benefit of a particular community or caste. The Assessing Officer as well as CIT (Appeal) confused with the word **Vishwakarma Sutradhar Samaj** which has been mentioned in two of the objectives of the trust. Therefore they held it that the trust has been formed for particular community and caste. It is not the case. Vishwakarma do not represent any particular community or caste. The word represents every community and every caste irrespective of any religious practice people are following, engaged in vocational activities like as gold ornaments making karigars, carpenters, doing job work of iron goods, construction labourers and karigars, barbers, launderers and so on, encompasses many communities and religions and represented by the public at large who are carrying out job work through hand process. Third aspect of the matter is that assessee trust is not carrying out any business activities as it is very obvious from financial statements already placed on revenue filed, how the Assessing Officer reached to the finding that assessee trust is carrying out business activities. The CIT (Appeal) also upheld the order of Assessing Officer. The facts narrated by the Assessing Officer and decided by CIT (Appeal) are absent and both have decided the case in arbitrary manner. For the purpose of benefit of section of public is also treated as good as public at large. We can take the support of

decisions of Hon'ble SC reported in 82 ITR 704 and 101 ITR 234. Sir, for wrong interpretation made by the Assessing Officer as well as by CIT (Appeal) when trust has been formed for the benefit of public at large and both the authorities either confused with the word or arbitrarily interpreted have decided the case de hors the objectives sought to be achieved for public at large. The word cannot be dubbed as belonging to a particular community or caste therefore the entire finding de hors the material available on record. By no stretch of imagination the income computed by the Assessing Officer can be subject to MMR but the individual taxation rate should be applied and CIT (Appeal) has also erred in upholding the order of the Assessing Officer in these facts.”

4. On the other hand, the ld. D/R relied on the findings of the revenue authorities and submitted that the assessee is not registered trust and, therefore, the benefit of sections 11 and 12 cannot be given. Based on these arguments, the ld. D/R supported the orders of the lower authorities.

5. We have heard the rival contentions and perused the material placed on record. Ground no.1 of the appellant is general ground and hence does not require any adjudication. Ground no. 2 relates to quantum of assessable income. The ld. AO has levied tax on an income of Rs. 1,92,751/- whereas the appellant out of said income has claimed deduction u/s 11 of the Income tax Act, 1961 for 15% of the gross income calculated at Rs. 1,04,581/-. Considering the fact that the assessee trust was not registered u/s 12AA of the Income Tax Act,1961 we are of the opinion that correct assessable income is Rs. 1,92,751/- and hence we dismiss this ground of the appellant. So far as ground no. 3 of the appeal of the appellant is concerned, at the outset, we find that the case of the assessee is squarely covered by the recent decision of the Coordinate Bench of the Tribunal, Jodhpur in the case of Shri Digambar Jain Mandir Trust vs. Assessing

Officer in ITA Nos. 121 to 124/Jodh/2021 and 237/Jodh/2023 dated 15th April, 2024, wherein the Tribunal decided the matter by observing in para 11 as under :-

11. We have heard the rival contentions and perused the material placed on record. From the facts argued by the ld. 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 ld. 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 ld. AR of the assessee also submitted that considering the facts of the case even the provision of section 167B will not applicable and the ld 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 ld. 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 recorded :

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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.”

5.1 We have also noted that the Id. CIT (A) dismissed the appeal of the assessee merely on the ground that benefit of section 11 cannot be given without registration under section 12AA/12AB of the Income tax Act, 1961. We agree to the same but here we are dealing with the issue of rate of tax chargeable in case of a trust which is not registered u/s 12AA/12AB of the

Income tax Act, 1961 whether it is to be charged at MMR or at normal rate as applicable to individual. We find that in case of charitable trust wherein there is no provision of share of any surplus and there is no provision of distribution of assets, provisions of section 164(2) can only be applied and we, therefore, following the decision of the coordinate bench of the Tribunal, Jodhpur, allow ground No. 3 of the appeal of the assessee and hold that the tax rate as applicable to section 164(2) will apply to the rate of the AOP/Individual and the initial exemption is also available to such assessee.

6. As regards the ground no. 4 and ground 5 are concerned, since nothing has been provided by the appellant before us and hence we reject both these grounds

7. In the result, appeal of the assessee is partly allowed in above terms.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

; Sd/-

;
(Dr. Mitha Lal Meena)
Accountant Member

Sd/-

(DR. S. Seethalakshmi)
Judicial Member

Dated 28/03/2025

Santosh- Sr. P.S

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order

