

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", NEW DELHI
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.1443/Del/2016
Assessment Year : 2007-08**

Vikramaditya Educational Society VPO Baliyana, Rohtak PAN : AAAAV9618E	Vs.	ITO (Exemptions) Aayakar Bhawan, Rohtak
(Appellant)		(Respondent)

Appellant by : Shri Mahavir Singh, Advocate
Respondent by : Shri S.K. Jain, Sr. DR
Date of hearing : 30-01-2017
Date of pronouncement : 31-01-2017

ORDER

PER S.V. MEHROTRA, A.M :

The assessee has filed this appeal against the order of Ld. CIT (A)-2, Gurgaon dated 28.01.2016 in Appeal No. 303/09-10 for A.Y. 2007-08.

2. Brief facts of the case are that the assessee had filed its return of income declaring nil income. The assessment was completed u/s 144 at a total income of Rs. 17,13,720/-. The assessee preferred the appeal before Ld. CIT (A) which was dismissed by CIT (A), Rohtak vide its order dated 9.2.2011 in appeal No. 303/SPT/2009-10. Against the order of Id. CIT (A), the appeal was preferred before ITAT, New Delhi and Tribunal vide its

order dated 12.9.2013 in ITA No. 1698/Del/2011 remitted the case to the file of the Id. CIT (A), to be decided afresh, inter alia, observing as under:-

“7. A bare perusal of the aforesaid observations of the Ld. CIT (A) regarding the issues involved shows that indeed, the grievance of the assessee, taken by way of Ground No.5, to the effect that fair and proper opportunity of hearing was not granted to the assessee by the Ld. CIT (A), is found to be justified and is accepted as such. The Order under appeal has been passed without even adverting to the afore- quoted written submissions filed by the assessee before the Ld. CIT (A). Therefore, it would be in the interest of justice to remit this case to the file of the Ld. CIT (A), to be decided afresh, in accordance with law on affording due and adequate opportunity of hearing to the assessee. The assessee, no doubt, shall cooperate in the proceedings before the Ld. CIT (A). Held accordingly.”

3. In consequence to directions of Tribunal, the Id. CIT (A) has passed the impugned order dismissing the assessee's appeal. Being aggrieved with the order of Id. CIT (A) the assessee has filed appeal before the Tribunal and has taken following grounds of appeal:-

01. That the learned Commissioner of Income Tax(Appeals), has grossly erred both in law and, on facts in taking it as remission with riders for adjudicating only two issues and thus wrongly and erroneously rejecting our first ground of first appeal without assigning any reason though the Hon IT AT had remitted the case back to CIT (A) for deciding the appeal a fresh as per law without any conditions attached. The Ld CIT(A) erred in deciding the appeal in summary manner on non existent technical ground.

2. That the learned Commissioner of Income Tax(Appeals), has grossly erred both in law and, on facts in upholding the additions of Rs. 1,19,723/- and Rs. 15,94,000/- by denying the claim of exemption u/s 10(23C) (iiiad) of the Act.

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the appellant society solely existed for education purposes and as such was entitled for exemption u/s 10(23 C)(iiiad) of the Act.

2.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that aims and objects stated in the memorandum and not pursued on by the appellant society could not be a ground to deny the legitimate claim of exemption.

2.3 That the finding of learned Commissioner of Income Tax (Appeals)that even from the expenditure incurred by the appellant it is evident that the appellant society was not existing solely for educational purpose is factually incorrect and legally misconceived.

2.4 That the learned Commissioner of Income Tax (Appeals) has further erred in not following the judgment of jurisdictional High Court in the case of Pinegrove International Charitable Trust vs. UOI reported in 327 ITR 73 (P&H) and CIT vs. Haryana Warehousing Corporation reported in 314 ITR 215 (P&H) and not allowing exemption u/s 10(23C)(iiiad) of the Act.

3 That without prejudice to the aforesaid, the learned Commissioner of Income Tax (Appeals) ought to have held that income of the appellant is also eligible for exemption u/s 11 of the Act.

4 That the learned Commissioner of Income Tax (Appeals) has otherwise to erred both in law and on facts in upholding the addition of Rs. 15,94,000/- representing corpus donations received by the appellant society. That the finding of the learned Commissioner of Income Tax (Appeals) that corpus donations are taxable revenue receipts irrespective of the fact whether these were anonymous donations or not is incorrect, erroneous and, not tenable.

That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the levy of interest u/s 234B of the Act.

It is therefore prayed that, it be held that, appellant is entitled to exemption u/s 10(23C)(iiiad) of the Act or in the alternative u/s 11 of the Act and, additions made and, sustained by the learned Commissioner of Income Tax (Appeals) together with interest may kindly be deleted.ö

4. The Ld. Counsel referred para no. 6 of Ld. CIT(A)'s order wherein the assessee's written submissions dated 27.1.2016 have been reproduced by Ld. CIT (A) as under:-

"The 1st ground of appeal is regarding legality of proceedings initiated u/s 143(2) of the act by taking the return of income as First return of income and as per clause 2(xix) of action plan issued by CBDT the Ld. AO issued notice u/s 143(2) of the act. Relevant page of certified copy of order sheet is placed at page 1 of the paper book wherein the reason of issue of notice u/s 143(2) of the act are mentioned.

Sir, the action of the Ld. AO is factually incorrect as this was not the first return of income. The First return of income was filed for A/y 2006-07 and photocopy of the same is placed at page 2-3 of the paper book. Further, this fact was clearly disclosed in the return of income filed for the year under appeal in Point No. 17 of ITR, photocopy of relevant page is placed at page 4 of the paper book.

Thus, the case of the assessee society was selected for scrutiny against the board instruction. Reliance is placed on the following judicial pronouncements.

The Hon'ble ITAT Delhi bench in the case of M/s Crystal Phosphates Ltd., Vs. Asstt. Commissioner of Income-tax, Sonapat in 1TA No. ITA no. 3630/Del/2009 had quashed the assessment as well as notices

issued, by holding that "once the CBDT has issued instructions for assumption of jurisdiction for selection of cases of corporate assesses for scrutiny and assessment thereof, the same have to be followed in letter and spirit by the AO. The burden lies on the authority assuming jurisdiction to show and establish that such instructions have duly been complied and satisfied in letter and spirit. However, in the instant case, for the reasons stated above, instructions issued by the CBDT are not shown to have been satisfied for assumption of jurisdiction. Thus, we are in agreement with the contention raised by the appellant that notice issued u/ s 143(2) of the Act for assumption of jurisdiction was not in terms of the instructions of the CBDT. Hence, both the notice and the assessment framed are held to be without valid jurisdiction and stand quashed as such. "

Sir, "In the hierarchical system of courts which exists in our country, It is necessary for each lower tyre to accept legally the decision of higher tyre" This view has been taken by the Hon'ble ITAT Chandigarh Bench in the case JCIT Spl Rang vi1 Jamna Auto Ltd reported at 26 Indian Taxation Reports 52 (ITAT, Chandigarh). The reliance is also placed on the following judgments ITNarsimhan vs ACIT reported at 97ITD 197 (ITAT Chennai) CIT, Kanpur vs Divya Investment P Ltd reported at 135 Indian Taxation Reports 391 (Supreme Court). In view of above submissions the assessment order under appeal may kindly be annulled."

5. The Ld. Counsel referred to para no. 7 of the Ld. CIT (A)'s order which is reproduced here under:-

"I have carefully considered the appellant's submissions. The issue of legality of proceedings initiated u/s 143(2) was not a ground of appeal filed before the Hon'ble ITAT. The Hon'ble ITAT has restored only the two issues of benefits of deduction u/s 10(23C)(iiiad) and of corpus donations. The present appeal proceedings are consequential to the

directions of Hon'ble ITAT and no other issue can be taken up at this stage. This ground of appeal is therefore dismissed as not maintainable."

6. With reference to aforementioned observation of the Id. CIT (A), the Ld. Counsel pointed out that the Ld. CIT(A) did not decide the issue relating to the legality of proceedings initiated u/s 143(2). He submitted that it was a jurisdictional ground and in support of its contention the assessee had relied on the decision in the case of M/s Crystal Phosphates Ltd., Vs. Asstt. Commissioner of Income-tax, Sonapat in 1TA No. ITA no. 3630/Del/2009 for A.Y. 2006-07.

7. The Ld. DR submitted that the Tribunal remitted the matter in regard to two issues viz. benefits of deduction u/s 10(23C)(iiiad) and corpus donations only. Therefore, assessee could not raise new issues in second round of proceedings.

8. I have considered the submissions of both the parties and perused the record of the case. The directions of Tribunal, as reproduced earlier, did not put any fetter on Ld. CIT (A)'s power to decide the jurisdictional issues raised before him. It is well settled law that jurisdictional issue can be raised at any stage of proceedings and, therefore, the Id. CIT (A) was justified in not deciding the ground relating to jurisdictional issue

raised before him. I therefore restore this matter to the file of Ld. CIT(A) for deciding the issue raised before him by way of ground as ground noted in para 4 of this order.

9. In the result, the assessee's appeal is allowed for statistical purposes.

10. Order pronounced in the open court on this 31st day of January, 2017.

(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated : 31-01-2017.

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Copy of order to: -

- 1) The Appellant;
- 2) The Respondent;
- 3) The DRP-I, New Delhi;
- 4) The DR, I.T.A.T., New Delhi;

By Order

Assistant Registrar
ITAT, New Delhi

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	31.1.2017		Sr. PS/PS
2	Draft placed before author	31.1.2017		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	01.2.2016		Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	File sent to Bench Clerk	01.2.2016		Sr. PS/PS
8	Date on which the file goes to the Head Clerk			
9	Date on which file goes to the A.R.			
10	Date of Dispatch of order			