

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. SANJAY GARG, JM & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 467/Chd/ 2023
निर्धारण वर्ष / Assessment Year : 2016-17

Baba Kishan Dass Education & Charitable Society Village- Salana, Fatehgarh Sahib	बनाम	The ITO (Exemptions) Ward, Chandigarh
स्थायी लेखा सं. / PAN NO: AAATB6757B		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारित की ओर से/ Assessee by : Shri Ashwani Kumar &
Ms. Muskan Garg, C.A's
राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR
सुनवाई की तारीख/ Date of Hearing : 19/12/2023
उद्घोषणा की तारीख/ Date of Pronouncement : 15/01/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC, Delhi dt. 26/05/2023 pertaining to Assessment Year 2016-17.

2. In the present appeal, the assessee has raised the following grounds of appeal:

1. That order passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals), NFAC Delhi vide order dated 26.05.2023 is against law and facts on the file in as much as CIT(A) was not justified to uphold the action of the Learned Assessing Officer that the appellant is not entitled to claim of exemption u/s 10(23C)(iiiad) of the Income Tax Act, 1961.

2. That the Learned Commissioner of Income Tax (Appeals) was not justified to uphold the action of the Learned Assessing Officer in framing assessment ex-parte u/s 144.

3. *That the Learned Commissioner of Income Tax (Appeals) was not justified in not adjudicating on the ground of admissibility of additional evidence.*

3. Briefly the facts of the case are that the assessee is an educational society running a school by the name of Baba Kishan Dass Education & Charitable Society at Village Salana. The assessee society filed its return of income declaring NIL income on 28/09/2016 which was subsequently revised on 14/11/2017. The case of the assessee was selected for scrutiny. Notice under section 143(2) was issued and thereafter notice under section 142(1) alongwith questionnaire and thereafter final show cause was issued and in absence of any reply submitted by the assessee society, the assessment was framed under section 144 by the AO.

3.1 As per the AO, the assessee has filed its return of income under section 10(23C)(iiiad) of the Act by showing income from other sources at Rs. 69,13,980. As per the AO, in order to claim of exemption, the assessee society has to fulfill certain conditions as laid down in the relevant provisions, however in the instant case, the assessee society has failed to furnish the details/ information to substantiate its claim under section 10(23C)(iiiad) of the Act and therefore the exemption claimed was disallowed and whole of the amount of Rs. 69,13,980/- was brought to tax in the hands of the assessee society.

4. Being aggrieved, the assessee society carried the matter in appeal before the Ld. CIT(A) who has since sustained the said addition.

5. Against the said findings and the direction of the Ld. CIT(A), the assessee society is in appeal before us.

6. During the course of hearing the Ld.AR submitted that the assessment in this case was completed under section 144 of the Act. Regarding non compliance to the notices issued by the AO, it was submitted that the assessee did not have access to the email –id being located in small village Salani, Tehsil

Amlon District Fatehgarh Sahib where there was no internet facility available. It was further submitted that the authorized manager cum Principal of the School Sardar Sukhwinder Singh looking after the affairs of school could not give due attention due to medical treatment of his son Charanjeet Singh who was suffering from cancer and who has since met with an untimely death. It was accordingly submitted that there was a reasonable cause for non appearance before the AO.

6.1 It was further submitted that during the appellate proceedings, the assessee sought permission of the Ld. CIT(A) to produce additional evidence as per the Rule 46A. However on perusal of the impugned order, it may be noted that the Ld. CIT(A) has failed to record any finding either accepting or rejecting the additional evidence so submitted by the assessee.

6.2 In this regard, our reference was drawn to the impugned order wherein the submissions so filed by the assessee were reproduced by the Ld. CIT(A) wherein the assessee has sought permission to submit additional evidence in terms of copy of audited balance sheet as on 31/03/2016 alongwith audit report in Form No. 10BB, copy of the trust deed, copy of the certificate of registration, copy of the assessment order under section 143(3) for A.Y 2010-11 wherein the AO has allowed the exemption under section 10(23C)(iiiad) of the Act, computation chart showing income applied towards revenue expenses and capital expenses and which shows that the assessee society has utilized more than 85% of the gross receipt towards attaining the object of the society, copy of the bills of assets purchased during the year etc. It was submitted that all these additional evidence are critical for determination of the issue at hand and same may be allowed to be submitted and taken into consideration while deciding the eligibility of the assessee society under section 10(23C)(iiiad) of the Act for the year under consideration.

6.3 It was further submitted that the assessee society has been regularly filing its return of income claiming exemption under section 10(23C)(iiia) of the Act and which has been assessed on same basis in all the subsequent assessment years starting from A.Y. 2017-18 to A.Y. 2020-23 and copy of the intimation issued under section 143(1) are placed on record. It was accordingly submitted that the assessee be allowed the necessary exemption under section 10(23C)(iiia) of the Act after taking into consideration the additional evidence so submitted by the assessee.

7. Per contra, the Ld. CIT/DR has relied on the orders of the lower authorities. It was submitted that the AO has given numbers of opportunities to the assessee and the assessee has miserably failed to avail of the said opportunity resulting in passing of the assessment order under section 144 of the Act. Further he relied on the order passed by the Ld. CIT(A).

8. We have heard the rival contentions and perused the material available on record. Given that the assessment proceedings have been completed u/s 144 and the assessee has come forward with an explanation regarding non-appearance before the AO and has also moved an application seeking permission to submit the additional evidence, it was incumbent on part of the Ld CIT(A) to consider the said prayer of the assessee for submitting additional evidence. In our view, we find that the additional evidence so submitted is critical and germane for deciding the matter under consideration and given that the assessment has been completed u/s 144, the assessee deserve to be allowed an opportunity to furnish the necessary explanation and documentation in support of its claim for exemption u/s 10(23C)(iiia) of the Act. Therefore, in interest of substantial justice, we hereby admit the additional evidence and the matter is remanded to the file of the Ld CIT(A) to examine the matter afresh after providing reasonable opportunity to the assessee. The contentions on merits are thus left open and not adjudicated upon. It would be

open for the assessee to raise the same before the Id CIT(A) who shall consider and decide the same as per law.

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

Order pronounced in the open Court on 15/01/2024.

Sd/-

संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 15/01/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar