

| आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
&
SHRI ANIKESH BANERJEE, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1272/Kol/2023
Assessment Year: 2017-18

Anamika Kala Sangam 4, Bishop Lefroy Road Kolkata - 700020 [PAN: AAAAA1515F]	Vs	Deputy Commissioner of Income Tax, CPC
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by : Shri J.M. Thard		
Revenue by : Shri L.N. Dash, Addl. CIT, D/R		

सुनवाई की तारीख/Date of Hearing : 25/01/2024
घोषणा की तारीख /Date of Pronouncement: 09/02/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi, [hereinafter the "ld. CIT(A)"] dt. 15/09/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2017-18.

2. The assessee has raised the following grounds of appeal:-

- "1. For that the order passed by the NFAC, Delhi is wrong, unjustified, arbitrary, without application of mind, without discussing the submission of the appellant and summarily dismissed the appeal.*
- 2. FOR that the Ld. CIT(Appeals) was wrong and unjustified in confirming the addition of Rs. 18,61,150/- received from members as subscription and donation.*
- 3. FOR that the Ld. CIT(Appeals) was wrong and unjustified in not allowing the expenses against the treatment of subscription and donation of Rs.18,61,150/- as business income.*

4. *FOR that the Ld. CIT(Appeals) was wrong and unjustified in not accepting the appellant as mutual association ignoring the rule of consistency.*

5. *FOR that the appellant craves leave to alter, amend, modify any of the grounds and/or take additional grounds before or at the time of hearing of this appeal."*

3. At the outset, the ld. Counsel for the assessee submitted that the assessee is a mutual association collecting subscription and donation from members and doing cultural programme for them. In the return processed u/s 143(1)(a) of the Act, dt. 26/08/2019, gross receipts of the assessee has been treated as income for the year and no deduction has been given for the expenses incurred during the year. He stated that the subscription and donation received from the members have been utilised for organising cultural programmes during the year. He further submitted that the case of the assessee has been scrutinised in the past for Assessment Year 1993-94 on 29/08/1996 and for Assessment Year 2013-14 on 29/01/2016, wherein also assessee has been treated as an organisation working for the member on the concept of mutual association and only the net surplus/loss have been subjected to tax. Reference made to the paper book filed, containing 20 pages.

3.1. On the other hand, the ld. D/R vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the material placed before us. We notice that the assessee is a mutual association collecting subscription and donation from their members and

organising cultural programme for members only. The assessee has been carrying out this activity for the past many years as evident from the assessment orders for Assessment Year 1993-94 and 2013-14 when the case was selected for scrutiny u/s 143 of the Act. Admittedly, after the system of e-filing, consultants are trying to align with the changed system of e-filing. In the instant case, though the assessee is an association not having any benefit of exemption u/s 11 of the Act but still in the return of income filed by it, on one hand it declared income received from fees and others at Rs. 19,23,183/- and then has shown the application of income towards various expenses amounting to Rs. 20,77,537/-. Inadvertently, the assessee has claimed the amount received as membership and donation from its members at Rs.18,61,150/- as exempt income. For this mistake made in the income tax return, the benefit of exemption was denied and the alleged sum of Rs. 18,61,150/- was added. Though the assessee filed a rectification application but it went in vain. However, when the matter travelled before the Id. CIT(A), even though necessary details were available on record, he merely observed as follows:-

“It is understood from the submissions that the appellant is an Association collecting subscription and donation for carrying on cultural programmes. The sums so collected have been claimed and excluded as non-taxable income in the return of income filed. It is observed from the submission that the status of the appellant is not an exempted entity under any of the exempted provisions of the Income Tax Act; 1961. No such evidences have been filed during the course of appellate proceedings to prove that the receipt/income of the appellant is exempted. It must be stated here that unless and otherwise the entity's income/receipt is recognized as exempted under the benefits provided in Income Tax Act, 1961, the entity cannot claim its income/receipt as exempted.”

The claim of the appellant that the receipts have been excluded as non-taxable in the computation of total income for the last several years cannot be considered as a valid ground, since each year assessment of income is independent to that of the earlier years. Therefore, in the absence of any exemption available to the appellant, the Assessing Officer, CPC, has rightly brought to tax the receipt/income as taxable."

5. From perusal of the order of the Id. CIT(A) we find that even though he was having necessary details, he failed to take note of the fact that it was an inadvertent mistake committed by the assessee showing the receipt from members as exempt income. He ought to have taken note of the audited balance sheet and profit and loss account wherein expenditure of Rs. 20,77,537.46/- has been claimed. It is judicially settled that even if an organisation, is not entitled to benefit u/s 11 of the Act but is certainly entitled to claim expenses incurred during the year against the gross receipts. Had the Id. CIT(A) examined the issue in the light of these facts as appearing in the profit and loss account, no addition would have been made in the hands of the assessee. We, therefore, considering the facts and circumstances and also on perusal of the audited balance sheet and profit and loss account are of the view that against the gross receipts during the year, which *interalia* included the receipt of membership and donation from members, if the assessee is given deduction of expenditure incurred during the year, which it is entitled to, there will be a net loss of Rs.1,34,354/-. We accordingly set aside the finding of the Id. CIT(A) and delete the addition of Rs.18,61,150/- made in the hands of the assessee. Accordingly, the effective Ground of appeal being Ground Nos. 1, 2 & 3 raised by the assessee are allowed.

6. Other grounds are general in nature.
7. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 9th February, 2024 at Kolkata

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 09/02/2024

SC SPS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata