

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'SMC' : NEW DELHI)
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 2806/Del/2014
Assessment Year: 2010-11

RESEARCH & INFORMATION SYSTEM
FOR DEVELOPING COUNTRIES,
ZONE-4B, 4TH FLOOR,
INDIA HABITAT CENTRE,
LODHI ROAD,
NEW DELHI- 110 003
(PAN: AAATR6664D)

VS. DDIT(E),
INV. CIRCLE-II, 2408,
24TH FLOOR, E-2,
PRATYAKSH KAR
BHAWAN, CIVIC
CENTRE,
NEW DELHI – 2

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. S.D. KAPILA & SH. SANJAY KUMAR, ADV.
Revenue by : Sh. T. Vasanthan, Sr. DR

ORDER

This appeal has been filed by the Assessee against the Order dated 07.3.2014 of the Ld. Commissioner of Income Tax (Appeals)-XXI, New Delhi relevant to assessment year 2010-11.

2. The grounds raised in the appeal read as under:-

That on the facts and in the circumstances of the case:-

1. The order of the learned Assessing Officer is bad both in law and on the facts of the case.
2. The learned Commissioner of Income Tax (Appeals) erred in sustaining the action of the learned Assessing Officer in determining "Net Taxable Income" of Rs. 21,00,000.

- 3 The learned Assessing Officer erred in holding that the assessee failed to produce any documentary proof for expenditure of Rs. 21,00,000 on the specific purpose of research activity for which it was accumulated .
4. The learned Assessing Officer erred in making an addition of Rs. 21,00,000 to the returned income holding that the amount accumulated under section 11 (2) of the Income Tax Act, 1961 out of income for the financial year 2003-04 was not utilised up to the previous year relevant to the assessment year 2010-11 .
- 5 The learned Assessing Officer erred in charging interest u/s 234C without authority under the Act.
6. The order of 'the learned Commissioner of Income Tax' (Appeals) suffers from plethora of errors including incorrect reference to Sections of the Income Tax Act, quoting incorrect. Form No. and incorrect application of the relevant provisions.
7. The learned Commissioner of Income Tax (Appeals) erred in holding that the accumulation of Rs. 21,00,000 out of income. for the assessment year 2004-05 was required to be applied within five years i.e. up to assessment year 2009-10.
8. The learned Commissioner of Income Tax (Appeals) erred in holding that the accumulation of Rs. 21,00,000 out of income for the financial year 2003-04 was without any specific purpose, illegal and not allowable.

9. The learned Commissioner of Income Tax (Appeals) erred in not providing any opportunity of being heard while holding that the that the accumulation of Rs. 21,00,000/- out of income for the financial year 2003-04 was without any specific purpose, illegal and not allowable as there were no such findings in the assessment order.
10. The learned Commissioner of Income Tax (Appeals) erred in summarily dismissing the appeal of the assessee:
11. The Appellant; craves leave to add, alter, amend and modify or forgo any of the grounds at the time of hearing.
12. That the above grounds are without prejudice to each other.

3. The brief facts of the case are that the assessee filed its return declaring NIL income on 30.9.2010 alongwith Audit Report dated 30.9.2009. The return of the assessee was processed by the AO u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) and later on the AO selected the case of assessee for scrutiny by issuing the statutory notices. The AR of the assessee appeared before the AO and filed the requisite details which was examined by the AO and he found that there is accumulation. As per AO, the Assessee has accumulation fund u/s. 11(2) of the Act of the financial year 2003-04 of Rs. 21 lacs. The AO issued show cause notice dated 30.1.2013 to the assessee asking to explain why the accumulated income u/s. 11(2) of the Act for the financial year 2003-

04 of Rs. 21 lacs should not be taxed, as the same has not been utilized till 2009-10 and the time period has expired. In response to the same, the assessee vide its letter dated 5.2.2013 has given his reply which the AO has reproduced at page no. 1 to 4 of the assessment order. After examining the reply filed by the assessee, the AO did not agree with the reply filed by the assessee and held that assessee failed to produce any documentary proof for expenditure of Rs. 21 lacs on specific purpose of such activities for which it was accumulated and he taxed the amount in dispute for the financial year 2009-10 i.e. Assessment year 2010-11 and completed the assessment on 26.2.2013 u/s. 143(3) of the Act. Aggrieved by the assessment order dated 26.2.2013 assessee filed appeal before the Ld. CIT(A), who vide his impugned order dated 7.3.2014 dismissed the appeal of the assessee. Now the assessee is aggrieved against the impugned order and file the present appeal before the Tribunal.

4. At the time of hearing, Ld. Counsel of the assessee stated that during the current year, the assessee has received a sum of Rs. 4,74,75,182/- which is mainly for the grants received from the Ministry of External Affairs and other Ministries and has incurred the expenditure of Rs. 4,77,78,369/- and as such there is excess expenditure of Rs. 3,03,181/-. He further submitted that accumulated income of AY 2004-05 of Rs. 21 lacs has been spent during the current year and the same is eligible for standard

deduction/ standard accumulations @15% from the current year income u/s. 11(1)(a) of the Act. Therefore, he requested that earlier accumulated income has been spent in the current year and as such the AO as well as Ld. CIT(A) are not justified to make the addition and affirming the same, hence, he requested that the same may be deleted. In support of his contention, he has filed a small Paper Book containing pages 1 to 37 in which he has attached the copy of the written submission filed before the Ld. CIT(A); Memorandum of Association and Rules; Copy of Tax computation and Audit Report in Form 10BB; Application in Form 10 filed alongwith tax return for AY 2004-05; Reply to show cause notice dated 5.2.2013; copy of decision in the case of CIT vs. Hotel & Restaurant Association (2003) 261 ITR 190 (Del); DIT(E) vs. Daulat Ram Education Society 278 ITR 260 (Del.).

5. On the contrary, Ld. DR relied upon the orders of the authorities below.

6. I have heard both the parties and perused the records, especially the orders of the authorities below and I am of the view that it is an admitted that assessee is registered under the Societies Registration Act, 1860 and is also registered u/s. 12A of the Income Tax Act, 1961a and Assessee Society is also exempted u/s. 10(23)(c)(iv) of the Act as well as the also being notified u/s. 80G(5)(vi) of the Act. During the course of assessment proceedings, the AO found that Assessee has accumulated fund u/s. 11(2) of the Act for the FY

2003-04 of Rs. 21 lacs. The show cause notice dated 30.1.2013 was issued to the assessee asking therein to explain why the accumulated income u/s. 11(2) of the Act of FY 2003-04 should not be taxed as income. In response to the show cause notice dated 30.1.2013, assessee filed its reply letter dated 5.2.2013 mainly stating therein that the assessee is a non-profit making Society and registered under the Societies Registration Act, 1860 as well as under section 12A of the Income Tax Act, 1961. Assessee further stated that as per Form No. 10, assessee submitted alongwith return of income for AY 2004-05 Rs. 21 lacs was accumulated u/s. 11(2) of the Act to carry out the research activity as envisaged in the Memorandum of Association and Rules of the (RIS) Society. For the sake of convenience, the reply dated 5.2.2013 filed by the assessee, in response to the show cause notice dated 3.1.2013 is reproduced as under:-

"Our explanation as to why the amount of Rs. 21,00,000 accumulated u/s 11(2) of the Income tax Act, 1961 out of income for the financial year 2003-04 should not be taxed in the assessment year 2010-11 is as under:-

- 1. RIS is a non-profit making society registered under the Society Registration Act, 1860. RIS, an autonomous think-tank under the aegis of Government of India, Ministry of . External Affairs,*

is an organization that specializes in policy research on international economic issues and development cooperation.

2. RIS is registered under section 12A(a) of the Act vide order dated November 28.1.1986. RIS enjoys exemption under section 10(23C)(iv) of the Act.

3. As per the form No. 10 Submitted along with the return of Income for the assessment year 2004-05, Rs. 21,00,000/- was accumulated under section 11(2) of the Act to carry out research activity as envisaged in the Memorandum of Association and Rules of RIS. Copy of the Form No. 10 is attached as [Annex'1'] herewith for your ready reference.

4. Following are the main objectives of RIS as per Memorandum of Association and Rules:

- a} To promote the concept of self-reliance among the non-aligned and other developing' countries and to forge and maintain a system of effective links amongst the various research institutions of these countries with a view to utilize their research capabilities or the maximum common benefits;*
- b) To undertake and/ or commission analytical studies, to evaluate and interpret information and*

data. to conduct or cause to conduct research in current trends and future projection concerning social, economic, scientific and technological matters on a global and regional basis as appropriate;

c) To disseminate factual information and data relating to diverse aspects such as trade, industrialization, finance, energy, raw materials, technology transfer, education, health, etc. in such form and manner as best calculated to strengthen the unified position and approach of the non-aligned and other

developing countries;

d) to serve as a national-focal for co-ordinary of research activities among the non-aligned and other developing countries and to this end organize conference, meeting seminars and workshops as appropriate;

e) to serve and effectively function on a continuous basis as a data bank/information storage, processing and retrieval centre, on global and , regional problems bearing on the interest of non-aligned and other developing countries;

f) to, promote research studies bearing on cooperation among non-aligned and other developing countries to economic, scientific, technological and related areas;

g) to advise the Government of India on all matters pertaining to multilateral economic and social issues, as may be referred to it from time to time, including collaborative arrangements with other non-aligned and developing countries;

h) to give grants for publications for research' undertaken by RIS and for periodicals and journals devoted to such research; and

i) to undertake all such other activities as are incidental to necessary for or conducive to achieving all or any of the above objectives.

5. RIS is continuously engaged in research activities as envisaged in the Memorandum of Association and Rules and utilizing the funds for such activities. The funds available with RIS i.e. past accumulations and yearly income are used for its research activities. .

6. During the previous year relevant to 'the assessment year 2010-11, RIS utilized Rs. 4,77,78,363 for its activities . Whereas total

income of RIS for the previous year relevant of the assessment year 2010-11 was Rs. 4,74,75,182.

7. It is apparent from the above that RIS has utilized some of the funds of past accumulations during the previous year relevant to the assessment year 2010-11.

8. As per provisions of section 10(23C(iv) of the Act, after setting apart Rs. 18,00,000/- i.e. amount being less than 15% of the income of the previous year relevant to the assessment year 2010-11, income available for utilization was Rs. 4,56,75,182/-. Whereas Rs. 4,77,78,363/- was utilized during the year.

9. Hence it may not be pre to state that the past accumulations have not been utilized.

10. It is prayed that the accumulation out of the income for the previous year relevant to , the assessment year 2004-05 may please be treated as utilized during the previous year relevant to the assessment year 2010-11 for the purpose mentioned in the Form No. 10 filed along with the Return of Income for the assessment year 2004-05 and that accumulation should not be taxed as

income of the previous year relevant to the assessment year 2010-11."

6.1 After examining the aforesaid reply of the assessee, the AO has rejected the request of the assessee on the ground that assessee has failed to produce any documentary proof for expenditure of Rs. 21 lacs on specific purpose of research activity for which it has been accumulated. Similarly, the Ld. First Appellate Authority has also upheld the order of the AO by holding that assessee is required to file Form No. 10B as per Rule 17 to the AO, but in the Form No. 10B filed by the assessee, no specific purpose has been specified by the assessee for additional accumulation of income u/s. 11(2)(a) of the Act and assessee has merely carry forward the income of Assessment year 2005-06 to the current year 2010-11 and even in the current year the accumulated income has not been applied for by any specific purpose. I have also perused the orders of the AO as well as Ld. CIT(A) alongwith documentary evidences filed by the assessee in the shape of Paper Book containing pages 1 to 37 in which the assessee has attached the copy of the written submission filed before the Ld. CIT(A); Memorandum of Association and Rules; Copy of Tax computation and Audit Report in Form 10BB; Application in Form 10 filed alongwith tax return for AY 2004-05; Reply to show cause notice dated 5.2.2013; copy of decision in the case of CIT vs. Hotel & Restaurant Association (2003) 261 ITR 190

(Del); DIT(E) vs. Daulat Ram Education Society 278 ITR 260 (Del.).
 Ld. Counsel of the assessee draw my attention towards the page no. 30 of the Paper Book which is the copy of Form No. 10 filed by the Assessee alongwith return before the AO. For the sake of convenience, we are reproducing the contents of the said Form No. 10 as under:-

Form No.10

(See Rule 17)

.....to the Assessing Officer/Prescribed Authority

Under Section 11(2) of the Income Tax Act, 1961.

To

Assessing Officer/Prescribed Authority

Trust Ward

Mayur Bhavan

New Delhi

I. I, Nagesh Kumar, Director General, RIS on behalf of Research and Information System for the Non-Aligned and Other Developing Countries (RIS), hereby bring to your notice that it has been decided by a resolution passed by the RIS Governing Council Members on 26'h June 2003 (and also on February 7, 1989) (copy enclosed)

that, out of the income of the RIS for the previous years), relevant to the Assessment Year 2004-2005 and subsequent 2009-2010 previous years), an amount of Rs.21,00,000/- of the income of the RIS as is available at the end of the previous year should be accumulated or set apart till the previous year(s) ending 2009 in order to enable 'the RIS Governing Council to accumulate sufficient funds for carrying out the following purposes:-

i) Carry out research activity as envisaged in the Memorandum of Association and Rules of RIS.

2. Before expiry of six months commencing from the end of each previous year, the amount so accumulated or set apart will be. invested or deposited in anyone or more of the forms OF mode specified in sub-section (5) of Section 11.

3. Copies of the annual accounts of the RIS .along with details of investment (including deposits) and utilization, if any, of the money so accumulated or set apart will be furnished to you before the expiry of six months commencing from the end of each relevant previous year.

4. It is requested that in view of our complying with the conditions laid down in Section 11(2) of the Income Tax Act, 1961, the benefit of that Section may be given in the assessments of the RIS/exempting the income in respect of the RIS in respect of the incomes accumulated or set apart as mentioned above.

Signature

Sd/-

Dr. Nagesh Kumar

Director General,

Research and Information System

For the Non-Aligned and other Developing Countries

New Delhi"

6.2 After perusing the above contention of the assessee-society, I am of the considered view that in the interest of justice, the matter requires verification of the contentions raised by the assessee before the revenue authorities as well as before me i.e. about the utilization of accumulated income in dispute for the purpose of establishing its plea before the AO and AO is at liberty to decide the issue in dispute, after verification of the same, as per law after giving adequate opportunity of being heard to the assessee.

7. In the result, the Assessee's appeal is allowed for statistical purposes.

Order pronounced in Open Court on this 23-08-2017.

Sd/-

**(H.S. SIDHU)
JUDICIAL MEMBER**

Dated : 23-08-2017

SR BHATANGAR

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.