

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA Nos. 3028 & 3029/DEL/2018
[Assessment Years: 2012-13 & 2014-15]

Srishti Resident Welfare Association
T - 6/803, Prasvanath Prestige - II
Sector 93-A, Noida

Vs.

The A.C.I.T.
Circle - 3
Noida

PAN: AAEAS 2644 D

[Appellant]

[Respondent]

Date of Hearing : 05.11.2018
Date of Pronouncement : 06.11.2018

Assessee by : S. Krishnan, Adv

Revenue by : Ms. Aashna Paul, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

These two separate appeals by the assessee are preferred against the order of the Commissioner of Income Tax [Appeals] - 1, Noida dated 28.02.2018 pertaining to assessment years 2012-13 & 2014-15. Since the first appellate authority has disposed off both the appeals by

a consolidated order and since the underlying facts in issues are identical, both these appeals were heard together and are being disposed of by this common order for the sake of convenience and brevity, though the quantum may differ.

2. The substantive grievances of the assessee in both the A.Ys read as under:

"1. The CIT(A) erred in returning findings and deciding the issue of the Assessee's entitlement to registration U/s.12-AA, which was completely out of his jurisdiction in appeal.

2. The CIT(A) erred in putting the Assessee's gross receipts to tax on the peculiar reasoning that a society registered U/s.12-AA of the Act cannot claim the benefit of mutuality.

3. The CIT(A) erred in enhancing the income in appeal without putting the Assessee to notice of the issues therein - the aspect of applicability of section 57, as also the intent to put gross receipts to tax. The notice u/s.251(2) therefore, is only technical compliance of the mandate in the provision.

4. The CIT(A) erred in confirming additions made by the AO without even applying his mind to averments & evidence placed before him in this regard, and passing a speaking order."

3. Briefly stated, the facts of the case are that the assessee is a Resident Welfare Association and registered under the Registrar of Societies, Meerut vide Certificate No. 1573 dated 25.02.2009. The assessee is also registered u/s 12AA of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] by the CIT, Ghaziabad.

3. Return for the year was selected for scrutiny assessment and during the course of scrutiny assessment proceedings and on perusal of income and expenditure account, the Assessing Officer noticed that the assessee has shown gross receipts of Rs. 2.24 crores and claimed entire receipt exempt u/s 11 of the Act. On perusal of income and expenditure account, the Assessing Officer noticed that gross receipts includes surplus amount of Rs. 6,39,591/-, which was earned from commercial activities. The Assessing Officer was of the firm belief that the activities of the assessee do not fit in the definition of

the words 'Charitable Purposes' and, therefore, is not entitled for exemption on surplus of Rs. 6,36,591/-.

4. The assessee carried the matter before the CIT(A) but, to its surprise, received notice for enhancement.

5. The first appellate authority was of the opinion that the assessee has wrongly claimed registration u/s 12AA of the Act, and therefore, the entire receipt of the assessee-society should be treated as income of the assessee. The CIT(A) further observed that the assessee is not entitled for the benefit of Doctrine of Mutuality. The CIT(A) further observed that the assessee has admittedly violated the provisions of section 13 of the Act in as much as, the entire expenditure of the assessee society is for the benefit of the members of the association or persons and their relatives.

6. On the observation made by the first appellate authority, the assessee-society was forced to withdraw the registration granted to it u/s 12 of the Act. The CIT(A) not

only confirmed the action of the Assessing Officer but also treated the entire receipts as income of the assessee.

7. Aggrieved by the action of the first appellate authority, the assessee is in appeal before me.

8. The ld. AR vehemently stated that since past many years, benefit of Doctrine of Mutuality was allowed to the assessee-society. It is the say of the ld. AR that the CIT(A) has no jurisdiction to comment upon the action of the CIT(Exemptions]. The ld. AR further stated that the first appellate authority should not have questioned the grant of registration u/s 12A of the Act by the CIT(Exemptions]. The ld. AR concluded by stating that the order of the first appellate authority is bad in law.

9. Per contra, the ld. DR strongly supported the findings of the Assessing Officer and on the point of enhancement, she relied upon the observations of the CIT(A).

10. I have given thoughtful consideration to the orders of the authorities below. I have also gone through the contents of the affidavit filed by the Secretary of the appellant-society. The undisputed fact is that the appellant society was enjoying the registration granted to it by the CIT(E), Ghaziabad u/s 12AA of the Act. I fail to understand how can the CIT(A) question the authority of the CIT(Exemptions) for granting registration u/s 12AA of the Act. It is for the CIT(Exemptions) to decide the allowability or otherwise of the registration u/s 12A of the Act. In my considered opinion, the CIT(A) should not have made any observation on that aspect and should have restricted himself to the issues raised before him. At the most, the CIT(A) could have enhanced the addition made by the Assessing Officer, which is within his powers. But by no stretch of imagination it can be accepted that the first appellate authority is making enhancement while commenting on the powers of the CIT(Exemptions). In my humble opinion, the first appellate authority has crossed his powers in deciding the appeal and, therefore, his findings have to be set aside. I direct accordingly.

11. Coming to the action of the Assessing Officer, I find that the Assessing Officer has doubted the surplus Rs. 6,36,591/- without examining each and every item of income. I, therefore, restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to examine each and every item of income and decide the issues afresh after allowing reasonable opportunity of being heard to the assessee. Accordingly, the enhancement is set aside and the order of the Assessing Officer is restored back to his file.

12. In the result, the appeals filed by the assessee in ITA No. 3028 & 3029/DEL/2018 are allowed for statistical purpose.

The order is pronounced in the open court on 06.11.2018.

Sd/-

[N.K. BILLAIYA]

ACCOUNTANT MEMBER

Dated: 06th November, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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