-आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'SMC'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.2337/Ahd/2017**
[Asstt.Year: 2015-16]

City Manager Association C/o. Ahmedabad Municipal Corpn West Zone Office PAN : AAATC 2293 H	Vs.	ACIT, CPC Usmanpura Cross Road.
(Applicant)		(Respondent)

Assessee by	:	Smt.Arti Shah, AR
Revenue by	:	Shri Virendra Singh, Sr.DR

*सुनवाई की तारीख/*Date of Hearing : 08/08/2019
*घोषणा की तारीख /*Date of Pronouncement: 21/08/2019

*आदेश/***O R D E R**

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-9, Ahmedabad dated 18.8.2017 passed for Asstt.Year 2015-16.

2. The Assessee has taken two substantial grounds of appeal, which reads as under:

> *"1. The Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad has erred in law and on facts of the case by confirming the disallowance of legitimate claim of deduction of Rs.4,03,4357- u/s.11(l)(a) of the I.T. Act, 1961 as claimed in the return of income filed by the Appellant.*

2. The Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad has erred in law and on facts of the case by confirming the disallowance of deduction of Rs.29,922/- for amount of TDS for which credit has been claimed against tax payable on the returned income."

3. Brief facts of the case are that the assessee has filed its return of which was processed under section 143(1) of the Income Tax Act, 1961 determining the income at Rs.8,92,931/- as against total income of Rs.7,61,081/-. As far as first ground of appeal is concerned, the assessee has accumulated income out of the income derived from the trust, which was not utuilised for the objects of the trust. This accumulated income was 85% of the alleged surplus. It was kept separately and was to be applied for the charitable objects of the trust in future years. However, during the year 2015-16 the assessee could not utilize that accumulated income and offered it for taxation at Rs.8,79,000/-. The assessee was of the view that on this unutilized income, it is entitled for further accumulation at the rate of 15%. In other words, the assessee was of the view that income which set apart for future utilization of the objects of the trust, and if not utilized and offered in future, then that income would be part of the current income of that figure year, and the assessee will be entitled to accumulate 15% from that income. A *prima facie* adjustment was made vide which its claim was rejected and addition of Rs.4,03,435/- under section 11(1)(a) of the Act was made. In other words, the AO was of the view that it is the deemed income, and on this deemed income no further rebate at 15% has to be granted. Appeal to the CIT(A) did not bring any relief to the assessee.

4. As far as second ground is concerned the assessee has contended that grant of TDS at Rs.22,922/- is concerned, this is in the form of TDS statement shown in Form NO.26AS and there was no reason at all for not granting the credit for the same. The ld.CIT(A) has not recorded any specific finding on this issue.

5. Before us, the assessee raised two fold submissions. Firstly, on the strength of Hon'ble Kolkatta High Court in the case of CIT Vs. Natwarlal Chowdhury Charity Trust, 52 taxmann 330 (Kol) it is entitled for deduction at 15% of the alleged deemed income offered for taxation in this assessment year. In the second contentions, she contended that both the issues are debatable that cannot be adjudicated under section 143(1) of the Act.

6. On the other hand, the ld.DR relied upon the order of the Revenue authorities. He placed on record copy of ITAT's order in the case of the Trustees, The B.N. Gamadia Parsi Hunnarshala, 77 TTJ 274 (Mum-Trib.) We would like to reproduce brief order of the Hon'ble Kolkatta High Court in the case of CIT Vs. Natwarlal Chowdhury Charity Trust (supra), which reads as under:

> *"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessee's right to accumulate 25% of the total income of the previous year extended to the deemed income under Section 11(3) of the Income-tax Act, 1961, added therein in the circumstances mentioned above ?"*
>
> *2. The facts found by the Tribunal as stated in the statement of case are as follows :*
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> *The assessee-trust accumulated Rs.46,184 during the accounting years relevant to the assessment years 1973-74 to 1976-77. During the previous year relevant to the present assessment year, accumulated income ceased to be invested in fixed deposit with the Indian Bank and it was, therefore, deemed to be the income*

of the trust in the previous year in which it ceased to remain invested or deposited in terms of clause (b) of sub-section (3) of section 11 of the Income-tax Act, 1961. The Income-tax Officer was of the opinion that the assessee was not entitled to accumulate 25% of this deemed income because permitting it to do so would amount to a double benefit to the assessee. He, therefore, assessed the entire deemed income.

3. The Tribunal in agreeing with the decision of the Appellate Assistant Commissioner observed:

The legal fiction contained in section 11(3) of the Income-tax Act, 1961, should be allowed to play to the fullest extent and there is no warrant to take a restricted view for denying the exemption which is specifically allowed by the statute. In fact, as per the law as stood from April 1, 1976, charitable trusts are permitted to accumulate up to 25% of their income without complying with any formalities or condition and such accumulation is not included in the total income. Therefore, we uphold the order of the Appellate Assistant Commissioner as it is quite justified in law and the assessee would be entitled to accumulate 25% of the total income of the previous year relevant to the assessment year 1978-79 inclusive of the deemed income under section 11 (3) of the Income-tax Act, 1961.

4. Mr. Moitra, appearing on behalf of the Revenue, has failed to show any infirmity in the order of the Tribunal. In fact, he has prayed merely for remand of the case as was done by the Andhra Pradesh High Court in the case of CIT v. Hyderabad Secunderabad Foodgrains Association Ltd. [1989] 175 ITR 574. The facts in that case were quite different and it was felt by the Andhra Pradesh High Court that it was necessary to remand the case.

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But, in the instant case, no argument at all has been advanced to show any infirmity in the order of the Tribunal."

Since Mr. Moitra has failed to show us any infirmity in the order passed by the Tribunal, the question is answered in the affirmative and in favour of the assessee."

7. In the light of the above, let us consider the scope of section 154 for making *prima facie* adjustment while processing return under section 143(1)(a) of the Act i.e. process of dealing with the return is an *ex parte* process. It is pertinent to observe that whenever any debatable issue is involved an explanation of the

assessee is required, then on such issue, no *prima facie* adjustment in an *ex parte* proceedings can be made. Reading of judgment of Hon'ble Kolkatta High Court (supra), and if facts are looked into, then it would reveal that both the issues were debatable one, where more than one opinion was possible. Adjustment under section 143(1)(a) is not permissible on both these aspects. Therefore, we allow appeal of the assessee, and delete both the disallowances.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 21st August, 2019.

Sd/-	Sd/-
(PRADIPKUMAR KEDIA)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER