

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.7642/Del/2019  
Assessment Year: 2015-16

Vidya Vihar Shiksha Samiti,  
1/11864, Panchsheel Garden,  
Naveen Shahdara,  
New Delhi.

Vs. ACIT, CPC,  
Bangalore.

PAN: AAATV1225A

(Appellant)

(Respondent)

Assessee by : Shri Rajiv Jain, CA  
Revenue by : Shri R.K. Gupta, Sr. DR  
Date of Hearing : 01.09.2021  
Date of Pronouncement : 04.10.2021

ORDER

This appeal filed by the assessee is directed against the order dated 26<sup>th</sup> July, 2019 of the CIT(A)-40, New Delhi, relating to Assessment Year 2015-16.

2. The grounds raised by the assessee are as under:-

01. That where the appellant is a registered society with charitable objects and is running two recognized educational schools and in respect of income derived therefrom (aggregate receipts Rs. 1,49,56,220/-) filed its return of income in Form ITR-7 u/s 139(4A) of the Act, declaring total income of Rs. 2,96,610/- without claiming any exemption u/s 11/12/10(23C)(iiiad)/10(23C)(vi) of the Act, as the society is neither registered u/s 12A nor approved u/s 10 (23C) (vi) of the Act. In the intimation u/s 143(1) dated 10.03.2016 CPC charged maximum marginal rate without allowing the basic exemption limit which was challenged

before the Id CIT(A)-40, New Delhi, who in her order dated 26-07-2019 was wrong:

- (i) In holding that there appears to be no infirmity in the action of the CPC in calculating the tax at Maximum Marginal rates instead of the slab rates.
- (ii) In not following her own view rendered in the appeal of ~~Ram Narain Krishna Devi Jain Foundation~~, appeal no 181/2016-17 AY 2014-2015~~ø~~ duly followed in appeal for AY 2015-2016 and other appeals holding that where a charitable society is not registered u/s 12A of the Act, it is entitled to basic exemption limit as per paragraph A and part I of the First Schedule to the Finance Act, and in view of the provisions of section 164(2) it is only the income which become taxable by virtue of section 13(1)(c) or 13(1)(d) which become taxable at the maximum marginal rate.
- (iii) In not appreciating that appellant society being not registered/approved u/s 12A or u/s 10 (23C) (vi) of the Act faced great difficulty in uploading the return in Form ITR-7 which the return filing utility/schema was not permitting and ITR could not have been filed without infirmities.
- (iv) In not appreciating that in case of any infirmity/defect in filing of ITR, before processing the return u/s 143(1) of the Act and charging of maximum marginal rates, CPC was required to give an opportunity u/s 139(9) of the Act.

That the appellant craves leave of this honøble court to add, amend, alter or withdraw any ground at the time of hearing.ö

3. Facts of the case, in brief, are that the assessee filed its return of income at Rs.2,96,610/-. The tax liability of Rs.4,801/- was adjusted against TDS of Rs.7,463/-. Tax was computed at the maximum marginal rate @ 30% on the total income of Rs.2,96,610/- instead of applying the slab rate. The assessee filed an appeal before the CIT(A), who dismissed the appeal filed by the assessee by observing as under:-

ö5.1 Ground of appeal no. 1 challenges the applying of maximum marginal rate @30% for computing the tax liability.

5.1.1 I have considered the impugned intimation and the submissions of the appellant. I have also perused the return of income from which it has been seen that exemption has been claimed under section 10(23C)(iiiad) and the aggregate annual receipts have been shown at Rs. 1,49,56,220/-. The claim of exemption under section 10(23C)(iiiad) is not allowable since the aggregate receipts exceed Rs. 1 Crore (Rule 2BC of the Income Tax Rules, 1962). Further, in the return of income it has been mentioned that the assessee is not registered under section 12A and no other details regarding registration under any other Act has been given. Since exemption has not been claimed under sections 11 and 12 and no details regarding registration under the Societies Registration Act have been given in the return of income, there appears to be no infirmity in the action of the CPC in calculating tax at the maximum marginal rate instead of the slab rate. Ground of appeal no. 1 is dismissed.ö

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Id. Counsel for the assessee, at the outset, filed a copy of the order of the Tribunal in assessee's own case for A.Y. 2014-15 and 2017-18 in ITA Nos.7641 & 7643/Del/2019, order dated 18<sup>th</sup> May, 2021 and submitted that identical issue had been decided by the Tribunal and the Tribunal has directed the AO to charge tax at normal rates. Further, in the case of Ram Narain Krishna Devi Jain Foundation, the CPC Bangalore had charged the income to tax at the maximum marginal rate without giving the basic exemption limit and on appeal by the assessee, the CIT(A)-40, New Delhi, in appeal No.181/2016-17 for A.Y. 2014-15 has held that the action of the DCIT, CPC, Bangalore, in computing the tax liability of the assessee Trust at the maximum marginal rate, prima facie, appears to be not in order. He, accordingly, allowed the appeal of the assessee

and the Revenue has not challenged the said order by the CIT(A). He accordingly submitted that the grounds raised by the assessee should be allowed.

6. The ld. DR, on the other hand, strongly supported the order of the CIT(A).

7. I have considered the rival arguments made by both the sides and perused the record. I find, since the assessee was not registered u/s 12A of the Act and exemption had not been claimed u/s 11 and 12, the CPC, Bangalore, calculated the tax at the maximum marginal rate instead of slab rate which has been upheld by the CIT(A). I find, identical issue had come up before the Tribunal in assessee's own case for A.Y.s 2014-15 and 2017-18. I find, the Tribunal vide ITA Nos.7641 & 7643/Del/2019, order dated 18<sup>th</sup> May, 2021 for A.Y.s 2014-15 and 2017-18 at para 8 of the order has decided the issue in favour of the assessee by observing as under:-

8. I have heard the rival submissions and perused the material available on record. It is the contention of the assessee that the assessee's society is not registered u/s 12A of the Act, is not approved u/s 10(23C)(iiiad) and 10(23C)(vi) of the Act. It is also contended that CPC failed to give an opportunity in terms of Section 139(9) of the Act, furthermore the same Ld.CIT(A) has held in favour of the assessee in the case of Ram Narain Krishna Devi Jain Foundation, Appeal no 181/2016-17 Assessment Year 2016-17. I found merit in this contention of the assessee as the Ld. CIT(A) in the case of Ram Narain Krishna Devi Jain Foundation (supra) has held as under:-

5.2.1. "I have considered the impugned intimation and the submissions of the appellant. I have also perused the return of income from which it has been that exemption has been claimed under section 10(23C)(iiiad) and the aggregate annual receipts have been received at Rs.1,46,73,932/-. The claim of exemption under section 10(23C)(iiiad) is not allowable since the aggregate receipts exceed Rs.1 Crore (Rule2BC of the Income Tax Rules, 1962). Further, in the return of income it has been mentioned

that the assessee is not registered under section 12A and no other details regarding registration under any other Act has been given. Since exemption has not been claimed under sections 11 and 12 and no details regarding registration under the Societies Registration Act have been given in the return of income, there appears to be no infirmity in the action of the CPC in calculating tax at the maximum marginal rate instead of the slab rate. Ground of appeal no.2 is dismissed."

9. The Revenue could not rebut the fact that the Ld. CIT(A) has taken contradictory view. I therefore, considering the totality of facts of the present case hold that Ld.CIT(A) was not justified in taking contrary stand in this case of the assessee. Hence, the Assessing Officer is hereby directed to charge tax at normal rates.ö

8. Similar view has again been taken in A.Y. 2017-18 in the same order. Since the facts of the instant case are identical to the facts in the cases in ITA Nos.7641 & 7643/Del/2019 cited (supra), therefore, respectfully following the decision of the coordinate Bench of the Tribunal in assessee's own case, I set aside the order of the CIT(A) and direct the AO to charge tax at normal rate. The grounds raised by the assessee are accordingly allowed.

9. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 04.10.2021.

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: 04<sup>th</sup> October, 2021

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi