

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC-2" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

**ITA Nos.7641/Del/2019
Assessment Year : 2014-15**

Vidya Vihar Shiksha Samiti, 1/11864, Panchsheel Garden, Naveen Shahdara, New Delhi-110032. PAN-AAATC1225A	vs	ACIT, CPC, Banglore.
APPELLANT		RESPONDENT

**ITA Nos.7643/Del/2019
Assessment Year : 2017-18**

Vidya Vihar Shiksha Samiti, 1/11864, Panchsheel Garden, Naveen Shahdara, New Delhi-110032. PAN-AAATC1225A	vs	DCIT, CPC, Banglore.
APPELLANT		RESPONDENT
Appellant by	Sh. Rajiv Jain, CA	
Respondent by	Sh. Farhat Khan, Sr.DR	
Date of Hearing	30.03.2021	
Date of Pronouncement	18.05.2021	

ORDER

PER KUL BHARAT, JM :

These two appeals filed by the assessee for the assessment years 2014-15 & 2017-18 are directed against two different orders of learned CIT(A)-40, New Delhi both dated 26.07.2019.

2. First I take up **ITA No.7641/Del/2019** pertaining to Assessment Year 2014-15 filed by the assessee. The assessee has raised following grounds of appeal:-

1. *“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. 1,46,73,932/-) filed its return of income in Form ITR-7 u/s 139(4A) of the Act, declaring total income of Rs. 2,40,752/- 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’ duly followed in 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(l)(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.”

3. Facts giving rise to the present appeal are that the assessee had filed return of income on 30.09.2014 declaring income of Rs.2,40,752/-. The return was processed by CPC whereby the tax liability was adjusted against TDS while computing the income at the time of processing the income of Rs.71,372/- was considered twice thereby the income was computed by CPC at Rs.3,12,124/- instead of 2,40,752/-. Further, the tax was computed at the maximum marginal rate at 30% at total income of Rs.3,12,124/- instead of applying the normal slab rate.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, partly allowed the appeal of the assessee. Thereby, the Ld.CIT(A) directed the CPC to consider the income under head “profits and gains”, “business and profession” of Rs.1,69,380/-. Therefore, the amount who was considered twice to be deleted. However, in respect of applying the maximum marginal rate, the explanation of the assessee was not accepted and the grounds raised by the assessee in this regard were dismissed.

5. Against this, the assessee is in appeal before this Tribunal.

6. Ld. Counsel for the assessee submitted that the assessee is a registered society having charitable objectives and running educational schools. The society derived income therefrom at Rs.1,46,73,932/- and filed its return of income in Form ITR-7 u/s 139(4A) of the Act, declaring total income of Rs.2,40,752/- without claiming any exemption u/sections 11, 12, 10(23C)(iiiad) and 10(23C)(vi) of the Act, as the society neither registered u/s 12A of the Act nor approved u/s 10(23C)(vi) of the Act. He contended that the CPC charged maximum marginal rate without allowing the basic exemption limit which was challenged before Ld.CIT(A). Ld. Counsel for the assessee contended that the decision of Ld.CIT(A) is contrary to her own decision rendered in the appeal "*Ram Narain Krishna Devi Jain Foundation, Appeal no.181/2016-17 Assessment Year 2014-15*" and duly followed in the Assessment Year 2015-16. Ld. Counsel for the assessee further submitted that the assessee is entitled for basic exemption as per paragraph A and part I of the First Schedule to the Finance Act, and in view of the provision of section 164(2), it is only the income becomes taxable by virtue of section 13(1)(c) or 13(1)(d) is liable to be taxed at maximum marginal rate. Ld. Counsel for the assessee submitted that Ld.CIT(A) failed to appreciate that the assessee society being not registered/approved u/s 12A or 10(23C)(vii) of the Act, found difficult to upload the income in ITR-7. He further contended that Ld.CIT(A) failed to appreciate that in the event of any infirmity/defect in filing of ITR before processing the return u/s 143(1) of the Act and charging of maximum marginal

rate, CPC was required to give an opportunity to the assessee u/s 139(9) of the Act.

7. Ld. Sr. DR opposed these submissions and supported the order of Ld.CIT(A).

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.

10. Now, coming to ITA No.7643/del/2019 for the Assessment Year 2017-18. The assessee has raised following grounds of appeal:-

1. *“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. 2,21,32,550/-) 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 Ld 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' 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(l)(c) or 13(l)(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."*

11. The facts and grounds are identical in this year as well. Ld. representatives of the parties have adopted the same arguments.

12. Having considered the rival submissions, I hold that my decision in ITA no.7641/Del/2019 for Assessment Year 2014-15 shall apply *mutatis mutandi* on this year as well. The grounds raised are allowed. The Assessing Officer is hereby directed to charge normal rate as claimed by the assessee.

13. In the result, both appeals of the assessee i.e. ITA Nos. 7641/Del/2019 [Assessment Year 2014-15] & 7643/Del/2019 [Assessment Year 2017-18] are allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 18th May, 2021.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI