

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.3665/Del./2015
(ASSESSMENT YEAR : 2010-11)**

ACIT,
Circle (Exemptions),
Ghaziabad.

vs. St. Thomas Orthodox Church Society (regd.),
Sector – IV, Lajpat Nagar,
Sahibabad, Ghaziabad.

(PAN : AABTS8844F)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Vipin Garg, Advocate
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 11.12.2018

Date of Order : 01.02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, ACIT, Circle (Exemptions), Ghaziabad (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 11.03.2015 passed by Ld. CIT (Appeals), Ghaziabad qua the Assessment Year 2010-11 on the grounds inter alia that :-

“1. Whether under the facts and circumstances of the case Ld. CIT(A) was correct in deleting the addition of Rs.80,00,000/- since the assessee has applied this income for purchase of residential house in the name of Chairman of the society and hence violated the Section 13(1)(c) of the Act, being benefit to

related party u/s 13(3). This is in contravention to the provisions of Section 13(3) read with 13(1)(c)(ii) of IT Act.

2. Whether under the facts and circumstances of the case Ld. CIT(A) was correct in deleting the addition of Rs.1,37,37,011/- made on account of disallowing the carry forward of accumulation under various heads as these funds have not been utilized till the end of 31.03.2010 which is evident from the statement of accumulation of funds by the assessee on the ground that the exemption u/s 11 & 12 be denied on the previous point and the assessee be treated as AOP.

3. Whether under the facts and circumstances of the case Ld. CIT(A) was correct in deleting the addition of Rs.1,18,98,495/- made on account of surplus (excess of income over expenditure) as the assessee was disqualified for availing benefits of Section 11 & 12 of the Act.

4. Whether under the facts and circumstances of the case Ld. CIT(A) was correct in deleting the addition of Rs.8,28,531/- as there was unexplained negative cash balance appearing in cash book of assessee in the months of December and February.

5. The order of Ld. CIT(A) be cancelled and the order of the AO be restored.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee society being registered with the Registrar of Societies, Uttar Pradesh, has been granted registration under section 12AA of the Income-tax Act, 1961, filed return of income declaring nil income. During the scrutiny proceedings, Assessing Officer called upon the assessee to provide details of income accumulated and its application. AO noticed that the amount of Rs.80,00,000/- was accumulated during FY 2009-10 relevant to AY 2010-11 the year under assessment, for purchase of

residential flat for Chairman of the society and out of the said amount, flat of Rs.75,28,480/- has been purchased in the name of Sri Shaji Mathews. AO, by invoking the provisions contained u/s 13(1)(c)(ii) of the Act, treated the application of income of Rs.75,28,400/- for purchase of residential house for the Chairman not for charitable purpose, hence disallowed the same. AO also proceeded to hold that the assessee society is not qualified for exemption u/s 11 & 12 of the Act. AO further treated the amount of Rs.4,71,600/- as surplus one and this accumulated amount cannot be carried forward on the ground that the exemption u/s 11 (2) of the Act has been denied and consequently made addition of Rs.80,00,000/-.

3. AO further made addition of Rs.1,37,37,011/- as accumulated funds under the heads 'building fund', 'school bus' and 'audio visual system' (Rs.1,05,00,000/-, Rs.31,38,640/- & Rs.98,371/- respectively) on the ground that these funds have not been utilized till the end of 31.03.2010 and since exemption u/s 11 & 12 of the Act has been denied the same cannot be allowed to carry forward the accumulated income.

4. AO also made addition of Rs.1,18,98,495/- as accumulated surplus as the society has failed to qualify for availing the benefit of sections 11 & 12 of the Act. AO also made addition of

Rs.8,28,531/- on account of unexplained negative cash balance appearing in the cash book of the assessee.

5. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has allowed the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

7. Undisputedly, the assessee society has been assessed as a charitable society allowing benefits under sections 11 & 12 of the Act in the preceding as well as succeeding years. It is also not in dispute that the assessee society has purchased the flat bearing property House No.27, Single Storey, THA, Sector 4, Ghaziabad for a sale consideration of Rs.70,00,000/- on 18.01.2010, paid Rs.4,90,000/- as stamp duty and registration charges of Rs.10,060/- as legal fee and deed writer charges. It is also not in dispute that the perusal of the sale deed, available at pages 27 to 57 of the paper book, shows that the property in question has been purchased in the name of St. Thomas Orthodox Church (Society) Regd. through its

Chairman, Fr. Shaji Mathews. It is also not in dispute that in the sale deed in question, PAN : AABTS8844F of assessee society has been mentioned. It is also not in dispute that in the appellate proceedings, remand report, available at pages 131 & 132 of the paper book, was called by Id. CIT (A).

8. In the backdrop of the aforesaid undisputed fact, when we examine aims and objects of the assessee society highlighted by AO at page 7 of the assessment order viz.

“conducting dispensaries, schools, hostels, meeting halls, centers of social welfare, seminars, conferences and other activities for the propagation of the faith of the above church and Christian principles generally which are in harmony with the same, in the city of Ghaziabad; "To purchase , lease, hire, exchange or otherwise acquire any movable or immovable property in the city or Ghaziabad and its suburbs and to lease , mortgage , dispose of, exchange, improve , manage, develop, invest, withdraw, reinvest and other wise deal with ,ny stocks, shares. bonds monies, securities and all kinds of movable or immovable property for all or any of the above objects",

it is beyond doubt that in order to carry out the aforesaid charitable activities, the assessee society is also authorized to purchase, lease, hire, exchange or otherwise acquire any movable or immovable property in the city or Ghaziabad or suburbs.

8. In the instant case, AO in order to deny the exemption u/s 11 (2) of the Act misstated the fact that the property in question has been purchased in the name of Fr. Shaji Mathews, Chairman of the

Society, whereas it is not the case, rather the property was purchased in the name of the society but through its Chairman. We are of the considered view that in order to carry out the charitable activities, the Chairman of the assessee society needs accommodation otherwise he would have to put in rented accommodation.

9. Furthermore, Id. AR for the assessee brought on record evidence, available at pages 58 to 73 of the paper book, to prove the fact that the property in question has not only been used for residential purpose of the Chairman of the Society but has been extensively used for conducting workshop by the faculty members, for conducting Hindi workshop, to convene meetings of the academy's core committee etc., and these facts go to prove that the property in question was also being used in order to carry out the charitable activities by the society. So, we are of the considered view that the Id. CIT (A) has rightly deleted the addition of Rs.80,00,000/- by holding that the assessee society is eligible for benefit of sections 11 & 12 of the Act. So, Ground No.1 is determined against the Revenue.

GROUND NO.2

10. AO made addition of Rs.1,37,37,011/- being the amount accumulated in earlier years under section 11(2) of the Act merely

on the ground that since exemption under sections 11 and 12 of the Act treating the assessee as AOP has been declined accumulated income has been treated as surplus for assessment year 2010-11. Ld. CIT(A) after thrashing the issue in detail and by relying on the various decisions rendered by the co-ordinate Bench of the Tribunal on the issue in question reached the conclusion that when the assessee is held to be eligible for benefit of sections 11 and 12, the assessee society cannot be treated as AOP. So, in these circumstances, since the assessee is held to be eligible for getting benefit under sections 11 and 12 of the Act, the time is available with it for use of accumulated fund of earlier years, hence ld. CIT (A) has rightly deleted the addition of Rs.1,37,37,011/-. So, Ground No.2 is determined against the Revenue.

GROUND NO.3

11. AO made for the addition of Rs.1,18,98,495/- on account of disallowance of claim of the assessee qua accumulation of surplus under section 11(2), again on the same ground that since the benefits of sections 11 and 12 are not available to the assessee society, the same is treated as AOP. Again we are of the considered view that when the assessee is held to be eligible for exemption under sections 11 and 12 of the Act as per our findings on Ground No.1 and has applied under section 11(2) of the Act for

accumulation of funds vide letter dated 07.07.2010 in the prescribed Form No.10 addressed to concerned Additional CIT, the addition is not sustainable. So, the Id. CIT(A) has rightly deleted the addition, hence Ground No.3 is determined against the Revenue.

GROUND NO. 4

12. AO made addition of Rs.8,28,531/- on account of negative cash balance in the month of December and February, AO noticed from the cash book that in December and February, no cash was credited in the cash book but expenses was shown paid of Rs.1,76,436/- and Rs.6,52,095/- in the month of December 2009 and February 2010 respectively. It is the case of the assessee before the Id. CIT (A) and before the Bench that this confusion occurred due to misprinting in the cash book by computer, credit entries of the cash book were not printed and the credit in the cash book is primarily on account of cash withdrawal from the bank which is verifiable from the bank statement of the Indian Bank.

13. Assessee has furnished details of the cash credit which were not shown in the cash book by mistake, which have been extracted by Id. CIT (A) on page 25 of the impugned order, and finding the same correct on factual verification from the bank statement as well as ledger account, found that no negative cash balance and the

impugned cash expenditure were out of withdrawals from the bank accounts and other cash receipts. So, in these circumstances, there is no scope to interfere in the findings returned by the Id. CIT(A) deleting the addition made by the AO on account of negative cash balance in the months of December and February. So Ground No.4 is determined against the revenue.

GROUND NO.5 & 6

14. Grounds No.5 & 6 need no findings being general in nature and having not been pressed by the Id. AR for the taxpayer.

15. Resultantly, the appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 1st day of February, 2019.

**Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 1st day of February, 2019
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Copy forwarded to:

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

AR, ITAT
NEW DELHI.