

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 165, 166, 167 & 168/JP/2019
निर्धारण वर्ष/Assessment Year : 2013-14, 2014-15, 2015-16 & 2016-17

Kund Kund Kahan Digamber Jain Versus Mumokshu Ashram Bajaj Palace, Near Paliwal Compound, Kota	बनाम Vs.	ITO (E), Kota Chhawani
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTK9217C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (C.A)
राजस्व की ओर से / Revenue by : Shri Ran Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 27/05/2019
उदघोषणा की तारीख / Date of Pronouncement : 29/05/2019

आदेश / ORDER

PER BENCH:

These are four appeals filed by the assessee trust against the separate orders of Id. CIT(A), Kota dated 10.12.2018 for Assessment Years 2013-14 – 2016-17 upholding the action of AO/CPC in denying exemption u/s 11 of the IT Act by holding that assessee's case is not covered by the proviso to section 12AA(2) as the objects of the trust were not same in the year in which exemption was claimed and the year in which exemption u/s 12AA was given ignoring the fact that amendment in trust deed was made to make the objects of the trust more clear and the amendment was made in the original trust deed to

be effective from the date of creation of trust, thereby assessing the following receipts as income:-

<i>Assessment Year</i>	<i>Receipts assessed</i>
<i>2013-14</i>	<i>Rs.3,14,665/-</i>
<i>2014-15</i>	<i>Rs.4,34,675/-</i>
<i>2015-16</i>	<i>Rs.4,54,710/-</i>
<i>2016-17</i>	<i>Rs.1,93,700/-</i>

2. Briefly stated, the facts of the case are that the assessee trust was constituted on 14.12.2000 with various charitable objects as mentioned in the trust deed. An application for registration u/s 12AA of the IT Act, 1961 was filed on 25.05.2015. The same was rejected by Ld. CIT(E) vide order dt. 16.12.2015 on the ground that trust has been created for the benefit of Jain Samaj only. Against this order, assessee filed appeal before the Tribunal which vide its order dt. 09.12.2016 set aside the matter with the direction that where the Ld. CIT(A) finds that the benefit is not limited to people belonging to a particular community but is available to public at large, he would grant registration as per law. In the set aside proceedings, assessee brought on record evidences by way of list of the patients whose cost of medicines/ expenses is borne by the assessee and list of students whose fees is borne by it without any discrimination as to the caste. The Ld. CIT(E), however, required the assessee to make necessary amendment in the trust deed stating that it is not restricted to Jain Dharm only. Accordingly, assessee vide amendment deed dt. 19.09.2018 inserted following proviso in Para 4 of the trust deed:-

"It is hereby declared that the activities of the trust & its objects would have for all religion and not restricted to Jain Dharm. It has been unanimously agreed that wherever in sub-paras of para 4 of trust deed, the word 'Jain Dharm or Digamber Jain Dharm' appears shall be read as 'Sarvadharm'."

The Ld. CIT(E) thereafter in pursuance of the direction of the Tribunal granted registration u/s 12AA of the Act vide order dt. 29.11.2018 from the date of the amended trust deed, i.e. from 19.09.2018.

3. For AY 2013-14 & 2014-15, the AO, after rejection of the original application u/s 12AA by Ld. CIT(E) reopened the assessment u/s 148; for AY 2015-16, the case was selected for scrutiny; and for AY 2016-17 processing was done by CPC where the receipt was assessed to tax without deduction of expenditure on the ground that assessee is not registered u/s 12AA of the Act/ the CIT(E) has not yet passed the order for registration in pursuance to the direction of Hon'ble ITAT.

4. In the appellate proceedings before CIT(A), assessee furnished the order u/s 12AA passed by Ld. CIT(E) and contended that in view of proviso to section 12AA(2), the benefit of section 11 should be allowed to the assessee since the creation of the trust. The Ld. CIT(A), however, held that assessee is not covered by proviso to section 12AA(2) as the object of the trust in the years under consideration is not the same as in the year in which the exemption is granted in as much as exemption u/s 12AA is given based on its modified objects

from 19.09.2018. Accordingly, he confirmed the orders of AO assessing the gross receipts as total income.

5 In the above factual matrix of the case, the Id AR submitted that the Tribunal has noted that the assessee trust is not for the benefit of any particular community and that the benefit of the trust is available to public at large. Therefore, the issue was set aside with the direction that CIT(E) would conduct an enquiry with regard to the objectives of the trust. Thereafter, the assessee in order to bring more clarity filed the amended deed by inserting a proviso to Para 4 of the trust deed as stated above as if the said clause is inserted in the original trust deed. Thus, the objects & activities of the trust in AY 2013-14 to 2016-17 remains the same as in the financial year 2018-19 when the registration u/s 12AA was granted by Ld. CIT(E) in pursuance of the direction of Tribunal with reference to application for registration filed on 25.05.2015. Hence, the registration so granted is also applicable for the AYs under consideration in view of proviso to section 12A(2). The Ld. CIT(A) has incorrectly held that there is change in the objects of the trust whereas there is no such change. Only to bring more clarity, certain words in the object clause were replaced as if the same were in the original trust deed. Therefore, AO be directed to allow benefit of exemption u/s 11 to the assessee in the AYs under consideration.

6. Without prejudice to above, it was submitted by the Id AR that the lower authorities have assessed the gross receipt as income ignoring the expenditure incurred by the assessee. The gross receipts,

expenditure incurred and the surplus/ deficit as per Income & Expenditure A/c of the AYs under consideration is as under:-

AY	Gross Receipts	Expenditure	Surplus/ Deficit
2013-14	Rs.3,14,665/-	Rs.3,25,690/-	(Rs.11,025/-)
2014-15	Rs.4,34,675/-	Rs.4,22,590/-	Rs.12,085/-
2015-16	Rs.4,54,710/-	Rs.4,40,290/-	Rs.14,421/-
2016-17	Rs.1,93,700/-	Rs.1,84,051/-	Rs.9,649/-

The expenditure incurred is directly connected with the donation received in as much as assessee received the donation only because the donors were satisfied that assessee is incurring the expenditure as per its objectives. Hence, the gross receipts cannot be taxed as income. Only the net surplus can be charged to tax. However, since the surplus is below the maximum amount chargeable to tax, the assessee is not liable to tax. Hence, the lower authorities be directed to compute the income after allowing the expenditure.

7. The Id DR is heard who has submitted that before invoking the proviso to section 12AA(2), what has to be seen is that the assessment proceedings are pending before the Assessing officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year. In the said legal background, the Id CIT(A) has rightly held that the case of the assessee cannot be treated as covered in the proviso to section 12AA(2) as the objects of the trust were clearly not the same in the year in which the exemption is claimed and the registration under section 12AA is given based on modified objects with effect from 19.09.2018. He thus supported the order of the lower authorities.

8. We have heard the rival contentions and perused the material available on record. We find that where the exemption claimed under section 11 and 12 has been denied by the Assessing officer, what can be brought to tax is the net income in the hands of the assessee trust and not the gross receipts. In all these years, we find that while denying the exemption under section 11 and 12 for want of registration under section 12AA, the Assessing officer has brought gross receipts to tax which is against the basic tenets of law where only the real income which is determined after deducting expenses from gross receipts can be brought to tax. We therefore agree with the alternate contention so advanced by the Id AR and without going into merit of the other contention which is left open, the matter is set-aside to the file of the Assessing officer to examine the claim of the expenditure so claimed by the assessee trust against the gross receipts for each of the relevant years and where the Assessing officer determines the net receipts as not exceeding the maximum amount not chargeable to tax, allow the necessary relief to the assessee trust.

In the result, all the appeals filed by assessee trust are allowed for statistical purposes.

Order pronounced in the open Court on 29/05/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/05/2019.

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Kund Kund Kahan Digamber Jain Versus Mumokshu Ashram, Kota
2. प्रत्यर्थी / The Respondent- ITO (E), Kota, Chhawani
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA. No. 165, 166, 167 & 168/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar