

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND

SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 5905/Mum./2019
(Assessment Year : 2014-15)

Versova Kokni Sunni Jamat Trust
Shop no.1, Versova, Andheri (W) Appellant
Mumbai 400 061 PAN – AABTV7167L

v/s

Centralised Processing Centre
Bangalore Respondent

Assessee by : Shri Firoz Andhyarujina
Revenue by : Shri Chandra Vijay, CIT-DR

Date of Hearing – 15.02.2022

Date of Order – 05/04/2022

ORDER

PERSANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee against the order dated 16.07.2019 passed by the Commissioner of Income Tax (Appeals)-1, Mumbai ["CIT (A)"] under section 250 of the Income Tax Act, 1961 ("the Act") for the assessment year 2014-15.

2. The assessee vide application dated 25.08.2021 filed following concise grounds of appeal: –

"1. Amount of Rs.8,99,811, received as Corpus Donation is not taxable even when the appellant trust is not registered under section

12AA since the donation received is specifically for corpus to purchase a Dargah/Masjid.

2. The amount of rent received from hire of buildings of Rs.4,87,924, be taxed under the head "Income From House Property" and not as "Income From Other Sources", as the trust is not registered under section 12A and is, therefore, an A.O.P."

3. The issue arising in ground No.1 raised in assessee's appeal is with regard to taxability of corpus donation received by assessee trust for a specific purpose.

4. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee trust is a religious trust formed in the year 2013 and is duly registered with "Maharashtra State Board of Wakf" having registration no. MSBW/MUM/284/2013 vide certificate dated 12.03.2013. The main objective of the assessee trust was to maintain, administer and manage the Masjid, Dargah, provide funeral facility for Muslims, celebrate and perform Muslim festivals, to provide burial ground for Muslims, to provide burial materials and facilities for last rites of Muslims. During the year under consideration the assessee filed its return of income on 16.10.2015 declaring total income at Rs. 4,75,980 in form ITR – 7 claiming exemption under section 11 of the Act. While processing the return under section 143(1) of the Act, the Assessing Officer after making certain adjustments determine the total income of the assessee at Rs.21,67,070/- as against Rs. 4,75,980 declared by the assessee. Under intimation issued under section 143(1) of the Act, the Assessing Officer, inter-alia, disallowed the entire amount of voluntary contribution of Rs. 13,84,207/- received by

the assessee out of which Rs. 8,99,811/- was received specifically towards corpus donation of the assessee trust for the purpose of purchase of immovable property/Masjid/Dargah.

5. In appeal before the CIT(A), assessee submitted that the assessee trust is not registered under section 12A of the Act. However, the consultant being ignorant of the provisions for applicability of section 11 and 12 of the Act filed return of income claiming exemption under section 11 of the Act. While filing the return of income for relevant assessment year, an amount of Rs. 8,99,811 collected as corpus donation for purchase of Masjid/Dargah was also offered as income. Accordingly, the assessee submitted that the corpus donation of Rs. 8,99,811 is in the nature of 'capital receipt' and thus not taxable in the hands of the assessee trust irrespective of not being registered under section 12A of the Act.

6. The CIT(A) vide impugned order dated 16.07.2019, though admitted that assessee is not registered under section 12 A of the Act and thus no benefit of exemption could be allowed to the assessee under section 11 of the Act, rejected the contention of the assessee that irrespective of status of registration under section 12A of the Act the receipts for specific purposes cannot be treated as income under section 2(24) of the Act by placing reliance upon the order dated 30.01.2017 passed by the Co-ordinate Bench of Tribunal in Bank of India Retired Employees Medical Assistance Scheme v/s CIT: ITA No. 3249/Mum/2016. Being aggrieved the assessee is in appeal before us.

7. During the course of hearing, Shri Firoz Andhyarujina, learned counsel appearing for the assessee submitted that the assessee wrongly filed the return of income in form ITR – 7, which is applicable to trust registered under section 12A of the Act. The learned counsel further submitted that the assessee being not registered under section 12A of the Act, no benefit under section 11 and 12 of the Act can be claimed. However, corpus donations received by the assessee for the purpose of purchase of Masjid/Dargah is not taxable being 'capital receipt' in nature. The learned counsel by placing reliance upon various judicial precedents submitted that corpus donation received for specific purpose are not taxable even in case of trust not registered under section 12A of the Act. The learned counsel also referred to (i) details of donors, (ii) sample copies of receipt issued by the assessee towards corpus donation along with the copy of PAN card of the donors, (iii) copy of resolution No. 37 dated 31.03.2018 of special general body meeting in respect of purchase of property – Dargah and (iv) deed of conveyance for purchase of property, which were also filed before the CIT(A).

8. On the other hand, Shri Chandra Vijay, learned Departmental Representative ("*learned D.R.*") by vehemently relying upon the order passed by the CIT (A) submitted that the Assessing Officer proceeded on the basis of claim made by the assessee in its return of income.

9. We have heard the rival submissions and perused the material available on record. In the present case, it is evident from the record that

there is no dispute that the assessee is trust registered with "Maharashtra State Board of Wakf". It has also not been disputed that assessee is not registered under section 12A of the Act and thus not entitled to any benefit under section 11 of the Act. The Assessing Officer rightly proceeded to disallow the erroneous claim made by the assessee under section 11 of the Act, which is available only to a trust registered under section 12A of the Act. However, before the CIT(A), the assessee agreed that it had made wrongful claim under section 11 even when assessee is not registered under section 12A of the Act and submitted that despite not being registered under section 12A of the Act, the corpus donation received specifically for the purpose of purchase of property/Dargah is not taxable being 'capital receipt' in nature.

10. The CIT(A) by merely referring to the decision of Co-ordinate Bench of Tribunal in Bank of India Retired Employees Medical Assistance Scheme (supra) rejected the fresh plea made by the assessee. We find that in Bank of India Retired Employees Medical Assistance Scheme (supra), the appeal before the Co-ordinate Bench of Tribunal was against the order passed under section 263 of the Act and the taxpayer before the Tribunal though not being registered under section 12A and thus not eligible for exemption under section 11 of the Act was granted relief by the Assessing Officer under section 11(1)(d) of the Act in respect of corpus donation. Further the corpus donation received by the taxpayer in the aforesaid case was granted without specifying the specific purpose for which the same was to be applied. Thus, in light of these facts, the Tribunal dismissed the appeal filed

by the assessee and upheld the order passed under section 263 of the Act. The Tribunal further noted that the decisions, as relied upon by the taxpayer, are not applicable, as in the facts of those cases the corpus donation received by the trust was for utilisation for specific purposes and thus was accordingly held not taxable being 'capital receipt' in nature despite the fact that the trust was not registered under section 12A of the Act. Thus, in view of the above, the reliance placed by CIT(A) on the decision of Co-ordinate bench of Tribunal in Bank of India Retired Employees Medical Assistance Scheme (supra) to deny the claim made, for the first time, by the assessee in the present case is erroneous and cannot be sustained.

11. Further we find that the Co-ordinate bench of Tribunal in ITO versus Serum Institute of India Research Foundation, ITA No. 621/PUN/2016 vide order dated 29.01.2018 following the decision of another Co-ordinate bench of Tribunal in Chadraprabhu Jain Swetamber Mandir v. ACIT [2017] 82 taxmann.com 245 (Mumbai-Trib.) held that 'corpus donations' received for specific purpose by the trust, which is not registered under section 12 A/12AA of the Act, are not taxable as they assume the nature of 'Capital Receipt'.

12. During the appellate proceedings before the CIT(A), the assessee filed various documents in support of its submission that corpus donations were received by the assessee for the purpose of purchase of property/Dargah and therefore is in nature of 'capital receipt'. The assessee

also furnished the details of donors along with their PAN card, on sample basis. The assessee also filed copy of deed of conveyance in respect of purchase of property/Dargah in financial year 2018-19. However, neither these documents were examined by the CIT(A) nor any report was sought from the Assessing Officer, and merely by erroneous understanding of order passed by the Co-ordinate Bench of Tribunal in Bank of India Retired Employees Medical Assistance Scheme (supra), fresh plea of the assessee was rejected by the CIT(A). As no scrutiny proceedings were initiated by the Revenue and return filed by the assessee was processed vide intimation under section 143 (1) of the Act, these documents also could not be verified by the Assessing Officer. In view of the above, we deem it appropriate to set aside the order passed by the CIT(A) and remand this issue to the file of CIT(A) for *de novo* adjudication after necessary verification of all the details / documents in respect of claim of the assessee. We further direct that if it is found that donations were received with respect to corpus of the trust for the purpose of purchase of property/Dargah then to that extent the same be not taxed being in the nature of 'capital receipt'. Needless to mention that no order shall be passed without affording reasonable opportunity of hearing to the assessee. Accordingly, ground No. 1 in assessee's appeal is allowed for statistical purpose.

13. The issue arising in ground No. 2 raised in assessee's appeal is with regard to treating the rental income as 'Income from House Property' instead of 'Income from Other Sources'.

14. It is the claim of the assessee that amount of Rs. 4,87,924 was wrongly shown in the return as 'Income from Other Sources' instead of 'Income from House Property' and was taxed accordingly vide intimation under section 143(1) of the Act. The CIT(A) rejected the claim of assessee in the absence of details and also on the basis that there was no ground of appeal on this issue. Being aggrieved, the assessee is in appeal before us.

15. During the course of hearing learned counsel submitted that the issue is regarding classification of rental income under the correct head of income. On the other hand, learned D.R. vehemently relied upon the order passed by the CIT(A).

16. We have heard the rival submissions and perused the material available on record. As the issue is only pertaining to classification of rental income under the correct head of income, we deem it appropriate to remand this issue to the file of CIT(A) for *de novo* adjudication, as per law. We further direct the assessee to file all the details for adjudication of this issue. Needless to mention that the CIT(A) shall have the liberty to call for remand report, if any, from the jurisdictional Assessing Officer while deciding this issue. Further, no order shall be passed without affording reasonable opportunity of hearing to the assessee. As a result, ground No. 2 in assessee's appeal is allowed for statistical purpose.

17. In respect of additional grounds of appeal filed by the assessee vide separate application dated 10.08.2021, same are left open as per the submissions of learned counsel.

18. In the result, appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05/04/2022

Sd/-
GAGAN GOYAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 05/04/2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai