

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.135/CTK/2021
Assessment Year : 2018-19

Joharimal High School, Ganesh Ghat, PO: Chandinchowk, Cuttack	Vs.	ITO (Exemptions), Cuttack
PAN/GIR No.AAATJ 3292 R		
(Appellant)	..	(Respondent)

Assessee by : Shri P.K.Mishra, and R.K.Jhunjunwala, ARs
Revenue by : Shri Sovesh Chandra Mohanty, (DR)

Date of Hearing : 2/3/ 2022
Date of Pronouncement : 09/3/2022

ORDER

Per C.M.Garg, JM

This is an appeal filed by the assessee against the order of the CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 9.11.2021 for the assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:

“1. For that the Id CIT has erred, in facts, by ignoring the actual data filed by the assessee in its return of income and assuming data given in the audit report, whereas no audit report is filed by the assessee as the same is not required to be filed by the appellant as per the provision of law.

2. For that, the Id CIT is wrong and unlawful in passing an order under section 250 dismissing the appeal filed by the assessee where

all required data, details and information are available in the ITR filed by the assessee.

3. For that the Id CIT has erred both in law and fact by upholding the order dated 26.9.2019 passed under section 143(1) of the Income tax Act disallowing expenses amounting to Rs.73,10,521/- by the AO-CPC, Bangalore without considering the details of expenses reported by the assessee in Form ITA-7, Part B-TI, Column-4 and in Schedule ER.

4. For that the Id CIT (A) has erred both in law and fact by assuming variance in data given in ITR-7 and audit report. The actual fact is that no audit report is filed by the appellant as the same is not required to be filed by the appellant as per the provision of law.”

3. Facts of the case are that the assessee is a charitable trust running a school since 1982. The assessee trust filed its return of income on 27.10.2018 showing an income of Rs.18,12,685/- being interest from bank and I.T.return, thereby claiming exemption of Rs.24,30,289/- u/s.10(23c)(iiad) i.e. excess of gross receipts of Rs.97,40,810/- over expenditure of Rs.73,10,521/-. The Assessing Officer processed the return u/s.143(1) and assessed the total income at Rs.91,23,206/-, inter alia, disallowing the revenue expenditure amounting to Rs.73,10,521/-.

4. In first appeal, the CIT(A) upheld the addition made by the Assessing Officer, presuming that the AO CPC while processing u/s.143(1) of the Act, must have captured the data from the Audit Report filed by the assessee itself. Ld CIT(A) observed that there are mainly two ways in which any data which is used for variance in the returned income of the assessee can be taken by the CPC. The first is data provided by the assessee himself in the

return of income and the second is the data given by the assessee in his audit report wherein, the auditor points out any amount which is disallowable. He also observed that any adjustments to the return income are made after opportunity is given to the appellant.

5. At the time of hearing, Id A.R.of the assessee submitted that the appellant trust is running its school since the year 1982 and it has been filing the return of income claiming exemption u/s.10(23C) of the Act.Ld A.R. submitted that the appellant trust was not registered under section 12AA of the Act. He submitted that the Id CIT(A) has mainly confirmed the addition on the ground that the AO must have gone through the audit report filed by the assessee but actually, no audit report is filed by the assessee as the same is not required to be filed by the assessee as per the provisions of law. Ld A.R. submitted that merely because due to inadvertent mistakes at the time of filing e-return done by the assessee, the CPC proceeded to make addition without providing due opportunity of hearing to the assessee. Therefore, the assessment order is bad in law. He also submitted that since the assessee is not having registration u/s.12AA of the Act, therefore, the assessee has to be treated as Association of Persons (AOP) for the purpose of application of provisions of Income tax Act and in this situation, according to normal principles of accounting, the expenditure incurred by the assessee for the purpose of activities of the AOP has to be allowed out of entire gross receipts and, thereafter, only the surplus income

can be taken as taxable in the hands of the assessee. With these submissions, Id A.R. submitted that in the interest of justice, the credit of expenditure incurred by the assessee during the relevant financial period amounting to Rs.73,10,521/- as per column-4 (i) of the e-return may kindly be allowed to the assessee. Ld counsel has also placed reliance on the decision of Co-ordinate Bench of ITAT, Indore in the case of DCIT (Exemption), Bhopal vs Shri Vaishnav Polytechnic College Govern by VSK Market Tech Educational Society, (2020) 122 taxmann.com 287 (Indore-Trib) and submitted that where income of the assessee charitable educational institution was brought to tax as "income from other sources", for reason that the assessee was not registered as charitable trust under section 12AA, all incidental expenditures laid out by assessee wholly or exclusively for purpose of making or earning such income were also to be allowed under section 57(iii) of the Act.

6. Replying to above, Id SR DR vehemently opposed to the submission of the assessee and submitted that when the assessee itself is submitting wrong information in the e-return, then AO-CPC cannot be blamed for making addition on the basis of such e-return. Ld SR DR also pointed out that the assessee received notice from CPC vide dated 16.8.2019, which was not properly replied by the assessee, therefore, no fault can be attributable to the CPC in this regard. Therefore, addition made by the AO-CPC and confirmed by the Id CIT(A) may kindly be confirmed.

7. Ld SR DR also submitted that when the assessee itself is stating that he has filed audit report alongwith return of income, then the authorities below were in doubt regarding correctness of the claim of expenditure of the assessee, therefore, the addition made by the AO and confirmed by Id CIT9A) may also kindly be upheld on this count.

8. Placing rejoinder to above, Id AR submitted that the AO has not raised any doubt regarding claim of expenditure as mentioned by the assessee in column 4(i) of return of income. It is also not the case of the authorities below that these expenditures of Rs.7310,521/- are not incurred exclusively or wholly for the purpose of activities of the assessee. Therefore, as per normal accounting principles, the expenditure incurred by the assessee during the relevant financial year wholly or exclusively for the purpose of making or earning income/receipts has to be allowed to the assessee and only remaining part of surplus can be taxed in the hands of the assessee.

9. On careful consideration of the rival submissions, first of all, we may point out that that ITAT Indore Bench in the case of Shri Vaishnav Polytechnic College Govern by VSK Market Tech Educational Society,(supra) has categorically held that in case the assessee does not have registration u/s.12AA of the Act, as charitable trust, then also all incidental expenditure incurred by the assessee wholly or exclusively for the purpose of making or earning such income was also to be allowed u/s.57(iii) of then Act and this

proposition has not been controverted by Sr DR by way of any other judgments of the higher forum or Co-ordinate Benches of the Tribunal.

10. Undisputedly rather admittedly, the assessee does not enjoy registration u/s.12AA of the Act and as per e-return filed before the Bench, as per column 3, the assessee has shown receipt of income of Rs.97,10,521/- and as per column 4(i), amount applied during the previous year or expenditure incurred during the previous year as per revenue account was Rs.73,10,521/-. In absence of registration u/s.12AA of the Act, the assessee has to be treated as an AOP for the purpose of calculation of tax liability in the hands of the assessee. In this situation, as per normal accounting principles and keeping in view the preposition rendered by Indore Bench of ITAT in the case of Shri Vaishnav Polytechnic College Govern by VSK Market Tech Educational Society(supra), all incidental expenditure incurred by the assessee during the relevant financial period, wholly or exclusively for the purpose of marking or earning such income/receipts has to be allowed as per provisions of section 57(iii) of the Act and this legal provision has not been controverted by Id SR DR.

11. Ld counsel for the assessee, at Bar, has pleaded that since the total income of the assessee trust is Rs.97,40,810/-, which is below Rs.1,00,00,000/-, the audit report is not required in this case. He also vehemently pointed out that no audit report has been filed alongwith the e-return. Therefore, the presumption of Id CIT(A) that the assessee trust

must have filed audit report, is not based on any documentary evidence furnished before us. However, the remaining amount i.e. Rs.97,40,810 – Rs.73,10,521 = Rs.24,30,289/- i.e. receipts of income has to be treated as surplus for the purpose of taxation in the hands of the assessee for the relevant assessment year. Hence, the AO is directed to allow the expenditure incurred of Rs.73,10,521/- during the relevant period.

12. In the result, appeal of the assessee is allowed.

Order pronounced on 09 /3/2022.

Sd/-

sd/-

(Arun Khodpia)
ACCOUNTANT MEMBER

(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 9 /03/2022
B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The Appellant : Joharimal High School,
Ganesh Ghat, PO: Chandinchowk, Cuttack
2. The Respondent. ITO (Exemptions),
Cuttack
3. The CIT(A)-, NFAC, Delhi
4. Pr.CIT-, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack