

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.494/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Vijaya Durga Devi Trust,
Lakaki Compound, Model Colony,
Shivajinagar, Pune.

..... अपीलार्थी /
Appellant

PAN : AAATV0895L.

बनाम v/s

The Dy.Commissioner of Income Tax,
CPC., Bangalore.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri C.H. Naniwadekar.

Revenue by : Shri M.K. Verma.

सुनवाई की तारीख / Date of Hearing : 03.06.2019	घोषणा की तारीख / Date of Pronouncement: 10.06.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by the assessee is emanating out of the order of Commissioner of Income Tax (A) – 10, Pune dated 24.01.2019 for the assessment year 2015-16.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a religious trust stated to have been formed in 1968 and was being hitherto assessed in the status of AOP. Assessee electronically filed its return of income for A.Y 2015-2016 on 29.07.2016 declaring total income of Rs.71,590/-. The return was processed u/s 143(1) of the Act whereby a demand of Rs.27,140/- was raised on the

assessee. Thereafter assessee raised objections and the application was rejected vide order dated 20.12.2016 passed u/s 154 of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who vide order dated 24.01.2019 (in appeal No.PN/CIT(A)10/ITO Exmp Wd1(1)/274/16-17) upheld the order of AO. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

“1. The learned CIT (Appeals) erred on facts and in law in charging tax liability at 30% flat rate without allowing basic exemption of Rs.2,50,000/- in case of AOP which is not registered u/s 12A. I have filed the return in Form type ITR-5 declaring total income of Rs.71,589/- however the tax has been worked out by the AO at 30% flat rate and total demand of Rs.27,138/- has been raised by the AO (30% tax of Rs.21,477/- is charged along with cess of Rs.644/- and interest of Rs.5,017/-). The tax in the past is always assessed as an AOP.

2. The point is to be noted that the income arises from the trust is not for the benefit of the trustee but for the maintenance and upkeep of Shri Vijayadurga Devi Devasthan, and all matters connected with and incidental thereto, including all religious, cultural activities and performance of festivals, to keep the premises clean, provision of lights, lamps etc.”

3. Both the grounds being inter-connected are considered together.

4. Before me ld AR reiterated the submissions made before lower authorities and further submitted that assessee is a Trust formed in 1968 and the object of the Trust inter-alia was the maintenance and upkeep of Shri Vijay Durga Devi Devasthan, Keri, Goa. He submitted that sole beneficiary as per the Trust Deed is the Deity and that the Deity being a juristic person, it can hold property and be in receipt of income and for this proposition he relied on the decision of Hon'ble Apex Court in the case of Official Trustee of West Bengal Vs. CIT reported in (1974) 93 ITR 348. He thereafter submitted that since the sole beneficiary is the Deity having the status of an “individual”, the tax rates applicable to

individual would apply to it and for which he relied on the decision of Pune ITAT in the case of ITO Vs. Shri Hanuman Mandir Trust (2003) 78 TTJ 469. He further submitted that the Ld.CIT(A) had erred in applying the provisions of Sec.167B of the Act to the case of the assessee. He submitted that provisions of Sec.167B are not applicable to the present facts because Sec.167B would become applicable when the income of the association or body are indeterminate and then in such a situation the tax rate applicable would be at maximum marginal rate. He submitted that in the present case since the entire income belonged to only one person, i.e. the Deity, provisions of Sec.167B of the Act are not applicable. He therefore submitted that the assessee be allowed the basic exemption limit as applicable to an individual. He therefore submitted that the order of lower authorities be set aside. Ld DR on the other hand supported the order of lower authorities.

5. I have heard the rival submissions and perused the material on record. It is an undisputed fact that the trust has been created in the year 1968 and as per the trust deed, the entire income is to be used for the upkeep of Deity. It is also an undisputed fact that the Deity is the sole beneficiary of the Trust. It is also a fact that there is no dispute with respect to the status of the assessee and the income returned by the assessee. The only dispute is whether the tax has to be computed on the basis of tax rates applicable to an individual or the provisions of Sec.167B would apply. The perusal of Sec.167B of the Act reveals that the provision applies to an association or persons or body of individuals where its income is indeterminate or unknown then the tax shall be charged at the maximum marginal rate. In the present case, it is a fact

that the Deity is the sole beneficiary and it is not a case where the share of its income is unknown or indeterminate. In such a situation I am of the view that provisions of Sec.167B would not be applicable and since the Deity is a juristic person and having the status of an individual, as held by Hon'ble Apex Court in the case of Official Trustee of West Bengal (supra) the tax rates and the slabs as applicable to an individual would apply. I therefore hold so. I therefore direct that the tax slab as applicable to individual be applied to the assessee. **Thus, the grounds of assessee are allowed.**

6. **In the result, the appeal of assessee is allowed.**

Order pronounced on 10th day of June, 2019.

Sd/--

(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 10th June, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-10, Pune.
4. The CIT (Exemptions), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.