

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH, PANAJI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM

ITA No.119/Pan./2018
(Assessment Year: 2010-11)

Sri Lalitamba Nidi Swarnavalli Math, Matadevala Post., Sonda, Sirsi-581 336	Vs.	ITO, Ward-1, Sirsi
PAN/GIR No. AAGTS 9799 E		
(Appellant)	:	(Respondent)

Appellant by	:	Shri V. Chandrashekhar and Shri V. Narendra Sharma
Respondent by	:	Shri Y. V. RAViraj

Date of Hearing	:	14.11.2018
Date of Pronouncement	:	15.01.2019

ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)– Panaji, pertaining to the assessment year 2010-11.

2. The grounds of appeal reads as under:

1. The order of the learned authorities below in as far as it is against the appellant is opposed to law, facts, equity, and weight of evidence and circumstances of the case.
2. The appellant denies itself liable to be taxed on an Income of Rs.5,98,814/- as against total income of Rs. Nil returned by the appellant on the facts and circumstance of the case.
3. The learned Commissioner of Income-tax [Appeals] is not justified in law and on facts in confirming the addition made by the learned assessing officer amounting to Rs.5,98,814/- as an anonymous donation by invoking the provisions of section 115 BBC of the Act without appreciating that the appellant's case falls under the provisions of sub-section [2] of section 115 BBC of the Act, and consequently no additions could have been made under section 115 BBC of the Act, on the facts and circumstances of the case.
4. The learned Commissioner of Income-tax [Appeals] erred in confirming the findings of the learned assessing officer without appreciating that the Dabbi Kanike [Box Collection] which is usually kept in front of Swamiji, Garba Gudi, Main Door, etc., which were received at the time of performing poojas, special poojas, festival occasions, etc., wherein the donors have not mentioned specific purpose or the

donation has been made with any direction, that such donation is for any University or other educational institution or medical institution and consequently the provisions of section 115BBC of the Act, on the facts and circumstances of the case.

5. The learned authorities below were not justified in disallowing depreciation of Rs.350/- on the facts and circumstances of the case.

6. The learned authorities below ought to have allowed the appellant to carry forward the deficit to the subsequent years and allowed to be set off against the subsequent years application of income, on the facts and circumstances of the case.

7. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself Liable to be charged to interest under section 234 A and 234 B of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234 A, 234 B & 234 D of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.

8. The appellant craves leave to add, alter, amend, modify, substitute or delete any of the grounds urged above.

3. At the outset, we note that there is a delay of 626 days in filing this appeal.

4. Brief facts of the case are as under:

The assessee is a charitable Trust duly registered u/s.12A of the Act, by the CIT, Hubli. on 23/03/1993. The main object of the Trust is to perform pooja, Viniyoga, worshiping deity, distributing annaprasadam (i.e., serving free meals) to devotees who visit Sonda Math and also providing medical help to needy persons, conducting seminars in Sanskrit subject, etc. The assessee filed its return of income on 11/08/2011, for the assessment year 2010-2011, declaring NIL income as the same was claimed as exempt. The said return was processed u/s. 143(1) of the Act, and later the case was selected for scrutiny by the issue of notice u/s.143(2) on 26/09/2012. During the course of scrutiny proceedings, the AO noticed that the assessee has credited a sum of Rs.33.59.836/- as voluntary contributions (donations) during the previous relevant to the assessment year 2010-2011. The assessee was asked to produce complete details of such contributions. The assessee produced the relevant ledger accounts containing details of contributions

received along with relevant head of contributions. The assessee also certified that out of the above contributions, a sum of Rs.5,98,814/- was received through *Dabbi Kanike* (box collections) which is usually kept in front of Swamiji, Garbha Gudi, main door, etc. At the time of performing poojas, special occasions, the devotees would generally opt to pay some amount in the box kept which would be usually in the denomination of Re.1/-, Rs.5/-, Rs.10/-, Rs.100/- and above and the Trust authorities will open such box collections in front of the panchas and the amount collected is counted Rs.5,98,814/- represents such collections, It was submitted to the AO that though this is an anonymous collection yet the same are brought on record and spent on the objects of the Trust. The assessee's AR submitted that such contributions are not taxable as per provisions of section 115BBC of the Act. The AO opined that the assessee is not covered under the provisions sub-section (2) of section 115BBC. Since, the assessee did not furnish the details of persons who have contributed the donations to the extent of Rs.5,98,814/- the same is treated as anonymous donations and taxed accordingly, as per Section 115BBC of the Act.

5. Upon the assessee's appeal, the Id. CIT(A) despite accepting the application of section 115BBC upheld the addition by observing as under:

It is a fact that the assessee is granted registration u/s.12A of the Act by the CIT, Karnataka-1, Bangalore on 28/03/1993. The main objects of the trust are (1) to take up religious activities like worship of Diety, conduct mass 'thread' ceremonies, preach vedic mantras, to undertake any other vaidik karmas, construct temples, and to give financial help to such activities undertaken by an individual or institution, (2) to establish libraries consisting of different languages (3) to promote education by establishing educational institutions, (4) to organize workshops seminars, meetings etc., to achieve the objects, etc.

Thus, as per the objects of the trust the trust is created only for religious and charitable purpose and no university or educational institutions are run by the assessee and provisions of section 10(23)(c) do not apply to the assessee. However, as per sec.115BBC, since there are anonymous donations received in this case of

Rs.5,98,814/-. the income of the assessee becomes taxable subject to the provisions of section 115BBC(2)(b). The AO has denied the benefit of section 115BBC(2)(b) to the assessee because of anonymous donation received of Rs.5,98,814/- i.e. no details whatsoever are there about such donations received . Since, this is totally a religious and charitable trust provisions of section 115BBC(1) shall not apply to any anonymous donations received by a trust subject to provisions of section 115BBC(2)(b). This sub-section says, The provisions of sub-section (1) shall not apply to any anonymous donations received.

(b) by any trust or institution created or established for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institutions.

In this case the fact that the assessee has received anonymous donation of Rs. 5,98,814/- is not denied, Therefore, the tax liability has be calculated as per provisions of section 115BBC(1)(i) by providing basic exemption of Rs.1 lakh in tax, because the total income computed by the assessee and even by the AO results in (-) minus figure, i.e., Rs.5,26,082/- and there is no tax liability. Therefore, 5% of total donations received are Rs. 16,79,918/- or Rs.1 lakh whichever is higher as per (i)(A) and (B) and c(ii) the amount of it with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations, i.e., NIL. because the total income has resulted in a negative figure.

In any case I agree that the assessee's case falls under section 115BBC(2)(b) and the anonymous donation requires to be brought to tax because there is no specific direction that the anonymous donation shall be utilized for any university or other educational institutions. The anonymous donation received is general in nature and therefore, 'requires to be brought to tax as per section 115BBC(1)(i) A&B and (ii). The AO has taxed it directly at 30% on anonymous donation received of Rs.5,98,814/-.

In view of this it is held that the assessee is liable to tax on the anonymous donation received, the tax liability has to be determined as per section 115BBC(1)(i) A&B and (ii) of the IT Act 1961.

6. Against the above order, the assessee is in appeal before us.
7. We have heard both the counsel and perused the records. For seeking condonation of delay it has been submitted by the assessee that the assessee was pursuing the formation before the ld. CIT(A) by filing application u/s. 154. It has been pleaded that the assessee was in a bonafide belief that the assessee will be eligible to file the appeal before the ITAT after the outline of application u/s. 154 of the Act. In this regard, the submission of the assessee is as under:

7. The appellant on the receipt of the appellate order dated 30/03/2016 passed by the learned CIT [A], consulted its authorized representative who represented the

matter in the scrutiny proceedings as well as the appellate proceedings for his advice as regard to the next course of action. The learned authorized representative suggested the appellant to prefer a miscellaneous application before the learned CIT [A] to rectify the mistake under the provisions of section 154 of the Act. Following the professional advice obtained from the authorized representative the appellant preferred a rectification application under section 154 of the Act, vide application dated 12/01/2017.

8. It is submitted that the rectification application filed by the appellant before the learned CIT [A] was disposed off by the learned CIT [A] vide his order passed under section 154 of the Act dated 29/01/2018, wherein the rectification application filed by the appellant was rejected and thus the same was dismissed.

9. Soon after the receipt of the said rectification order passed by the learned CIT [A] the appellant approached its authorized representative to guide it properly as regard to the next course of action. The said authorized representative who represented the matter before the learned assessing officer and also before the learned CIT [A] advised the appellant to file an appeal against the order passed by the learned CIT [A] dismissing the rectification application filed by the appellant. The appellant at a religious gathering apparently met and interacted with the present counsel Sri. V. Chandrasekhar, Advocate and appraised him about the entire facts. The present counsel sought the files for his study and guides the appellant as regard to the correct approach. The present counsel after verifying the papers and studying the entire files suggested and advised the appellant to file an appeal before the Hon'ble Tribunal, against the order passed by the learned CIT [A], dated 30/03/2016 and not against the order of CIT [A] dated 29/01/2018 dismissing the rectification application filed by the appellant.

10. In view of the above fact, that the Appellant has been a victim of wrong professional advice on the matter and consequently the Appellant could not file the appeal before this Hon'ble Income Tax Appellate Tribunal, well in time i.e., within 60 days from the date of receipt of order i.e., 03/05/2016 i.e., the Appellant ought to have filed the appeal on or before 02/07/2016 and by the time the Appellant sought the present counsel's proper professional advise, there arose a delay of about 626 days in filing this present appeal before this Hon'ble Income-tax Appellate Tribunal as per the provisions of the Act.

11. It is humbly prayed that this Hon'ble Tribunal takes a lenient and compassionate view and condone the delay of about 626 days in filing the present appeal against the order of the learned Commissioner of Income-tax [Appeals] dated 30/03/2016 and hear the same on merits for the advancement of substantial cause of justice.

12. It is humbly submitted that if this application for condonation of delay in filing the appeal is not allowed, the appellant would be put to great hardship and irreparable injury and on the other hand no hardship or injury would be caused to the Respondent if this application of condonation of delay is allowed. Reliance is placed on the decision of the Hon'ble Apex Court in the case of Collector, Land Acquisition Vs, MST. Katiji and Others [1987] 167 ITR 471 and also in the case of Concord of India Insurance Co. Ltd., Vs. Smt. Nirmala Devi and Others 118 ITR 507. Further the Appellant relies on another decision of the Hon'ble Apex Court in the case of Radha Krishna Rai Vs. Allahabad Bank & Others [2009] 9 SCC 733 and CIT Vs. West

Bengal Infrastructure Development Finance Corporation Limited [2011] 334 ITR 269 [SC].

13. Wherefore the appellant once again humbly pray before this Hon'ble Tribunal to kindly consider the submissions made and considering the submissions the appellant humbly pray before this Hon'ble Tribunal to condone the delay in filing the present appeal of about 626 days and hear the same on merits of the matter for the advancement of substantial cause of justice.

8. Upon careful consideration and hearing both the counsel we are of the considered opinion that there was a reasonable cause for condition of the delay.

Since the assessee was seeking an alternative remedy, it can be construed that there was reasonable cause for the delay. Hence, on the facts and circumstances of the case, in substantial interest of justice, the delay is condoned.

9. We have carefully considered the submission and perused the records. We find that the provision of section 115BBC reads as under:

Anonymous donations to be taxed in certain cases.

115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

⁷[(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

- (A) five per cent of the total donations received by the assessee; or
- (B) one lakh rupees, and

⁸[(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.]]

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

- (a) any trust or institution created or established wholly for religious purposes;
- (b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any

hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.]

The Id. CIT(A) in his order has noted that the Trust is totally religious charitable trust, hence, the provision of section 115BBC(1) shall not apply. Still he has proceeded to invoke the provision of section 115BBC(1). We find that this is quite contradictory when the Id. CIT(A) has found that the assessee is falling under section 115BBC(2), then the provision of section 115BBC(1) are not applicable. Hence, the impugned amount cannot be subject to tax u/s. 115BBC. Hence, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

10. In the result, the assessee's appeal is allowed.

Order pronounced by listing the result on the Notice Board of the Bench under Rule 34(4) of the Appellate Tribunal Rules, 1963.

Sd/

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RAM LAL NEGI
JUDICIAL MEMBER

Sd/-

SHAMIM YAHYA
ACCOUNTANT MEMBER

DATED: 15.01.2019

Copy of the order forwarded to:

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

Roshani, Sr. PS

By Order

(Sr. P.S./P.S.)
ITAT