

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]**

I.T.A. No. 2650/Kol/2019

Assessment Year: 2010-11

Shree Shree Mohanananda Samaj Seva Samity.....Appellant
AE-467, Salt Lake City,
Kolkata - 700 064.
[PAN: AADTS 7675 N]

Vs

ITO, (Exemption) Ward 1(3) Kolkata.....Respondent
10B, Middleton Row,
Kolkata - 700 071.

Appearances by:

Shri V.N. Datta, Advocate appearing on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : March 12, 2020

Date of pronouncing the order : June 05, 2020

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 25, Kolkata dated 18.10.2019 and the issue involved therein relates to the disallowance of assessee's claim for exemption of Rs. 13,48,365/- u/s 11(2) of the Income Tax Act, 1961.

2. The assessee in the present case is a trust which is registered u/s 12A of the Income Tax Act, 1961. The return of income for the year under consideration was filed by the assessee on 08.11.2010 declaring its total income at Nil. Although the said return was initially processed by the AO u/s 143(1) of the Act, the assessment was subsequently reopened by him and a notice u/s 148 was issued by him to the assessee on 26.03.2015. In reply, a letter was filed by the assessee requesting that the return filed originally on 08.11.2010 be treated as the return filed in response to notice u/s 148. As noticed by the AO, the assessee had set apart a fund of Rs. 13,48,365/- during the year under consideration by virtue of section 11(2) of the Act. In

support of the same, Form No. 10 was filed by the assessee showing the purpose of setting apart a fund for Thirthashram and other charitable objects of the trust. According to the AO the purpose of setting apart a fund as per section 11(2) of the Act should have been specific in nature and since the purpose as shown in Form No. 10 was general in nature, he disallowed the claim of the assessee for exemption u/s 11(2) of the Act and made an addition of Rs. 13,48,365/- to the total income of the assessee in the assessment completed vide an order dated 04.03.2016 passed us 144/147 of the Act.

3. Against the order passed by the AO u/s 144/147, an appeal was preferred by the assessee before the Ld. CIT(A) challenging the validity of the assessment made by the AO as well as disputing the addition made therein on account of disallowance of exemption 11(2) of the Act. During the course of appellate proceedings before the Ld. CIT(A), a detailed submission was made in writing mainly on the issue of validity of the assessment made by the AO u/s 144/147 of the Act. The said submission was forwarded by the Ld. CIT(A) to the AO for the latter's comment and after considering the remand report submitted by the AO, the Ld. CIT(A) did not find merit in the case of the assessee challenging the validity of assessment made by the AO u/s 144/147 of the Act. He accordingly upheld the validity of the said assessment and dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has mainly raised argument in support of the assessee's case on the issue of its claim for exemption u/s 11(2) of the Act. He has submitted that a similar claim made by the assessee for exemption u/s 11(2) of the Act has been allowed by the AO in the assessment completed u/s 143(3) of the Act vide an order dated 29.03.2016 for A.Y. 2013-14 (copy of the order placed at page no. 28 to 30 of the Paper Book). He has also submitted that a similar issue involved in assessee's own case for A.Y. 1995-96 and the same was allowed by the Tribunal vide paragraph no. 4 to 7 of its order dated 28.02.2002 passed in ITA No. 1822/Kol/1996 which read as under:

"4. We have heard the rival submission, gone through the orders of the authorities below and found that the assessee is a Public Charitable Trust existing since long back and in the earlier years and subsequent years also, it was allowed the benefits of exemption. During the relevant assessment year, the assessee has filed Form No. 10 on 27th October, 1995 as per which fund has been accumulated for the purpose of its first public charitable purposes like Hospital, second educational institution and Tirthashram. The AO was of the view that the purposes mentioned in Form No. 10 in vague in nature and held that in the scheme of the Act is applicable for exemption for public charitable trust u/s 11(2) has to be for specific purposes for which the assessee wants to apply its funds. The AO relied on the judgment reported in D.I. (Exemption) vs Trust of Singhanian Charitable Trust (199 ITR 819). The judgment relied on by the AO is not applicable to the facts and circumstances of the case, in so far as in the abovementioned case, the resolution passed by the Board of Trustees of the Trust was as follows:

'That consent be and is hereby accorded that, out of the balance of unapplied income of Rs. 1,94,125/- for the year, the sum of Rs. 68,814/- be accumulated and or not apart for purposes of application to any one or more of the objects of the trust is set out in items no. (i) to (xvi) under paragraph 1 of the deed of trust till the previous year ending on March 31, 1994'

5. *It is apparent from the above that the purposes for which the fund was actually vague, and not specific. In so far as it is fixed for anyone or more of the objects of the Trust set out in the Trust Deed, whereas in the present case, out of the other objects, the fund was clearly earmarked for first public charitable purposes like hospital, second educational institutions and Tirthasharm in the Form 10 filed by the assessee on 27.10.1995.*

6. *Moreover, the Hon'ble Supreme Court in the case of CIT, A.P. vs Andhra Pradesh State Road Transport Corporation (159 ITR 1) held that the test is 'what is the predominant object of the activity – whether it is to carry out a charitable purpose or to earn profit? If the predominant object is to carry out a charitable purpose and not to earn profit, the purpose would not lose its charitable character merely because some profit arises from the activity.*

7. *In view of the above, we are of the considered opinion that there is no infirmity in the order of the Id. CIT(A) in granting exemption to the assessee trust."*

5. As the issue involved in the present case as well as all the material facts relevant thereto are similar to that of 1995-96, I respectfully follow the order of this Tribunal for A.Y. 1995-96 and direct the AO to allow the claim of the assessee for exemption u/s 11(2).

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

Order Pronounced in the Open Court on 5th June, 2020.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 05/06/2020
Biswajit, Sr. PS

Copy of order forwarded to:

1. Shree Shree Mohanananda Samaj Seva Samity, AE-467, Salt Lake City, Kolkata – 700 064.
2. ITO, (Exemption), Ward 1(3), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata