IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES **" A "** BENCH: BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos.1860 to 1864/Bang/2018 &
3442 & 3443/Bang/2018
(Assessment Years : 2009-10 to 2015-16)

M/s. Bidar Nirmithi Kendra,
Basaveshwara Circle, Naubad, Bidar. ….Appellant
PAN:AABAN0989k

Vs.

Income Tax Officer,
Ward 1, Bidar. ……Respondent.

Assessee By:	Shri T. Srinivasa, C.A.
Revenue By:	Ms. Neera Malhotra, CIT (D.R)

Date of Hearing :	10.03.2020
Date of Pronouncement :	13.03.2020

O R D E R

PER BENCH :

These are the appeals filed by the assessee against separate orders of Commissioner of Income Tax (Appeals), Gulbarga passed under Section 143(3) r.w.s. 147 and 264 of the Income Tax Act, 1961 ('the Act'). Since all the appeals have common and identical issues, they are clubbed and heard together and consolidated order is passed. For the sake of convenience, we shall take up ITA No.1860/Bang/2018 and the facts narrated therein.

2. The assessee has raised the following grounds of appeal and additional grounds of appeal as under:

1. The impugned order passed by the learned Commissioner of Income Tax (Appeals), Kalaburgi is highly unjust, arbitrary and against the facts and circumstances of the case

2. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the appellant is a Government of Karnataka sponsored society, registered under The Societies Registration Act, 1960 and established for the purpose of carrying of charitable activities for the advancement of general public utility and does not involve any activity in the nature of trade, commerce or business.

3. The learned Commissioner of Income Tax (Appeals) is not justified to have upheld the findings of the learned assessing officer, so for as relates to admissibility of the re-audited financial statements/ re-computation of Appellant's total income.

4. The learned Commissioner ought to have appreciated that the learned assessing officer was not justified to have declined to entertain the re-audited financial statements linking the same to the provisions of section 44AB of the Income Tax 1961.

5. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the Learned Pr. Commissioner of Income Tax, Kalaburgi had, vide her order dated 29/12/2016, set aside the original assessment order dt. 07/03/2016 in its entirety and accordingly the learned assessing officer was required under law to commence the re-assessment proceedings, de-novo, duly admitting/examining all documents submitted by the appellant including the re-audited financial statements/ recomputed statement of income.

6. The learned Commissioner of Income Tax (Appeals) is not justified to have declined to treat the assessment as an agent of State of Karnataka established solely for the purpose of implementing the social/ public welfare measures for and on behalf of its Principals/ Local Authorities

7. The learned Commissioner of Income Tax (Appeals) is not justified to have declined to uphold the contention of the appellant that their activities were not in the nature of trade/commerce and consequently the appellants' income were exempted from the provisions of Income Tax Act, 1961.

8. The learned Commissioner of Income Tax (Appeals) ought to have followed the principles laid down by the Hon'ble ITAT (Mum) in the case of M/s City & Industrial Development vs. Asst. Commissioner of Income Tax and Hon'ble High Court (Mum) in the case of Percival Joseph Parera vs. Special Land Acquisition Officer

9. The learned Commissioner of Income Tax (Appeals) ought to have appreciated that the learned assessing officer had passed the impugned order in a mechanical manner without application of mind and without examining the applicability of the following decisions/CBDT circular cited by the appellant:
    a. Gemini Oils (P) Ltd Vs. CIT ITAT (Mum)
    b. Sinclarie Murray & Co (P) Ltd Vs. CIT (SC)
    c. Herculas Pigment Industry Vs. ITO ITAT (Mum)
    d. CBDT Circular No 148, Dated: 11/04/1955.

Additional Grounds of Appeal

The appellant herein, begs to urge the following additional grounds of appeal in addition to the nine (9) grounds urged in the appeal memorandum and prays that the Hon'ble Tribunal may kindly be pleased to admit the same in the interest of justice:

10. That in the facts and circumstances of the case, the learned lower authorities ought to have appreciated that the activities of the appellant were not in the nature of trade and commerce and hence the income earned by appellant are not chargeable to income tax under the head "Profits and gains of business or profession" and consequently the provisions of section 40(a)(ia) are not attracted.

11. That in the facts and circumstances of the case, the learned lower authorities ought to have appreciated that from the Asst Year 2010-11 Explanation No III to section 194C had been deleted vide Finance (No 2) Act 2009 and consequently the learned assessing officer is neither authorized under law nor justified, in invoking the provision of section 40(a)(ia) based on a non-existent explanation.

Without prejudice to the above two additional grounds of appeal the appellant begs to urge the following alternate ground.

12. That in the facts and circumstances of the case, the learned lower authorities ought to have restricted the disallowances, if any warranted, to 30% of the amounts involved, as provided for under the amended provisions, vide Finance (Act-2) Act 2014, effect from 01st April 2015 which has been held to be retrospective in operation in the following decisions:

a. ITAT (Ahmd) in the case of M/s. Amruta Quarry Works Vs ITO (Modasa);
b. Hon'ble HC(Raj) in the case of Sri. Bhanwar Lal Choudhary Vs ACIT
c. Hon'ble SC in the case of CIT Vs Vatika Township (P) ltd

Ground No 13

That in the facts and circumstances of the case, the learned lower authorities ought to be appreciated that the appellant is Charitable Institution (registered under the Society's Registration Act 1960), its income has to be computed as provided under section 11, under Chapter III of the Income Tax Act, 1961 and consequently provisions of section 40 (a) (ia) of the Income Tax Act, 1961 were not applicable.

3. At the time of hearing, the learned Authorized Representative has filed petition for condonation of delay in filing the appeal with 1 day delay and the LdDr has no objections and the delay is condoned. Further, The ldAr prayed for the admission of additional grounds of appeal and the Revenue has no serious objections, accordingly additional grounds of appeal are admitted.

4. The learned Authorized Representative has restricted his arguments on the additional grounds of appeal.

5. The Brief facts of the case are, the assessee is a society Registered under Karnataka Societies Act, 1960 and having income from Government Contracts and Hiring of vehicles. The Assessing Officer recorded the reasons for escapement of income has issued Notice under Section 148 of the Act for filing the Return of Income. Whereas, the assessment was concluded under Section 144 r.w.s. 147 of the Act on 22.02.2016. Subsequently, the assessee society filed Revision Petition under Section 264 of the Act before the Prin. CIT, Kalaburgi ,whereas the Prin. Cit vide order under Section 264 of the Act has set aside the assessment to the file of Assessing Officer with direction to pass a fresh assessment order in accordance with law and provide adequate opportunity of hearing to the assessee. The Assessing Officer posted the case for hearing and provided opportunity of hearing to the assessee. The assessee has filed the Return of Income and the AO in the assessment proceedings called for details and finalized the assessment with disallowance of expenditure for non-deduction of TDS applying the provisions of Section 40a(ia) of the Act as per Act. The AO observed that TDS was not deducted on sub-contractors work expenses, consultancy charges, fabrication expenses, labour and vehicle hire charges aggregating to Rs.8,65,14,782/-.Further the Assessing Officer found that the expenditure was debited in respect of Student Welfare Forum Scholarship, Expenditure on Bidar Utsav, Outstanding VAT and return of ACA Fund aggregating to Rs.1,63,38,786/- since the assessee has not

established the nature of expenses, the AO applied the provisions of Section 43B of the Act, were the assessee should have paid the amount to Government authorities within due date under Section 139(1) of the Act and Assessed the total income of Rs.10,59,46,438 and passed the order under Section 143(3) r.w.s. 147 and 264 of the Act on 21.12.2017. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). The CIT(Appeals) considering the grounds of appeal and submissions of the assessee and the facts that no Registration 12A of the Act is available with the assessee, relied on the judicial decisions and confirmed the disallowances of AO and dismissed the assessee's appeal. Aggrieved by the order of CIT(Appeals), the assessee has filed an appeal before the Tribunal.

6. At the time of hearing, the learned Authorized Representative submitted that the CIT(Appeals) has erred in dismissing the appeal including the additional grounds of appeal without considering logical and reasonable explanations. The assessee has raised additional grounds of appeal before the Tribunal on the jurisdiction and applicability of provisions of section 40a (ia) of the Act. The learned Authorized Representative submitted that the assessee was granted Registration u/sec12AA vide order dt.9.3.2020 and placed a copy on record. Further supported the submissions with paper book and prayed for allowing the

appeal. Contra, the ld. DR objected to the submissions and relied on the CIT (Appeals) order.

7. We heard the rival contentions and perused the material on record. The learned Authorized Representative has restricted his arguments to the extent of additional grounds of appeals. The contention of the learned Authorized Representative that the CIT(Appeals) has dismissed the grounds of appeal without considering the explanations and the process of obtaining of registration under 12A of the Act. We found that the CIT(Appeals) has not made any observations or findings in respect of additional grounds of appeal, that the provisions of Section 40(a)(ia) of the Act are not applicable to the charitable institutions registered under Karnataka Societies Act, 1960.The learned Authorized Representative demonstrated with the copy of order of Registration under Section 12AA of the Act dt.9.3.2020 and explained that the fact of Registration under Section 12A was not available before the assessing authority or the CIT(Appeals) and prayed for an opportunity to substantiate before the lower authorities. We considering the submissions of the learned Authorized Representative, facts and circumstances, and the Registration under Section 12AA of the Act obtained, find that the CIT (Appeals) order was passed on 19.03.2018 whereas the Registration under Section 12A of the Act was granted on 9.3.2020.Further, in the appellate proceedings before CIT(Appeals),Registration under Section 12AA of the Act was not available

to the assessee and learned CIT(Appeals) dealt on disputes and dismissed the appeal. The assessee has filed additional grounds of appeal,which are to be adjudicated by the appellate authority considering availabilityof Registration U/sec12AA of the Act. Accordingly, to meet the ends of justice, we set aside the order of CIT(Appeals) and restore entire disputed issues and additional grounds of appeal to the file of CIT(Appeals) to adjudicate afresh on merits and pass a speaking order, if the assessee fails on legal issue then the CIT(Appeals) shall adjudicate the disputed issue on merits considering the Registration U/sec12AA of the Act and the assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information for early disposal and allow the grounds of appeal of assessee for statistical purposes.

8. Similarly, the assessee has filed appeals in ITA Nos. 3442 & 3443/Bang/2018 and ITA no 1861 to 1864/Bang/2018 for A.Ys 2009-10&2011-12 to 2015-16 were the delay in filling the appeals is condoned and the issues are similar and identical. The decision in ITA No.1860/Bang/2018 shall equally apply. Accordingly, we set aside the order of the CIT(Appeals) in these appeals and restore the entire disputed issue to the file of CIT(Appeals) for adjudication on merits with similar directions and allow the grounds of appeals of assessee for statistical purposes.

9. In the result, the assessee's appeals in ITA Nos. 3442 & 3443/Bang/2018 and 1860 to 1864/Bang/2018 are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(A.K. GARODIA) **ACCOUNTANT MEMBER**	**(PAVAN KUMAR GADALE)** **JUDICIAL MEMBER**

Dated: 13.03.2020.

*Reddy GP

Copy to

1. The Appellant
2. The Respondent
3. CIT (Appeals)
4. Prin. CIT
5. DR, ITAT
6. Guard File.

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore