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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 13.12.2022*

\+ **ITA 755/2019 & CM Appl.36702/2019**

SRI GURU SINGH SABHA ..... Appellant

Through: Ms Shreya Jain, Adv.

versus

DY. COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr Vipul Agarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the order dated 30.10.2018 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] concerning Assessment Year (AY) 2014-15. The appeal was admitted by this Court on 20.11.2019, when the following questions of law were framed:

> *"(i) Whether in the facts and circumstances of the case, the Tribunal erred in not appreciating that since the Appellant received an amount of Rs. 5,07,274/- (Rupees Five Lacs Seven Thousand Two Hundred and Seventy-Four Only) towards offerings on account of 'Gurupurab and Kirtan Darbar' and incurred expenses of Rs. 3,22,837/- (Rupees Three Lacs Twenty Two Thousand Eight Hundred and Thirty Seven Only) on Kirtan and Darbar against the said receipts in the relevant Assessment Year, the assessing officer had wrongly assessed the entire receipts of Rs. 5,07,274/- (Rupees Five Lacs Seven Thousand Two Hundred and Seventy Four Only) as income without allowing the corresponding expenses and without appreciating the fact that only surplus is taxable as income and not the entire gross receipts?*
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> *(ii) Whether in the facts and circumstances of the case, the Tribunal erred in not appreciating that section 167B of the Act has been incorrectly applied to the Appellant and that the Appellant has been incorrectly taxed at the maximum marginal rate ignoring the specific and unambiguous provisions of the law?*
>
> *(iii) Whether in the facts and circumstances of the case, the Tribunal*

erred in not appreciating that the alterations made were neither prima facie adjustments nor apparent from information on record in the return and thus were not permissible under the ambit of Section 143(1) of the Act?

2. The broad facts required to be noticed to adjudicate the instant appeal, are the following:

2.1. The appellant before us i.e., the assessee had filed its return for the aforementioned AY i.e., AY 2014-15, at which point in time, it had declared income amounting to Rs.2,39,350/-.

2.2. The return filed by the appellant/assessee was processed by the Centralized Processing Centre, Bangalore [in short, "CPC"] under Section 143(1) of the Income Tax Act, 1961 [in short, "1961 Act"]. The CPC pegged the taxable income of the appellant/assessee at Rs.13,41,461/-. While doing so, expenses incurred by the appellant/assessee towards activities carried out by it, amounting to Rs.3,22,837/- were disallowed. These activities involved holding "*Gurupurab and Kirtan Darbar*".

2.3 The appellant/assessee was also taxed at maximum marginal rate.

2.4. Being aggrieved, the appellant/assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]. The CIT(A) substantially confirmed the view taken by the CPC and thus allowed the appeal only to extent it concerned ground number 5, which pertained to exclusion of the amount received towards building fund [i.e., Rs 5,69,100/-] from the income of the appellant/assessee.

2.5. This resulted in the appellant/assessee escalating the matter to the Tribunal. The Tribunal *via* the impugned order, affirmed the view taken by the CIT(A).

3. It is in these circumstances that the instant appeal has been preferred

and the questions of law, as indicated above, were framed.

4. Ms Shreya Jain, who appears on behalf of the appellant/assessee, says that despite specific grounds being raised before the CIT(A) and the Tribunal that the appellant was a society registered under the Societies Registration Act, 1860 [in short, "1860 Act"] and hence the maximum marginal rate could not have been applied, the impugned order was passed, ignoring the plain language of Section 167B of the 1961 Act.

4.1. In the same vein, Ms Jain has also submitted that the appellant/assessee had also brought to the notice of the CIT(A) as well as the Tribunal that what could be taxed, apart from anything else, was only the income of the appellant and not gross receipts.

5. Mr Vipul Agarwal, who appears on behalf of the respondent/revenue, on the other hand, submits that, in a sense, the appellant/assessee is responsible for its own woes.

6. In this context, Mr Agarwal has drawn our attention to the return filed by the appellant/assessee in which the appellant has shown its status as Association of Persons/Body of Individuals (AOP/BOI). Mr Agarwal says that a plain reading of Section 167B would show the maximum marginal tax is applicable in case of AOPs/BIOs.

6.1. Therefore, it is Mr Agarwal's contention that the CPC was correct in its view in applying the maximum marginal rate of tax to the appellant/assessee.

7. Insofar as the other aspect is concerned, as to whether the CPC was right in taxing gross receipts as against income, Mr Agarwal relies upon the order of the CIT(A) as well as the Tribunal to highlight the fact that the entire case set up by the appellant/assessee was that it was entitled to claim

exemption under Section 11 and 12 of the 1961 Act, having regard to the first proviso to Section 12A(2) of the Act.

7.1. Mr Agarwal, in this context, states that there is no dispute about the fact that the appellant/assessee had applied for registration under Section 12AA of the 1961 Act on 27.11.2015 and therefore, the provisions of Section 11 and 12 of the 1961 Act would kick in only in AY 2016-17 and thereafter.

7.2. In other words, the argument was that, for the AY in issue i.e., AY 2014-15, the appellant/assessee could not claim exemption under Section 11 and 12 of the Act, which is what has been held by the CIT(A) and confirmed by the Tribunal.

8. We have heard the learned counsel for the parties and perused the record.

8.1 The record, as presently made available to us, shows that the appellant/assessee was registered as a society as far back as on 10.02.1978 under the 1860 Act. A copy of the said certificate is available on record and is marked as Annexure A-2.

8.2. If this position is correct, then on a plain reading of Section 167B of the Act, one can only conclude that the maximum marginal rate cannot be made applicable to the appellant/assessee. For the sake of convenience, the said provision is extracted hereafter:

> *"**167B.** (1) Where the individual shares of the members of an association of persons or body of individuals (**other than a company or a co-operative society or a society registered under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India**) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :*

> ***Provided*** *that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.*
> *(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)],—*
> *(i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;*
> *(ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate."*
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> [Emphasis is ours]

9. Mr Agarwal is right to the extent that the appellant/assessee is, perhaps, responsible for its own woes. The return filed by the appellant/assessee did indicate the appellant/assessee's status as AOP/BOI.

9.1. However, having said that, the CIT(A) failed to exercise powers which were available with him and examine a specific ground of appeal raised by the appellant/assesseee. We may, for the sake of convenience, extract the ground raised in that behalf by the appellant/assessee in its appeal filed before the CIT(A):

> *".....**The assessing officer erred in law and on fact, in assessing the income of the assessee society at maximum marginal rate instead of applying slab rate applicable in case of AOP**. Thus necessary directions should be given to compute tax by applying slab rates on the assessee....."*
>
> [Emphasis is ours]

10. Clearly, the assertion made by the appellant/assessee in one of the

grounds taken in the appeal was that it was constituted as a society. If this position is correct, [something which is not disputed before us by the revenue] then, as indicated hereinabove, the maximum marginal rate of tax could not have been applied to the appellant/assessee.

11 This brings us to the other aspect of the matter i.e., as to whether the CIT(A), having concluded that the provisions of Sections 11 and 12 of the Act were not applicable to the appellant/assessee in the AY in issue, he ought to have then gone on to rule on what was, really, an alternate ground, i.e., should gross receipts, simpliciter, be brought to tax . In other words, should gross receipts or the taxable income arrived at, after adjusting deductible expenses be subjected to tax?

11.1. Concerning this aspect as well, according to us, CIT(A) side-stepped the contention, although, a specific ground had been raised by the appellant/assessee in the appeal filed before the CIT(A). For the sake of easy reference, the relevant ground raised in the appeal before the CIT(A) is set forth hereafter:

> *"....**The assessing officer erred in law and on facts in considering the gross receipts of Rs.13,41,461/- as taxable income without allowing the amount of expenses of Rs. 3,22,837/- incurred towards the said receipts and ignoring that only surplus is taxable as income and not the gross receipts.** Necessary directions should be issued to allow expenses against gross receipt and consider only the surplus amount as taxable income....."*
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> [Emphasis is ours]

12. Mr Agarwal cannot but accept that in the succeeding AY i.e., AY 2015-16, CPC has brought to tax that amount which constitutes excess of income over expenditure i.e., from gross receipts, deductible expenses have been adjusted.

13. We are also of the view that since the return of the appellant/assessee

was processed under Section 143(1) of the 1961 Act, if there were any doubts, scrutiny should have been carried out and the necessary powers available under the 1961 Act should have been taken recourse to.

14. Evidently, this was not done and therefore, the order was passed by the CPC and confirmed by the CIT(A) without delving into the specific grounds raised by the appellant/assessee, which remain unrebutted, cannot be sustained.

15. It is also a matter of record that the Tribunal also failed to take into account similar grounds raised by the appellant/assessee consistent with what was averred in the appeal preferred before CIT(A). This is evident upon perusal of ground nos. 3 and 5 incorporated in the appeal instituted before the Tribunal.

16. Thus, having regard to the aforesaid, the questions of law are decided in favour of the appellant/assessee and against the respondent/revenue. The impugned order passed by the Tribunal and the order of CIT(A) are set aside.

17. Appeal is disposed of in the aforesaid terms. The pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 13, 2022
pmc/r