

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 829/JP/2016
निर्धारण वर्ष/Assessment Year : 2010-11

Shri Ramji Lal Arya Kanya Chhatrawas Samiti, Swami Dayanand Marg, Alwar.	बनाम Vs.	A.C.I.T., Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAETS 0631 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Kranti Mehta (CA)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 13/10/2017
उदघोषणा की तारीख / Date of Pronouncement : 28/11/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order dated 04/07/2016 U/s 154 of the Income Tax Act, 1961 (in short the Act) passed by the Id CIT(A), Alwar for the A.Y. 2010-11, wherein the assessee has raised only one ground of appeal, which is as under:

- "1. That the Id. CIT(A), Alwar erred in rejecting the application of the appellant U/s 154 even when under the facts and circumstances of the case and as per the provisions of Section 11 there was mistake in the appeal order in appeal No. 115/2013-14 dated 15/7/2015 apparent on record and very much covered in the scope*

of section 154 of the IT Act since once the delay in filing Form No. 10 was condoned, all surplus income as per Form No. 10 should have been allowed to be carried forward and not 15% of the income. Hence, the rectification application of the appellant U/s 154 deserves to be accepted."

2. Earlier, this appeal of the assessee has been dismissed by this Bench vide order dated 24/01/2017 for want of prosecution. Against the order passed by the Bench, the assessee filed M.A. No. 55/JP/2017 for recalling of the order dated 24/01/2017. The ITAT vide order dated 24/7/2017 passed in the M.A. has recalled the order dated 24/01/2017 and fixed the case for regular hearing on merit.

3. The assessee Trust is engaged in Charitable activities and philanthropic service to the society and providing hostel facility to girls/women as per objects mentioned in the constitution under the name and style of Shri Ramji Lal Arya kanya Chhatrawas Samiti, Alwar. The Trust is registered U/s 12AA of the Act by the CIT, Alwar on 24/08/2004. The return of income was filed by the assessee on 15/10/2010 declaring NIL income. The case was selected for scrutiny and the assessment was finalized on 19/3/2013 computing total taxable income of Rs. 15,61,274/-.

4. Being aggrieved by the order of the Assessing Officer, the assessee preferred appeal before the Id. CIT(A), who vide order dated 15/07/2015 partly allowed the appeal of the assessee by directing the Assessing Officer to allow the claim of the assessee for carry forward of income to the extent of 15% as per the provisions of the Act after condoning the delay in filing of Form No. 10 and therefore, income of the assessee Trust would be recomputed accordingly by the Assessing Officer.

5. Against the order of the Id. CIT(A) dated 15/07/2015, the assessee filed a rectification application dated 07/6/2016, who after considering the submissions of the assessee, rejected the application vide his order dated 04/7/2016 by holding as under:

"3. I have gone through the application filed by the appellant and the material available on record and find that request made by the appellant with regard to carry forward of income exceeding 15% of its income to subsequent years, would amount to review of the order and would not fall within the ambit of the scope of the provisions of this Section. The finding given in the appellate order is that carry forward of income to the extent of 15% may be allowed to the appellant. Thus, I find that there is no mistake apparent from record in the appellate order passed. Hence, application for rectification filed by the appellant is rejected."

6. Now the assessee is in appeal before the ITAT. While pleading on behalf of the assessee, the Id AR has submitted as under:

In the above connection and with reference to the appeal order dated 15-07-2015, I respectfully beg to submit that there is mistake apparent on record in para 4.11 of CIT (Appeals) order which reads as under-

"After considering the facts and circumstances of this case, I find that AO has merely rejected the claim of the appellant on the ground that Form No. 10 was not filed in time and after placing reliance on the above mentioned judicial decision, direct the AO to allow the claim of the appellant for carry forward of income to the extent of 15% as per the provisions of IT Act after condoning the delay in filing of Form No. 10. Therefore, income of the appellant would be recomputed accordingly."

Your honor will kindly observe that the direction given to the AO as above is self contradictory and contrary to the provisions of the IT Act because once delay in filing Form No. 10 during assessment proceeding is condoned by CIT(A) and Form No. 10 is treated as validly filed document by him, there cannot be the restriction of carry forward of income to the extent of 15%. You will kindly appreciate that there is no necessity to file Form No. 10 for carry forward of income to the extent of 15% in terms of Section 11(1)(a) which reads as under-

"Income from property held for charitable or religious purposes.

11. (1) Subject to the provisions of section 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of (fifteen) per cent of the income from such property;"

Every charitable/religious institution is entitled to carry forward 15% of its income to subsequent years without filing Form No.10. Form No. 10 is filed only if the income to be carried forward to subsequent years is more than 15% of the total receipts as laid down in Explanation (2) below Section 11(1) which reads as under-

"Explanation.—For the purposes of clauses (a) and (b),—

(1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;

(2) if in the previous year, the income applied to charitable or religious purposes in India falls short of eighty-five per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—

(i) for the reason that the whole or any part of the income has not been received during that year, or

(ii) for any other reason, then—

(a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, and

(b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount, may, at the option of the person in receipt of the income be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived."

This was a mistake apparent from record rectifiable u/s 154 of IT Act, yet the CIT(A) rejected the rectification application that rectification would amount to review of the order and would not fall within the ambit of scope of section 154.

It is humbly submitted that overlooking of statutory provision is very much a mistake apparent from record rectifiable u/s 154 of IT Act and would never be called as review. Rather, it is duty of all income tax authorities to apply correct statutory provision.

Once Form No. 10 is treated as validly filed as mentioned in the appeal order, all surplus income as per Form 10 is to be carried forward and not 15% of the income, otherwise the purpose of filing Form 10 will be defeated.

Since this is a mistake quite apparent on record, I request your honor to kindly issue direction to carry forward the income as per Form No. 10 and oblige."

7. On the other hand, the Id Sr. DR has relied on the orders of the authorities below.

8. I have heard both the sides on this issue. The Id. CIT(A) in his order has given a finding, which is as under:

"After considering the facts and circumstances of this case, I find that AO has merely rejected the claim of the appellant on the ground that Form No. 10 was not filed in time and after placing reliance on the above mentioned judicial decision, direct the AO to allow the claim of the appellant for carry forward of income to the extent of 15% as per the provisions of IT Act after condoning the delay in filing of Form No. 10. Therefore, income of the appellant would be recomputed accordingly."

Thus, the Id. CIT(A) has condoned the delay in filing the Form No. 10. Section 11(2) of the Act provides that where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided such person furnishes a statement in the prescribed form (the prescribed form is Form No. 10 under Rule 17(2)) and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years. Form No. 10 is to be furnished before expiry of time allowed under sub-Section (1) of Section 139, for furnishing the return of income. The Id. CIT(A) has condoned the delay in filing the Form No. 10, therefore, the income of the assessee needs to be recomputed as the Form No. 10 has been filed in time. The Id. CIT(A) has given a direction that the appellant's claim for carry forward of income to the extent of 15% is to be allowed. However, with regard to the income more than 15% for

which the assessee has submitted Form No. 10, the issue remains to be decided. Therefore, in the interest of justice and equity, I find it appropriate to restore the issue to the file of the Assessing Officer to be decided afresh as per law.

9. In the result, the appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 28/11/2017.

Sd/-

(भागचंद)

(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28th November, 2017

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Ramji Lal Arya Kanya Chhatrawas Samiti, Alwar.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-2, Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 829/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar