

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER  
AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.775/Del/2016  
Assessment Year:2008-09

Indian Road Congress, Kama Koti Marg, Sector-6, R. K. Puram, New Delhi. PAN:AAATI 3600 c (Appellant)	Vs.	ADIT (E) Trust, Cir. II, New Delhi.  (Respondent)
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Appellant by	Shri Sushil Kumar Gupta, C.A.
Respondent by	Shri S. S. Rana, CIT, (DR)
Date of hearing	10/04/2019
Date of pronouncement	12/04/2019

**ORDER**

**PER T. S. KAPOOR, A.M.**

This is an appeal filed by the assessee against the order of Learned CIT(A)-40, New Delhi dated 14/12/2015 pertaining to assessment year 2008-2009. In this appeal the assessee has raised the following grounds:

*"1. That the learned Assistant Director of Income Tax (E) (hereinafter called ADIT(E) has erred in reopening the completed assessment u/s. 147 on the ground that the Form No. 10 was not filed along with the return of Income for the asstt. Year 2008-09.*

*2. That the ADIT(E) erred in adding the amount of Rs.55,38,710/- which was set apart for accumulation for specific purpose was duly intimated to the ADIT through Form No. 10 along with the copy of the resolution as the same were filed along with the Income Tax Return for the asstt. Year 2008-09 on 30<sup>th</sup> September 2008.*

*3. The learned CIT(Appeals) 40 dismissed the appeal*

*without considering the facts of case stated above.”*

2. Learned A.R., at the outset, submitted that the case of the assessee was reopened u/s 147 of the Act for the reason that the assessee had not filed Form-10 along with the return of income whereas the fact remains that Form-10 was filed along with the return of income and in this respect our attention was invited to page 20 of the paper book where a copy of income tax return showing enclosures was placed wherein Item No. 1 was stated to be enclosed was Notice u/s 10. Learned A.R. further took us to page No. 4 of the paper book where in the enclosures attached with the income tax return, there was mention of Form-10 for exercising options under section 11(2). Learned A.R. therefore, in view of these facts, submitted that the reopening u/s 147 was not justified as during original assessment proceedings the assessment was passed u/s 143(3) of the Act and our attention was invited to assessment order dated 26/08/2010, placed at pages 1 & 2 of the paper book.

2.1 Arguing ground No. 2, Learned A.R. submitted that during the reassessment proceedings also the copy of Form-10 along with copy of resolution was filed before the Assessing Officer and Assessing Officer rejected the submissions by holding that there was a calculation mistake in Form-10. He submitted that Learned CIT(A) has also upheld the order of the Assessing Officer. Learned A.R. in this respect submitted that assessee was a Government organization which was undisputedly engaged in charitable activities and was duly registered u/s 12A of the Act and Learned A.R. therefore, filed a fresh Form-10 along with the copy of resolution for accumulation of funds. Learned A.R. submitted that in this Form-10 and resolution the mistakes pointed out by the authorities below have been removed and which should be considered for allowing benefit to the assessee.

3. Learned D.R., on the other hand, submitted that it is not correct on the part of the assessee to claim that the assessee had filed Form-10 while filing the return of income and in this respect the original assessment record was also produced. Learned D.R. submitted that though the copy of resolution was there on the record but Form-10 was not on record and during remand proceedings also the Assessing Officer had held that there was no Form-10 available on the record. Therefore, it was argued that Assessing Officer has rightly reopened the assessment and therefore, ground No. 1 taken by the assessee needs to be dismissed. Reliance in this respect was placed on an order of Hon'ble Supreme Court in the case of CIT vs. P.V.S. Beedies (P) Ltd. [1999] 103 Taxman 294 where the Hon'ble Court has held that reopening of case u/s 147(b) on the basis of factual information given by internal audit party was valid in law. Reliance was further placed on an order of Hon'ble Delhi High Court in the case of Indu Lata Rangwala vs. DCIT [2017] 80 Taxmann.com 102 (Delhi) for the proposition that it is not necessary for Assessing Officer to come across some fresh tangible material to form 'reasons to believe' that income has escaped assessment.

3.1 Arguing second ground Learned D.R. stated that the Form-10 filed by the assessee during reassessment proceedings was also not valid as it contained various mistakes as pointed out by the authorities below therefore, the corrected document in the form of Form-10 and resolution should not be accepted as question of not submitting Form-10 is a question of fact and reliance was placed on an order of Mumbai Bench of the Tribunal in the case of Ultratech Cement Ltd. vs. Addl. CIT [2017] TIOL-785-HC-MUM-IT. Learned D.R. further placed reliance on the case law of Hon'ble Supreme Court in the case of Addl.CIT vs. Gurjargravures (P) Ltd. [1978] 111 ITR 1 (SC).

4. Learned A.R., in his rejoinder, submitted that if the case is set aside to the Assessing Officer for reconsideration of its additional evidence, which is in the form of corrected Form-10 and resolution then he will not press ground No. 1 on legal issue. The opinion of Learned D.R. for setting aside the matter was sought who though objected to the proposal but stated that if the case is remitted back to the Assessing Officer, the Assessing Officer should be directed to examine the contents of Form-10 wherein the amount proposed to be accumulated already exceeds 15% as the amount represents 28% of the profits.

5. We have heard the rival parties and have gone through the material placed on record. We find that original assessment was completed u/s 143(3) of the Act vide order dated 26/08/2010, a copy of which is placed at pages 1 & 2 of the paper book. In the original assessment proceedings the Assessing Officer did not raise any objection regarding not filing of Form-10. The evidence in the form of copy of return of income and enclosures, as pointed out by Learned A.R. also, demonstrate the fact of having filed Form-10 along with the original return of income. Such evidences are in the form of copy of income tax return and list of enclosures placed at pages 1 to 20 of the paper book. However, the case of the assessee was reopened by recording the reasons that Form-10 was not filed by the assessee. The Learned CIT(A), after obtaining remand report from Assessing Officer, upheld the findings of the Assessing Officer that Form-10 was not on the record. The records demonstrated by Learned A.R. clearly shows that original Form-10 was filed by the assessee but the record of the Assessing Officer shows that Form-10 was not filed along with the return of income. Therefore, in view of these facts and circumstances, we hold that benefit of doubt has to be given to assessee. We further find that Form-10 submitted during assessment proceedings was also rejected by the authorities below as they observed certain mistakes and therefore, Learned A.R. has filed an amended and corrected copy of Form-10 and copy of resolution. The

benefit has been denied to the assessee on the basis of technical defects in the form but keeping in view the fact that assessee had in its possession evidence of having filed Form-10 alongwith return of income in original assessment proceedings, we find it appropriate to remit the issue back to the file of the Assessing Officer with a direction to examine the corrected Form-10 filed before us along with the corrected copy of resolution as the mistake pointed out by the Assessing Officer during reassessment proceedings also were of technical nature which cannot be made a basis for disallowing the claim of the assessee as admittedly the assessee is a charitable organization registered u/s 12AA of the Act. In view of the above, legal ground taken as ground No. 1 is dismissed as not pressed and ground No. 2 is allowed for statistical purposes.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

(Order pronounced in the open court on 12/04/2019)

**Sd/.**  
**(SUCHITRA KAMBLE)**  
**Judicial Member**

**Sd/.**  
**( T. S. KAPOOR )**  
**Accountant Member**

Dated:12/04/2019

\*Singh

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T.,