

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER  
AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

**ITA No.1898/Hyd/2017  
Assessment Year: 2015-16**

<b>International Institute of Information Technology, Survey No.25, Gachibowli, R.R. District. PAN: AAAAI 6797 B (Appellant)</b>	<b>Vs. DCIT (Exemptions), Circle-1(1), Hyderabad. (Respondent)</b>
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Assessee by: Sri M.V. Anil Kumar  
Revenue by: Smt. N. Swapna, DR

Date of hearing: 20/06/2019  
Date of pronouncement: 10/07/2019

**ORDER**

**PER A. MOHAN ALANKAMONY, AM.:**

This appeal is filed by the assessee against the orders of the Ld. CIT(A)-9, Hyderabad dated 14<sup>th</sup> September, 2017 in appeal No. 10103/DCIT (CPC)/2017-18 passed U/s. 154 & U/s.. 250(6) of the Act for the Assessment Year 2015-16.

2. The assessee has raised five grounds in its appeal and they are extracted herein below for reference:

- "1. The Commissioner of Income Tax erred in law and facts of the case in upholding the 154 order passed by the CPC ignoring the fact that your appellant filed the Notice under section 10 along with the*

*petition under section 154, which is rectification of mistake apparent from record, ought to have allowed accumulation under section 11(2) of the Income Tax Act, 1961.*

2. *The CIT(A) as well as the Assessing Officer erred in law and facts of the case in not granting exemption U/s. 11 r.w.s 12 and section 13 of the Act when your appellant is registered U/s. 12A of the IT Act, 1961.*
3. *The Assessing Officer ought not to have rejected the rectification petition filed U/s. 154, by accepting the Form 10 submitted online along.*
4. *The CIT (A) having appreciated the fact that for the first time online filing of Form 10 was introduced has caused difficulties, ought to have directed to accept the Form 10 and allow the accumulation as per section 11(2) and consequently allowed the exemption U/s. 11.*
5. *Assessing Officer erred in law and facts of the case in holding that your appellant is not eligible for exemption U/s. 11 in absence of filing the Form 10 online along with return of income, which was for the first time introduced for this assessment year and this being the first year, ought to have accepted the Form 10 filed along with the rectification petition.”*

3. Brief facts of the case are that the assessee is a registered society filed it's e-return of income for the relevant assessment year declaring NIL income. In the return of income assessee claimed accumulation of surplus U/s. 11(2) of the Act however failed to submit Form No.10 while filing the e-return of income U/s. 139(1) of the Act. Thereafter, the return of income was processed U/s. 143(1) of the Act on 14/3/2017 by the CPC, Bangalore wherein the claim for accumulation of surplus U/s. 11(2) of the Act was rejected because Form No.10 was not filed along with the return of income. Aggrieved by the order processed by

the CPC, Bangalore, the assessee filed rectification petition U/s.. 154 of the Act. However, the rectification petition was rejected by stating that there is no apparent mistake or prima facie error which is required to be rectified. The assessee carried the matter before the 1d CIT (A). During the appellate proceedings it was argued by the assessee that due to inadvertent mistake the Form 10 was not filed along with the return of income however it was filed subsequently and therefore the benefit of accumulation may be granted. However, the 1d CIT (A) held the issue against the assessee on the following count:

- (i) Since it was the first year wherein e-filing of Form 10 was made mandatory the assessee could have filed Form 10 at least manually if there was any difficulty in e-filing the Form 10.
- (ii) Even if the assessee has omitted to file the Form 10 along with the return of income U/s. 139(1) of the Act, the assessee could have filed the Form 10 before processing of the return U/s. 143(1) of the Act by the CPC, Bangalore.
- (iii) The Assessee has failed to file appeal against the order passed U/s. 143(1) of the Act instead resorted to seek rectification U/s. 154 of the Act which is not appropriate as rectification can be made only if there is mistake apparent on record or due to any prima facie error in the order.

- (iv) The case laws relied by the assessee were with respect to filing of Form 10 subsequent to filing of the return U/s. 139(1) of the Act but before passed the assessment order. However, in the case of the assessee the return was processed U/s. 143(1) of the Act and thereafter the Form 10 was filed. Therefore, the case laws relied on by the assessee is not with respect to identical facts.

4. At the outset, the Ld. AR submitted before us that the Ld. AO has disposed of the petition filed U/s. 154 of the Act without providing the assessee an opportunity of being heard. It was further submitted that the assessee had stated in his return of income all the details of the income received, details of application of income and the amount set apart / accumulated as per section 11(2) of the Act. The Ld AR further argued stating that submission of Form 10 is only a technical issue and therefore, it is a mistake apparent from record which can be rectified U/s. 154 of the Act. Reliance was placed on the decision of the Hon'ble Delhi High Court in the case of Rajindra Prestress Concrete Industries vs. ACIT reported in [1995] 52 TTJ (Del.) 178 wherein it was held that the decision of the Revenue with respect to rejection of claim of deduction U/s. 80HHA and 80J on the ground that audit report was not filed with the return could be rectified and decided in favour of the assessee if the audit report is filed at the stage of assessment proceedings by treating it to be a mistake apparent on record. It was

therefore pleaded that the matter may be remitted back to the Ld AO for fresh consideration. The Ld. DR on the other hand vehemently argued in support of the orders of the Ld. Revenue Authorities however could not controvert to the fact that the assessee was not provided with an opportunity of being heard before the Ld. AO while despising of the petition filed by the Assessee U/s. 154 of the Act.

5. We have heard the rival submissions and carefully perused the materials on record. From the facts of the case it is apparent that the Ld. AO had not provided the assessee with an opportunity of being heard before passing order in lieu of the petition filed U/s. 154 of the Act by the assessee which is in gross violation of principles of natural justice. Therefore, in the interest of justice we hereby remit the entire matter back to the file of the Ld. AO for *de novo* consideration.

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

Pronounced in the open Court on 10<sup>th</sup> July, 2019.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(A. MOHAN ALANKAMONY)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated:10<sup>th</sup> July, 2019

**OKK**

Copy to:-

- 1) International Institute of Information Technology, C/o. M. Anandam & Co., Chartered Accountants, 7A, Surya Towers, S.P. Road, Secunderabad – 3.
- 2) Deputy Commissioner of Income Tax (Exemptions), Circle-1(1), Hyderabad.
- 3) The CIT(A)-9, Hyderabad
- 4) The Pr. CIT-9, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File