

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC+C": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 1364/Del/2019
(Assessment Year: 2015-16)

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| Siddharth Intercontinental Hotels (India) Ltd, EPF Trust, 54, JA Annexe Basant Lock, Vasant Vihar, New Delhi PAN: AAETS2449H | Vs. | ITO(Exemption), Ward-2(2), New Delhi |
| (Appellant) | | (Respondent) |

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|-----------------------|--------------------------|
| Assessee by : | Shri Ashwani Garg, Adv |
| Revenue by: | Ms. Ekta Vishnoi, Sr. DR |
| Date of Hearing | 15/10/2019 |
| Date of pronouncement | 13/01/2020 |

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-40, New Delhi dated 09.01.2019 for the Assessment Year 2015-16.
2. The assessee has raised the following grounds of appeal:-
 - “1. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) has erred in dismissing the appeal filed before her.*
 2. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) has erred in not entertaining the claim made before her that the income the appellant was exempt under the provisions of Section 10(25)(ii) of the Act.*
 3. *On the facts and circumstances of the case and in law, the Commissioner of Income-tax (Appeals) has erred in not following the principles of natural justice and not taking into account the submission made by e-mail on the date of hearing.*
 4. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) has erred in not admitting the additional evidence relating to the exemption of income u/s 10(25)(ii) of the Act, despite the specific request, on specious ground that the provisions relating to admitting the additional evidence under Rule 46A of the Income Tax Rules 1962, have no application to the return of income processed u/s 143(l)(a) of the Act.”*

3. Assessee is an employee's Provident fund trust formed for the benefit of its employees in respect of Provident fund contributed by them. The trust is recognized under rule 3 (i) of part A of the fourth schedule of the income tax act as per the certificate issued by the CIT dated 26 March 1983. For the impugned assessment year the assessee filed return of income on 1 September 2015 which was subsequently revised on 3 September 2015. The revised return was taken as defective and therefore a fresh return was filed on 11 April 2016. This return was processed by CPC under section 143 (1) as per order dated 3 March 2017. The assessee filed the return in ITR - 7 and disclosed the income chargeable under section 11 of the act. It was mentioned that assessee is not registered under section 12 A of the act. The gross total income of the assessee was Rs 249100/- and no amount was stated to have been applied for charitable purposes. Thus the central processing centre processed the return under section 143 (1) at the total income of ₹ 2 49100/-.
4. Assessee was aggrieved with the above processing of the return and preferred appeal before the learned CIT - A. The learned CIT - A noted that assessee is registered under section 10 (25) (ii) of the income tax act however refused to deny the benefit of the same for the reason that assessee has not filed return properly and as per the information provided in the return of income the central processing unit has processed the return of the assessee. The learned CIT - A further relied on the decision of honourable Supreme Court in case of 305 ITR 103. It was further held that if the return was to be processed on the basis of information given in the return of income therefore the provision relating to admission of the additional evidence under rule 46A of the income tax rules 1962 has no application in the said case. Therefore the appeal of the assessee was dismissed.
5. Aggrieved, assessee preferred appeal before us, and submitted that assessee is a trust which is registered under section 10 (25) (ii) of the act. It was stated that merely because the assessee has filed incorrect return of income, expectedly the central processing unit processed the return on that basis however when the information is furnished to the learned CIT - A that there is an error which is caused injustice to the assessee, the CIT appeal should have rectified it.

6. The learned departmental representative supported the order of the learned CIT appeal stated that it was based on the decision of the honourable Supreme Court and therefore no infirmity can be found from the same.
7. We have carefully considered the rival contention and perused the order of the learned CIT – A as well as the order under section 143 (1) of the act passed by the central processing unit. No doubt the assessee might have filed his return of income by filling up the incorrect information, it would also be correct that the central processing unit would have processed the return of the assessee only on the information available in that return, however when the correct facts are pointed out by the assessee which are not disputed, the learned CIT – A should have rectified the order of the central processing unit. The methodology of the first appeal is only to correct errors made by the lower authorities and not to shy away from rectifying them. In the present case there is no denial the assessee submitted an additional evidence showing the recognition of the trust issued by the CIT whereby it is apparent that the assessee should not have been taxed. Such additional evidences should have been admitted. The decision of the honourable Supreme Court relied upon by the learned CIT – A does not fetter upon the right of or on the duties of the first appellate authority in any manner. As in the present case the learned CIT – A has not admitted the additional evidence and rejected the claim of the assessee despite having the proper registration certificate with it, in the interest of justice we remit the issue back to the file of the learned CIT – A to decide the issue on the merits of the case after admitting the additional evidences. The assessee is directed to produce the relevant certificates before the learned CIT – A and the learned CIT – A is directed to decide the issue based on that certificate. In the result ground number two of the appeal of the assessee is allowed with about direction.
8. In the result appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 13/01/2020

-Sd/-
(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13//01/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi