

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH  
MUMBAI**

**BEFORE SHRI C.N. PRASAD, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.3369/Mum/2018  
(Assessment Year : 2014-15)**

M/s. Indian Corrugated Case Manufacturers Association 314, Veena Killedar Industrial,10/14, Pais Street Byculla (West) Mumbai – 400 011	Vs.	Income Tax Officer (Exem) 1(3), Mumbai
<b>PAN/GIR No.AACCI1723K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vipul Joshi & Shri Ashok Patil
Revenue by	Shri Kumar Padmapani Bora
<b>Date of Hearing</b>	<b>04/02/2020</b>
<b>Date of Pronouncement</b>	<b>20/02/2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.3369/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-6, Mumbai in appeal No. CIT(A)-6/IT-4/119/2017-18 dated 26/03/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the action of the Id. AO in disallowing

the exemption u/s.11 & 12 of the Act in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a company incorporated u/s.25 of the Companies Act, 1956. While applying for PAN, the assessee had mentioned the status as 'Company' instead of 'AOP(Trust)'. The PAN allotted to the company is AACCI1723K. Even in the Income Tax Return, the assessee had mentioned its status as a 'company'. The assessee trust is duly registered u/s.12A of the Income Tax Act. In respect of the surplus derived by it, the assessee claimed exemption u/s.11 in the sum of Rs.54,43,948/- while filing the return of income. But since the Income Tax Return was filed in the status of 'Company' instead of 'AOP(Trust)', the Central Processing Centre (CPC) / the Id. AO vide intimation dated 28/02/2016 determined the total income of the assessee at Rs.54,43,948/- after disallowing the claim of exemption u/s.11 of the Act. The assessee applied for rectification of the said intimation with a request to treat the status of the assessee as 'AOP (Trust)' instead of 'Company' and thereby grant claim of exemption u/s.11 of the Act. This rectification application u/s.154 of the Act was rejected by the CPC / Id. AO on the plea that assessee had changed its status from 'company' to 'AOP(Trust)' in Section 154 proceedings which tantamount to fresh claim made by the assessee which cannot be entertained in Section 154 proceedings. This action of the CPC / Id. AO was upheld by the Id. CIT(A). Aggrieved, the assessee is in appeal before us.

4. It is not in dispute that assessee had filed a rectified ITR-7 mentioning its status as 'AOP(Trust)' before the Id. AO. It is not in dispute that assessee is a 'Trust' (i.e. Section 25 company) duly registered

u/s.12A of the Act. But we find from the copy of intimation u/s.143(1) dated 08/12/2016, the CPC has accepted the status of the assessee as 'AOP(Trust) and the return filed u/s.139(4A) of the Act. Having done so, the claim of exemption of the assessee u/s.11 of the Act could not be denied merely based on the status which has been erroneously mentioned by the assessee while filing its return of income. It is not in dispute that the objects of the assessee trust are charitable in nature. Both the parties admittedly stated that registration granted u/s.12A of the Act to the assessee trust is still in force. In this scenario, we are unable to persuade ourselves to accept to the action of the lower authorities in rejecting the claim of exemption u/s.11 of the Act. However, in order to ensure that assessee had duly complied with other conditions stipulated in Section. 11, 12 & 13 of the Act, we deem it fit and appropriate in the interest of justice and fair play, to remand this issue to the file of the Id. AO for denovo adjudication in accordance with law. The assessee is at liberty to adduce fresh evidence, if any, in support of its contentions. Needless to mention that the assessee be given a reasonable opportunity of being heard. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on this 20/02/2020

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 20/02/2020  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**