

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA Nos.419 & 420/Bang/2020
Assessment Years: 2014-15 & 2015-16

JCIT (OSD) (Exemptions) Circle-1 Bangalore	<b>Vs.</b>	M/s. Institute of Manpower Planning & Training Impact Campus Shankara Nagar Post Bangalore-560 092 <b>PAN NO : AAAAI1762Q</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

C.O. Nos.17 & 18/Bang/2020
Assessment Years: 2014-15 & 2015-16

M/s. Institute of Manpower Planning & Training Impact Campus Shankara Nagar Post Bangalore-560 092	<b>Vs.</b>	JCIT (OSD) (Exemptions) Circle-1 Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri K. Devarathna Kumar, D.R.
<b>Respondent by</b>	:	Shri C. Ramesh, A.R.

Date of Hearing	:	06.10.2020
Date of Pronouncement	:	07.10.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The appeals filed by the revenue and the cross objections filed by the assessee are directed against the orders by Ld. CIT(A)-6, Bengaluru and they relate to the assessment years 2014-15 and 2015-16. All these appeals were heard together and hence they are

being disposed of by this common order, for the sake of convenience.

2. We shall first take up the appeals filed by the revenue for both the years. Identical issues have been raised in both the appeals of revenue. For the sake of convenience, we extract below the grounds of appeal urged by the revenue in assessment year 2014-15:

*“1. The Order of the Ld. CIT(A) is erroneous on the facts of the case*

*2. The learned CIT(A) erred in granting relief to the assessee by holding that the invalid return cannot be processed ignoring the fact that the order u/s 139(9) dated 17.12.2016 had been subsequently withdrawn vide CPC communication dated 24.03.2017.*

*2.1 The Ld. CIT(A) erred in holding that the RoI is invalid while at the same time granted the benefit of exemption on such invalid return.*

*3. The Ld. CIT(A) erred in failing to appreciate the fact that the order invalidating the return of income had been withdrawn and the assessee had not objected for such withdrawal and hence the return originally filed is valid.*

*4. The Ld.CIT(A) failed to take into consideration the fact that the assessee had claimed exemption u/s 11 of the Act, when the assessee has not been granted recognition u/s 12AA of the Act and therefore not eligible exemption u/s 11 of the Act.*

*5. The Ld. CIT(A) erred in directing the Assessing officer to ignore the exemption claimed u/s 11 of the Act and allow exemption u/s 10(23C)(iiiab) of the Act, when the assessee is not substantially financed by the Government and grants received from Government of Karnataka is less than 50% as per rule 2BBB of the Income tax Rules. Consequently, not eligible for exemption u/s 10(23C)(iiiab) of the Act.*

*3.1. The Ld. CIT(A) erred in holding that the assessee is substantial financed by the Government therefore, eligible for exemption u/s 10(23C)(iiiab) of the Act when the total grants*

*from Government of Karnataka is less than 50% of the gross receipts.”*

In nutshell, the revenue is contesting the decision of Ld CIT(A) in holding that the returns of income filed by the assessee for AY 2014-15 and 2015-16 are invalid in terms of sec.139(9) of the Act and after holding so, he was not justified in allowing the claim for exemption u/s 10(23C)(iiiab) of the Act for both the years under consideration.

3. The facts relating to the case are stated in brief. The assessee is an educational society registered under the Karnataka Societies Registration Act. The assessee is running educational institutions. For both the years under consideration, the assessee filed its returns of income claiming exemption u/s 11 of the Income-tax Act,1961 [‘the Act’ for short]. While processing the return of income by Dy. Commissioner of Income Tax (CPC), Bengaluru, a defect was noticed in both the years as given below:

Assessment year 2014-15:

Sl.No.	Error Code	Error Description
1	57	The income of assessee exceeds 2 lakhs and audit flag is NO

Assessment year 2015-16:

Sl.No.	Error Code	Error Description
1	57	The income of assessee exceeds 2.5 lakhs and audit flag is NO
2	77	Assessee has been claimed the deduction under section 11 from the Sl.No.9i to 9viii of Part BTI, But in Part A, General (2) Sl.No.C(i) whether registered u/s 12A/12AAA?, has not obtained registration and same flag is not selected YES. Then return should be treated as core defective.

Accordingly, the returns of income filed by the assessee for both the years under consideration were held to be defective and the assessee was issued a notice u/s 139(9) of the Act intimating about the defect and offering opportunity to rectify the defect. However, the assessee did not respond to the notices. Accordingly, in terms of section 139(9) of the Act, an order was passed on 17.12.2016 and 11.1.2017 respectively for assessment years 2014-15 and 2015-16 treating the returns filed as invalid returns.

4. Subsequently, another order was passed on 24.3.2017 for both the years, wherein it was stated that the earlier orders passed u/s 139(9) of the Act may kindly be ignored and the returns of income filed for both the years have been taken up for processing. Accordingly, the returns of income relating to AY 2014-15 and 2015-16 were processed and intimations u/s 143(1) of the Act dated 30.3.2017 were issued separately for both the years determining the total income at Rs.7.79 crores and Rs.9.12 crores respectively for assessment years 2014-15 & 2015-16.

5. The assessee challenged the intimations issued u/s 143(1) of the Act for both the years by filing appeals before Ld. CIT(A).

6. It was contended before Ld CIT(A) that the CPC has treated the returns of income filed for both the years as invalid by written orders, since the assessee did not rectify the defects pointed out by CPC u/s 139(9) of the Act. It was submitted that, after having held that the returns of income are invalid returns, the AO/CPC could not state that their earlier order should be ignored. It was contended that there is no provision in the Act to reconsider the said decision and ignore the orders so passed by it. In this regard, the assessee placed reliance on the decision rendered by Hon'ble Punjab & Haryana High Court in the case of CIT Chandigarh Vs.

Harjinder Kaur (2009) 180 Taxmann.com 23, wherein it was held as under:

*“The procedure for the assessment under the Act is laid down in the provisions contained in Chapter XIV.*

*A perusal of sub-section (9) of section 139 leaves no room for doubt, that in case of a defective return, the Assessing Officer is required to afford an opportunity to the assessee to rectify the defect. Having given the aforesaid opportunity to the assessee, if he/she fails to rectify the defect, the Assessing Officer is authorized to treat the return as an invalid return and to make the assessment, as if the assessee had failed to furnish any return. It is, therefore, apparent that the Assessing Officer cannot make an assessment on an invalid return.”*

7. The Ld. CIT(A) accepted the contentions of the assessee and held that the A.O. is not correct in processing the returns of income after treating them as invalid.

8. The assessee also put up a claim before Ld. CIT(A) for allowing exemption u/s 10(23C)(iiiab) of the Act by submitting that it is substantially financed by the Government of Karnataka. The Ld. CIT(A) accepted the contentions of the assessee. It is pertinent to note that the assessee had claimed exemption u/s 11 of the Act in the returns of income filed for both the years under consideration, even though it did not have registration u/s 12AA of the Act, which is a mandatory condition for claiming exemption u/s 11 of the Act. Since its claim for exemption u/s 11 was not correct, it appears that the assessee has put up an alternative claim before Ld. CIT(A) to allow exemption u/s 10(23C)(iiiab) of the Act, which was accepted by him. Accordingly, he directed the A.O. to allow exemption u/s 10(23C)(iiiab) of the Act.

10. The revenue is aggrieved by the decision so rendered by Ld. CIT(A) in both the years.

11. The Ld. D.R. submitted that the returns of income filed by the assessee have been held to be invalid by Ld. CIT(A). Hence the

income of the assessee for these two years could not be assessed. Accordingly he prayed that the Tribunal may give direction u/s 150 of the Act to the assessing officer to assess the income of these two years. He further submitted that the assessee has put a fresh claim for exemption u/s 10(23C)(iiiab) of the Act before the Ld CIT(A) and the Ld CIT(A) was not justified in allowing the claim without properly examining the same and without confronting the same with the AO. He submitted that the question whether the assessee is substantially financed by the State Government requires deeper examination. Further Ld CIT(A) could not give such directions after holding that the returns of income are invalid, i.e., directions have been given to the AO for the years in which the assessee has been deemed to have not filed returns of income. Accordingly he submitted that the directions so given by Ld CIT(A) is not correct in the eyes of law and they are liable to be dismissed.

12. The Ld A.R, on the contrary, supported the orders passed by Ld CIT(A) in both the years. He submitted that the orders issued by the AO/CPC treating the returns of income as invalid returns shall be final and there is no provision under the Act to recall them. He submitted that the provisions of sec.139(9) clearly states that, if the defect pointed out by the AO in the return of income is not rectified within the prescribed time limit, the return of income shall be treated as invalid return. He submitted that the orders passed by AO can be rectified only u/s 154 of the Act, but the assessee should be given notice of hearing before carrying out the rectification. He submitted that no such notice has been issued for these two years. Accordingly he submitted that the returns of income filed by the assessee for AY 2014-15 and 2015-16 remain as invalid returns as per the orders passed by AO/CPC.

13. We heard the parties on this issue and perused the record. The provisions of sec.139(9) read as under:-

“139 (9) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and **if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return :**

**Provided** that where the assessee rectifies the defect after the expiry of the said period of fifteen days or the further period allowed, but before the assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

*Explanation.*—For the purposes of this sub-section, a return of income shall be regarded as defective unless all the following conditions are fulfilled, namely :—

- (a) the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computation of gross total income and total income have been duly filled in;
- (aa) [\*\*\*]
- (b) the return is accompanied by a statement showing the computation of the tax payable on the basis of the return;
- (bb) the return is accompanied by the report of the audit referred to in section 44AB, or, where the report has been furnished prior to the furnishing of the return, by a copy of such report together with proof of furnishing the report;
- (c) the return is accompanied by proof of—
  - (i) the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid :

**Provided** that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted or collected at source, the return of income shall not be regarded as defective if—

- (a) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income;
- (b) such certificate is produced within a period of two years specified under sub-section (14) of section 155;
- (ii) the amount of compulsory deposit, if any, claimed to have been made under the Compulsory Deposit Scheme (Income-tax Payers) Act, 1974 (38 of 1974);
- (d) where regular books of account are maintained by the assessee, the return is accompanied by copies of—
  - (i) manufacturing account, trading account, profit and loss account or, as the case may be, income and expenditure account or any other similar account and balance sheet;
  - (ii) in the case of a proprietary business or profession, the personal account of the proprietor; in the case of a firm, association of persons or body of individuals, personal accounts of the partners or members; and in the case of a partner or member of a firm, association of persons or body of individuals, also his personal account in the firm, association of persons or body of individuals;
- (e) where the accounts of the assessee have been audited, the return is accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report and, where an audit of cost accounts of the assessee has been conducted, under section 233B of the Companies Act, 1956 (1 of 1956), also the report under that section;
- (f) where regular books of account are not maintained by the assessee, the return is accompanied by a statement indicating the amounts of turnover or, as the case may be, gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amounts have been computed, and also disclosing the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.”

14. We notice that the AO/CPC has pointed out defect(s) in the returns of income filed for AY 2014-15 and 2015-16, but the said defect(s) have not been rectified by the assessee. The provisions of sec.139(9) clearly states that, **if the defect is not rectified within**

**the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the return shall be treated as an invalid return and the provisions of this Act shall apply as if the assessee had failed to furnish the return.** Since the defects pointed out by AO/CPC were not rectified by the assessee in both the years, the returns of income filed for these two years have been rightly held to invalid return in terms of sec.139(9) of the Act. Hence it should be held that the assessee has failed to furnish the returns of income for AY 2014-15 and 2015-16. The Hon'ble Punjab & Haryana High Court has also held so in the case of Harjinder Kaur (supra).

15. However, the above said order invalidating the returns of income was directed to be ignored by another order passed on 24.3.2017 for both the years. It is the contention of the assessee that the AO/CPC does not have power to hold that his earlier order should be ignored. It was submitted that there is no provision under the Act to hold so. We find force in the submissions of the assessee. After passing an order under the provisions of the Act, the mistake, if any, in the order or incorrectness of the order could be rectified/corrected only through the process of law prescribed under the Act. The AO can rectify the mistakes apparent from record u/s 154 of the Act. However, even if any rectification order is required to be passed u/s 154 of the Act, it is required to be shown that there is a mistake apparent from record in the original order. Further rectification of order cannot be carried out without giving notice of hearing to the assessee. However, even u/s 154 of the Act, entire order cannot be recalled. If any of the order so passed by an assessing authority is erroneous and prejudicial to the interests of revenue, then revision proceedings can be initiated u/s 263 of the Act by the Ld CIT. Hence the letters dated 24.3.2017 issued by the AO on his own directing the assessee to

ignore its earlier orders is not in accordance with law. Hence the said letters are nullity in the eyes of law. Accordingly, we are of the view that the said letters cannot validate an invalid return. Accordingly, we are of the view that the processing of returns of income for both the years, after holding them as invalid, is not in accordance with the law. Hence the Ld CIT(A) was justified in holding that the AO is not correct in processing the returns of income. Accordingly, in terms of sec.139(9) of the Act, it should held that the assessee has not filed returns of income for AY 2014-15 and 2015-16.

16. The Ld D.R pleaded that the Tribunal may give direction to the AO to assess the income of these two years as per the provisions of sec.150(1) of the Act. In our considered view, the Tribunal has no power to give any such direction, since such direction is not necessary to adjudicate the dispute before the Tribunal. The AO, however, proceed in accordance with law to assess the income of both the years, since the provisions of sec.139(9) clearly state that the provisions of this Act shall apply as if the assessee had failed to furnish the return.

17. We notice that the Ld CIT(A), after holding that the returns of income filed for these two years as invalid, has proceeded to hold that the assessee is entitled for exemption u/s 10(23C)(iiiab) of the Act. The revenue is challenging the same by contending that the Ld CIT(A) could not have granted exemption on such invalid returns. We find merit in the said contentions of the revenue. Once the returns of income have been held to be invalid, there is no return of income available for making any assessment. In the absence of any returns of income, the question of claiming or allowing exemption u/s 10(23C)(iiiab) does not arise. Accordingly, we are of the view that the Ld CIT(A) was not justified in holding that the

exemption u/s 10(23C)(iiiab) should be allowed to the assessee. Accordingly, we set aside the order so passed by Ld CIT(A).

18. The assessee has filed cross objections in both the years, wherein the assessee has stated that the AO has assessed gross receipts without allowing deduction of expenditure incurred by the assessee.

19. However, the above said cross objections shall become infructuous, as the returns of income have been held to be invalid.

20. In the result, both the appeals of the revenue are partly allowed and the cross objections of the assessee are dismissed.

Order pronounced in the open court on 7<sup>th</sup> Oct, 2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 7<sup>th</sup> Oct, 2020.  
VG/SPS

**Copy to:**

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

By order

Asst. Registrar, ITAT, Bangalore.