

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL
MEMBER AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.693/Bang/2020
Assessment Year: 2017-18

Sree Jain Shiksha Samiti No.20, Prime Rose Road M.G. Road Cross Bangalore-560 025 PAN NO :AAATS7975G	Vs.	ITO (Exemption) Ward-3 Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, A.R.
Respondent by	:	Shri Kannan Narayan, D.R.

Date of Hearing	:	31.12.2020
Date of Pronouncement	:	01.01.2021

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 16.9.2020 passed by Ld. CIT(A)-14, Bengaluru and it relates to the assessment year 2017-18. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the rejection of exemption claimed by the assessee u/s 11 of the Income-tax Act,1961 [the Act' for short].

2. The Ld. A.R. submitted that the assessee is a Charitable Trust duly registered u/s 12A of the Act. It filed its return of income for the year under consideration declaring Nil income on

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7.11.2017, within the period of extended due date granted for the year under consideration. The return of income was filed electronically. However, the assessee inadvertently omitted to upload audit report in Form No.10B along with return of income. Hence, during the course of assessment proceedings, the A.O. rejected the claim for exemption u/s 11 of the Act on account of non-furnishing of audit report in form No.10B.

3. The Ld. A.R. submitted that the assessee challenged the assessment order so passed by the A.O. by filing appeal before Ld. CIT(A). The Ld. A.R. submitted that the Ld. CIT(A) posted the appeal for hearing on 4.9.2020. On that date, the assessee sought adjournment of the matter. Subsequently, the assessee filed its written submissions before Ld. CIT(A) on 30.9.2020. It was noticed later that the Ld. CIT(A), however, had passed the order on 16.9.2020 itself without giving an opportunity of being heard to the assessee. The Ld. A.R. also submitted that even though the order of Ld. CIT(A) is dated 16.9.2020, yet it was digitally signed by Ld. CIT(A) only on 21.9.2020. The Ld A.R submitted that the assessee received the order of Ld CIT(A) on 14.10.2020 and the written submissions were filed prior to the dispatch of order of Ld. CIT(A).

4. The Ld. A.R. also submitted that the Ld. CIT(A), in paragraph 4.2.3 of the order has mentioned that the due date for filing form No.10B is 30.6.2017. She submitted that the Ld. CIT(A) was not correct in mentioning so, since the due date for filing form No.10B for the year under consideration was 30.11.2017. Accordingly, she submitted that this observation of the Ld. CIT(A) also needs to be set aside.

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5. The Ld. A.R. also submitted that the assessee has uploaded form No.10B subsequently on 17.12.2019 and it has also filed a petition before CBDT for condonation of the delay in furnishing form No.10B. She submitted that the said petition is still pending before CBDT. Accordingly, the Ld. A.R. submitted that the assessee may be provided with an opportunity to present its case before Ld. CIT(A).

6. We heard Ld. D.R., who submitted that the A.O. has rejected exemption claimed u/s 11 of the Act since the assessee did not furnish audit report in form No.10B along with return of income. Accordingly, he submitted that the Ld. CIT(A) was justified in confirming the rejection of exemption claimed by the assessee.

7. We heard the parties and perused the record. It is the case of the Ld. A.R. that the assessee sought adjournment before Ld. CIT(A) when the appeal was posted for hearing for the first time on 4.9.2020. Thereafter, the assessee was not given an opportunity of being heard by Ld CIT(A). It is submitted that the assessee filed written submissions before Ld. CIT(A) on 30.9.2020. However, by that time, the Ld. CIT(A) had already passed the order. Accordingly, we notice that the order passed by Ld. CIT(A), in effect, is an ex-parte order, without giving to the assessee opportunity of being heard. Accordingly, in the interest of natural justice, we are of the view that the assessee should be provided with an opportunity to present its case before Ld. CIT(A). In fact, affording one more opportunity to the assessee would promote the cause of justice. Accordingly, we set aside the entire order passed by the Ld. CIT(A) and restore all the issues to his file for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee.

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8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 1st Jan, 2021

Sd/-
(George George K.)
Judicial Member

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

Bangalore,
Dated 1st Jan, 2021.
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.