

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC-I" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1786/MUM/2019
Assessment Year: 2014-15**

Padmashali Yuvak Samagh,
Plot No. 41, Keshar Baug
Sandanand Jadhac Marg Kesh
Naigaum, Dadar (East),
Mumbai - 400014
PAN No. AABTP2887P
Appellant

Vs. Deputy Commissioner of Income
Tax, CPC
Respondent

Assessee by : Mr. Subramanian, AR
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 12/01/2021
Date of pronouncement : 27/01/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-1, Mumbai [in short 'CIT(A)'] and arises out of the order u/s 154 of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the assessee read as under :

1. "The learned CIT (A) has erred in disallowing the exemption claimed u/s 11 (1) (a) of Rs. 1712592 and the amount which was set apart u/s 11 (1) (a) amounting to Rs. 437842 on the ground that the appellant has not satisfied

section 11 & 12 although appellant has satisfied all the condition of section 11 & 12. The appellant craves, leaves to add amend and withdraw any ground of appeal before the order is passed.”

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2014-15 on 30th September, 2014 declaring total income at Rs. Nil. The said return was processed u/s 143 (1) of the Act, by disallowing claim of exemption u/s 11 and determining the total income at Rs. 35,44,930/-. The appellant filed rectification application u/s 154 of the Act. The Deputy Commissioner of Income Tax (CPC), Bangalore (henceforth “AO”) rejected the request for rectification *vide* order dated 8th November, 2016.

4. Aggrieved by the order of the AO, the appellant filed an appeal before the Ld. CIT (A). We find that *vide* order dated 15.01.2019, the Ld. CIT (A) dismissed the appeal filed by the assessee by observing that:

“5.2 I have carefully considered the facts of the case, oral contentions and written submissions of the assessee, mention of the AO in the impugned order and material available on record. In this case the appellant had filed rectification application u/s 154 of the Act to the AO (CPC), which was rejected by the AO observing that there was no prima facie error in the order which was sought to be rectified. In the said order of the AO it has been noted in the e-filed return of income, the assessee had claimed exemption u/s 11 but has not furnished details of the audit in the schedule of audit information and that in the rectification application, the appellant had made fresh claim of income which could not be made in the rectification request. Due to these reasons, rectification application was rejected by the AO (CPC). It is mentioned in the submission of the assessee that due to oversight the

auditor's name was not mentioned in the ITR-7. It is further seen that the appellant in their submission have detailed the provisions of Sec. 12A(1)(b) and have contended that the trust has got its accounts audited and auditors have filed the audit report in Form 10 B on 29.09.2014 and the return of income was filed on 30.09.2014. The appellant has further contended that non-mention of the name of the auditor in the return of income is purely technical in nature and therefore the learned AO should not have rejected the application u/s 154 of the Act. In regard to such contention of the assessee it is stated that the appellant in their submission has nowhere brought out any mistake apparent from record in the order u/s 143 (1) which was sought to be rectified by the application u/s 154 made to the AO (CPC). It has further mentioned that what could be rectified by the AO is mistake apparent from record which has crept up in any order passed by him which is apparent from records. As can be seen from the facts of the case mentioned above, as also from the submissions of the assessee that there was no mistake crept up in the order/intimation passed u/s 143 (1) of the Act which could have been rectified u/s 154 of the Act. It is further mentioned that the instant appeal is not an appeal against the order/intimation u/s 143 (1) of the Act and there is no mistake apparent from record in such order which could have been rectified by the AO u/s 154 of the Act. Further in the proceedings u/s 154 of the Act, no new facts, claims etc. could be considered for giving effect. Under these facts and circumstances, the contention and submissions of the assessee are not found to be acceptable and are therefore rejected. The ground of appeal raised is therefore dismissed."

5. Before us, the Ld. counsel for the appellant submits that the assessee filed its return of income for the AY 2014-15 on 30.09.2014 declaring total income at Rs. Nil. The said return was processed u/s 143 (1) by the Assistant Commissioner of Income Tax (CPC) determining tax payable at Rs. 10,77,730/-.

The appellant filed a rectification application against the above order, which was rejected by the Dy. Commissioner of Income Tax, CPC with the following observations:-

“On verification, it is seen that there is no prima facie error in the order which you have sought to rectified. Therefore, your application for rectification u/s 154 is rejected for the following reasons:

As seen from the e-filed return of income filed by the assessee, the assessee has claimed exemption u/s 11 but has not furnished details of audit in the SCH, Audit Information – in view of the above, this rectification request is rejected”.

The Ld. counsel submits that the AO has passed the order u/s 143 (1), disallowing all the expenditure claimed in the return of income of Rs. 17,12,592/- and amount set apart of Rs. 4,37,842/- ; in short the AO has brought to tax the entire income (without deduction of expenditure) and raised the demand of Rs. 10,77,730/-. It is stated by him that the appellant –Trust got its accounts audited and the auditors have filed the audit report in Form 10B on 29.09.2014 and the return of income was filed on 30.09.2014. It is stated that while filing the return of income the assessee by oversight did not mention the name of the auditors in ITR – 7. Thus, it is submitted that the same being a mistake apparent from record, it is amenable to rectification u/s 154 of the Act. In this regard, reliance is placed by him on the order of the ITAT “H” Bench, Mumbai in the case of *Kasturi Foundation vs. DCIT* (ITA No. 3663/Mum/2019) for AY 2016-17.

6. On the other hand, the Ld. Departmental Representative (DR) submits that the appellant in their submission in application u/s 154 has no where

brought out any mistake apparent from record in the order u/s 143 (1) which was sought to be rectified by application u/s 154 made to the AO (CPC). Thus, it is submitted that the order passed by the Ld. CIT (A) be affirmed.

7. We have heard the rival submissions and perused the relevant material available on record. The reasons for our decision are given below:-

In the instant case, the appellant –Trust got its accounts audited and auditors have filed the audit report in Form – 10B on 29.09.2014. The return of income was filed on 30.09.2014. It is the contentions of the appellant that non-mentioned of the name of the auditor in the return of income is purely technical in nature and the AO should not have rejected, the application u/s 154 of the Act.

In *Kasturi Foundation* (supra) relied on the Ld. counsel, for the AY 2016-17, the assessee filed its return of income declaring nil income after claiming exemption u/s 11 of the Act. While processing the return of income u/s 143 (1) of the Act, the AO (CPC) disallowed an amount of Rs. 20,01,732/- and treated it as income of the assessee. Against the intimation issued u/s 143 (1) of the Act, the assessee made an application for rectification u/s 154, stating that since 85% out of the income received has been applied for the objects of the Trust, exemption u/s 11 of the Act is available. The aforesaid application u/s 154 of the Act was dismissed by the AO (CPC). The Tribunal *vide* order dated 11.11.2020 held that:

“3. We have considered rival submissions and perused the material on record. Undisputed facts are, though, the assessee had filed the return of income for the assessment year under dispute on 12th September 2016,

however, he has filed the audit report electronically on 21st September 2016. Of course, the audit report was approved by the trustees on 18th May 2017. But, fact remains that the assessee had filed the audit report much prior to the due date of filing of return of income under section 139(1) of the Act. The claim of the assessee that it has applied 85% of its receipts towards the objects of the trust has not been disputed by the Departmental Authorities at any stage. Denial of exemption under section 11 of the Act is only for the reason that audit report in Form no.10B of the Act was filed belatedly. Pertinently, in Circular no.10./2019, the CBDT has clarified that for the assessment year 2016-17 and 2017-18, in all cases where the audit report for the year under consideration has been obtained before filing of the return of income and has been furnished subsequent to filing of return of income, but before the date specified under section 139 of the Act, such delayed filing should be condoned. In the facts of the present case, the claim of the assessee that it has obtained the audit report prior to the date of filing of return of income and has filed audit report before the due date of return of income under section 139(1) of the Act has not been controverted by the learned Departmental Representative. The learned Commissioner (Appeals) has also upheld the disallowance of exemption by simply stating that it is not a rectifiable mistake under section 154 of the Act. In our view, when the assessee has complied with the statutory provisions in terms of the CBDT Circular, the delay if any, in filing the audit report should have been condoned. In view of the aforesaid, we delete the disallowance made and allow assessee's claim of exemption under section 11 of the Act. Grounds raised by the assessee are allowed."

7.1 The above order of the Tribunal is applicable to the instant case. Following it, we set aside the order of the Ld. CIT (A).

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27.01.2021.

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

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 27.01.2021
Alindra, P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Dy./Assistant Registrar)
ITAT, Mumbai