

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 4328/Mum/2019 (A.Y. 2016-17)

Sicot India Foundation Dr.L.N. Vora, Nusser House, 3 rd Floor 20 Mama Parmanand Marg, Mumbai-400004. PAN : AAATS0469B (Appellant)	Vs.	DCIT(CPC) Piramal Chambers Lalbaug, Parel Mumbai-400012. (Respondent)
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Assessee by	None
Department by	Shri T. Sankar
Date of Hearing	30.12.2021
Date of Pronouncement	22 .02.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 28.5.2019 pertains to Assessment year 2016-17.

2. The grounds of appeal read as under :-

1. On facts and in law, the learned CIT(A) had erred in confirming the addition of Rs.8,31,102/- made by AO (CPC) being the amount applied to charitable purposes in India during the previous year relating to Asstt. Year 2016-17. Under the facts and circumstances of the matter, he ought to have deleted the said addition of Rs.8,31,102/-.

2. On facts and in law, the learned CIT(A) had erred in confirming the addition of Rs.2,21,325/- made by AO (CPC) being the income exempt under section 11(1)(a) (income accumulated set apart upto 15 per cent). Under the facts and circumstances of the matter, he ought to have deleted the said addition of Rs.2,21,325/-.

3. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing of the appeal, so as to enable the Hon. ITAI to decide this appeal according to law.

3. Brief facts are that in this case return of income was processed under section 143(1) by the CPC, Bangalore. Brief facts and grounds of appeal noted by learned CIT(A) read as under :-

“The facts of the case in brief are that the appellant filed its return of income for A.Y. 2016-17 on 14.11.2017 declaring total income at Rs. 4,23,070/-. The Assessing Officer(CPC) while processing the return u/s.143(1) of the Act had not allowed the exemption of Rs.10,52,427/- claimed by the appellant u/s 11 of the Act and determined the total income at Rs. 14,75,500/-. The appellant filed a rectification, which was rejected by the AO(CPC) stating the reason that as seen from the return of income filed, the assessee has claimed exemption u/s 11 of the Act but has not furnished details of audit in the Schedule Audit information and Form 10B in Audit Report is not E-filed along with the return or before filing the return. Aggrieved by the action of the AO, the appellant has filed the present appeal against the order so passed u/s. 154 of the Act.

3. The grounds of appeal raised by the appellant are as under-

1. On the facts and in law, the learned Dy. Commissioner of Income-tax-CPC, Bangalore had erred in not allowing claim of Rs.8,31,102/- being the amount applied for charitable purposes in India during the previous year. Under the facts and circumstance of the matter, he ought to have given the aforesaid claim of Rs.8,31,102/-.
2. On the facts and in law, the learned Dy. Commissioner of Income-tax-CPC, Bangalore had erred in not allowing claim of Rs.2,21,325- being the income exempt under section 11(1)(a) (income accumulated or set apart upto 15%). Under the facts and circumstance of the matter, he ought to have given the aforesaid claim of Rs,2,21,325/-.
3. On the facts and in law, the learned Dy. Commissioner of Income-tax-CPC, Bangalore had erred in charging interest under section 234A at Rs.35,294 as against Rs. Nil. Under the facts and circumstances of the matter, he ought not to have charged any interest under section 234A.
4. On the facts and in law, the learned Dy. Commissioner of income-tax-CPC, Bangalore had erred in charging interest under section 234B at Rs.63,025 as against Rs. Nil. Under the facts and circumstances of the matter, he ought not to have charged any interest under section 234B.
5. On the facts and in law, the learned Dy. Commissioner of Income-tax-CPC, Bangalore had erred in charging interest under section 234C at Rs. 63,025 as against Rs. Nil Under the facts and circumstances of the matter, he ought not to have charged any interest under section 234C.
6. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at the time of hearing of the appeal, so as to enable the learned Commissioner Appeals) to decide this appeal according to law.”

4. Learned CIT(A) noted the following facts as under :-

The AO(CPC) while processing the return u/s. 143(1) of the Act had denied the exemption claimed by the appellant of Rs.10,52,427/- u/s 11 of the Act and computed the total income at Rs. 14,75,500/-. The appellant filed a rectification u/s 154 of the Act, which was rejected by the AO on the ground that as seen from the return of income filed, the assessee has claimed exemption u/s 11 of the Act but has not furnished details of audit in the Schedule Audit information and Form 10B in Audit Report is not E-filed along with the return or before filing the return.

5. Learned CIT(A) noted the following submission of the assessee as under :-

The appellant in their written submission have stated that the Audit Report in Form 10B was obtained 10.10.2017. However, while preparing and filing the return of income of the assessee, through oversight omitted to file the audit report electronically alongwith the return of income. In this case, the return of income was filed on 14.11,2017. The appellant further submitted that the audit report in Form 10B was electronically uploaded on 04.05.2019, The appellant in their submission have further referred to the provisions of Sec.12AA, referred to the Circular of CBDT vide No.267/482/77-IT(Part) dated 09.02.1978 and also placed reliance on following decisions :-

- i. Calcutta Management Association vs. ITO (1992) 42 ITD 62.
- ii. Swajan Pariwar Trust vs. ADIT(E) (1997) 57 TTJ(Mum)(SMC)77
- iii. CIT vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325(Guj)
- iv. National Horticulture Board vs. CCIT(2009) 176 Taxman 167 (P&H)
- v. CIT vs. Hardeodas Agarwala Trust(1992) 198 ITR 511 (Calutta)
- vi. CIT vs. Shanzedanand Chanty (1977) 228 ITR 292 (PH)

The appellant, accordingly has contended that the delay in filing Audit Report in Form 10B should be condoned and AO should be directed to allow the claim of Rs.8,31,102/-being the amount applied for charitable purposes in India and Rs.2,21,325/- being the exemption u/s 11(1)(a) of the Act.”

6. Learned CIT(A) adjudicated the issue as under :-

I have carefully considered the facts of the case, oral contentions and written submissions of the assessee, reason of rejection given by the AO in the impugned order and material available on record. In the facts of the case it has not been disputed that Form 10B was not filed alongwith the return. It is a fact that for A.Y. 2016-17 the appellant has filed the return of income on 14.11.2017, and the audit report was filed only on 04.05.2019. It is mentioned that rectification order u/s 154 of the Act in this case was passed by AO on 13.11.2018, whereas assessee have uploaded the audit report in Form 10B electronically on 04.05.2019. Therefore, either while processing the return u/s 143(1) or before passing the rectification order, the Audit

Report was not available with the A.O. These facts clearly prove that Form No.106 was not filed either before or alongwith the return filed by the assessee. It is mentioned here that this appeal has been filed against the order u/s 154 of the Act. The assessee has placed reliance on certain decisions to support its contention that where there is a delay in filing Form 10B but the same has been filed before completion of assessment, the same should be accepted. In respect of such contentions and reliance placed by the assessee it is stated that there is no differing opinion or position that is being taken here. However, it is stated that acceptance of delay in filing Form 10B which involves a positive action and discretion exercised on the part of the authority to condone the delay would not come within the ambit of provisions of Sec. 154 of the Act and therefore, the relevant contention of the appellant is not found to be acceptable. As has been mentioned hereinabove, the present appeal is against the order u/s 154 and the appellant has failed to produce the audit report i.e., either before processing of the u/s 143(1) or even at the time of passing the rectification order, and hence there is no mistake apparent from record in the order sought to be rectified. The action of the AO in rejecting the rectification application of the appellant is found to be justifiable and is upheld.

7. Against the above order assessee has filed the appeal before the ITAT.
8. I have heard the ld. DR and perused the record. I note that though in form No. 35 before learned CIT(A) it was mentioned that the appeal under section 248 was against the order under section 154 but in statement of facts and grounds of appeal before learned CIT(A) the same was on merit of addition u/s 143(1). Moreover it is palpable that this is simply a technical mistake in mentioning section and in substance it is an appeal against the order passed under section 143(1) by the CPC. In my considered opinion learned CIT(A) should not have take refuge under technicality and dismissed the appeal. The facts of the matter clearly point out that the absence of audit report which has been the subject matter of reason for rejection of appeal under section 143(1) by the CPC was in fact filed though with some delay. The case laws are on record that such delay is to be condoned. In my considered opinion in the facts and circumstances of the case matter was to be examined on the touchstone of these case laws. Hence, I remit this issue to the file of the Assessing Officer and direct him to examine the issue on merits of the case taking into account submissions being made by the assessee and the case laws being relied upon.

9. It may also be not out of place to mention that the section 154 order in this case was also processed by Central Processing Centre. The said processing only refers to columns and figures (1) as provided by taxpayer in return of income and (2) as computed under section 154 of the Act. Apart from figures, there is no reasoning as to why it is being so computed. It is beyond comprehension how such processing by the computer can be said to be the order under section 154 of the Act, which admittedly betrays non application of mind and supply of reasoning for the order. Such an order under section 154 of the Act is also liable to be quashed because of its content itself. Be as it may, I have already remitted the issue on merits to the file of the AO.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open court on 22.02.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 22 /02/2022

Copy of the Order forwarded to :

The Appellant

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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