

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'SMC', NEW DELHI**

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER

ITA No. 169/Del/2022
(Assessment Year : 2018-19)

Cure Foundation 17/6/C, Nai Sarak, Shashtri Nagar, Meerut, UP-250 004 PAN No. AABTC 6398 J (APPELLANT)	Vs.	Exemption Ward Ghaziabad, UP (RESPONDENT)
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Assessee by	Shri Rohit Agarwal, C.A.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	11.04.2022
Date of Pronouncement:	27.04.2022

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 03.12.2021 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) - Delhi relating to Assessment Year 2018-19.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a charitable trust which is stated to be running and maintaining a Homeopathy medicine clinic under the name and style of Homeo Cure. Assessee is stated to have filed the return of income for A.Y. 2018-19 on 07.10.2018, claiming exemption u/s 11 & 12 of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) r.w.s 143(3A) & 143(3B) of the Income Tax Act vide order dated 04.02.2021 and the total income was determined at Rs.10,50,000/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A). NFAC who vide order dated 03.12.2021 in Appeal No.NFAC/2017-18/10006855 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“That, the Ld. CIT(A) has erred in law as well as on the facts of the case by confirming the disallowance of Rs. 10,50,000/-, being the amount of salary payable to specified persons, which was not actually paid during the relevant previous year, ignoring the fact that, the appellant trust followed the accrual system of accounting and non-payment of any particular expense during the year itself cannot be the sole reason for making/confirming disallowance.*
2. *That the Ld. CIT(A) has erred in law and on the facts of the case by not disposing off the ground no.3 raised before him and in the result by confirming the addition made by the Ld. A.O., which is in violation of the scheme of e-assessment and is against the principles of natural justice, having made the same without issuing a draft assessment order and a show cause notice, thereby denying the appellant the opportunity to file its submission on the issue, rendering the assessment order under appeal as a nullity.*
3. *That without prejudice to the above, the Ld. CIT(A) has erred in law and on the facts of the case by not disposing off the ground no.4 raised before him and in the result by not allowing the benefit of exemption u/s 10(23C)(iiia) of the Act to the appellant.*

4. *The appellant craves leave to add, modify and/or delete any ground of appeal.”*

4. With respect to **Ground No.1**, Learned AR submitted that during the year, assessee had made payments of salary to the specified persons namely; Dr. Indu Goel (Rs.12,00,000/-), Dr. Aman Goel (Rs.5,75,000/-) and Dr. Pooja Goel (Rs.6,30,000/-). AO noted that the aggregate salary paid as per Form 10B to the above three persons was Rs.24,05,000/- whereas amount that was reflected in Bank A/c was Rs.13,55,000/- resulting into a difference of Rs.10,50,000/-. AO though noted that the salary paid to the specified persons were considered to be reasonable but he disallowed the differential amount of Rs.10,50,000/- u/s 40A(2) of the Act, as according to him, assessee had failed to furnish the evidence of the payment of the differential amount. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) upheld the order of AO by noting the fact that assessee had failed to explain the difference in the salary of the three specified persons as per Profit and Loss account and the Bank statements and assessee had not submitted any relevant documentary evidences to reconcile it. Aggrieved by the order of CIT(A), assessee is now before Tribunal.

5. Before me, Learned AR submitted that during the course of assessment proceedings, assessee was issued only two notices u/s 142(1) of the Act, one dated 07.01.2020 which was fully replied by the assessee on 20.01.2020, and the other one was on

15.01.2021 which was almost one year after the reply of earlier notice. He submitted that assessee could not furnish the full details as called for by the AO within the given time frame. He submitted that before CIT(A) assessee had made the submissions which were not considered by him. He further submitted that while confirming the addition, CIT(A) has ignored the fact that assessee has been following the mercantile system of accounting and of the various items of expenditure, AO had disallowed only one item i.e. salary for the reason of non-payment. He also filed application under Rule 29 of the Income Tax Appellate Rules praying for the admission of additional evidences. With respect to the additional evidences he submitted that the additional evidences are in the form of the copy of the Ledger Accounts of the three persons namely; Dr. Indu Goel, Dr. Aman Goel and Dr. Pooja Goel in the immediate succeeding 2 financial years i.e. F.Y. 2018-19 & F.Y. 2019-20 in the books of assessee and the copies of the Bank statements for those period to prove that the salary payable as on 31.03.2017 was indeed paid in immediate succeeding year. He further submitted that the aforesaid documents could not be furnished before the AO and CIT(A) as no show-cause notice was issued in this regard. He therefore submitted that since the aforesaid documents goes to the root of the matter with respect to the allowability of the salary payable and in the interest of justice the same be admitted.

6. With respect to the other grounds raised, Learned AR submitted that assessee had raised **Ground No.2 & 3** before the

CIT(A) but the same have not been adjudicated by Learned CIT(A). He therefore fairly submitted that in the interest of justice, the matter be remanded back to the file of CIT(A). Learned AR further stated that assessee undertakes to cooperate by furnishing all the required details called for by the authorities.

7. Learned DR on the other hand supported the order of Learned AO but however did not seriously objected to the request of remanding the matter to CIT(A) and on the admission of additional evidences.

8. I have heard the rival submissions and perused the material available on record. The issue in the ground No.1 is with respect to disallowance of Rs.10,50,000/- being the salary paid to the three persons namely Dr. Indu Goel, Dr. Aman Goel and Dr. Pooja Goel. The aggregate salary to the extent of Rs.10,50,000/- paid by the assessee to the aforesaid persons was disallowed by the AO as the said amount though debited in the books of accounts but was not reflected in the bank account thereby evidencing its payment. Before me, Learned AR has filed an application under Rule 29 of the I.T. Rules for admission of the additional evidences in the form of ledger account and bank account reflecting the payment. Before me, Learned AR has also pointed to the reasons as to why the aforesaid documents could not be filed before the authorities. I find force in the submissions of the Learned AR for non submission before the authorities. In such a situation, I hereby admit the additional evidences filed by

the assessee. Since these evidences were not before the lower authorities. I am of the view that in the interest of justice, the matter needs to be restored back to the file of CIT(A) to decide the issue afresh in accordance with law after considering the additional evidences filed by the assessee. **Thus the Ground No.1 is allowed for statistical purposes.**

9. As far as **Ground No.2 & 3** are concerned, I find that though the grounds were raised by the assessee before CIT(A), but the same have not been adjudicated by CIT(A). In such a situation, I restore the issue back to the file of CIT(A) and direct him to adjudicate the issues raised therein after considering the submissions of the assessee and in accordance with law. Needless to state that CIT(A) shall grant adequate opportunity of hearing to both the parties. **Thus the grounds are allowed for statistical purposes.**

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

Order pronounced in the open court on 27.04.2022

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 27.04.2022
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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI