

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.765/Del/2022
Assessment Year: 2018-19

M/s. Om Vimla Mediclinic, AG-1/89A, DDA Flats, Vikas Puri, New Delhi	Vs.	Additional Commissioner of Income Tax, National E- Assessment Centre, Delhi
PAN : AAATO1899F		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Om Prakash, Sr. DR

Date of hearing	08.06.2022
Date of pronouncement	24.06.2022

ORDER

This is an appeal by the assessee against order dated 15.03.2022 passed by National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2018-19.

2. When the appeal was called for hearing, none appeared on behalf of the assessee. However, keeping in view the fact that the assessee has challenged the *ex-parte* disposal of appeal by learned Commissioner (Appeals), I proceed to dispose of the appeal *ex-parte* qua the assessee after hearing learned Departmental Representative and based on the materials on record.

3. Briefly the facts are, the assessee is stated to be a public charitable trust registered under section 12A and 80G of the Income-tax Act, 1961 (for short 'the Act'). For the assessment year under dispute, the assessee filed its return of income on 25.03.2019 declaring nil income after claiming deduction under section 11 of the Act. In course of assessment proceeding, the Assessing Officer noticed that the assessee has furnished Form- 10 on 04.03.2019 exercising its option to accumulate or set apart unutilized income to the subsequent years, which is beyond the prescribed time limit. Thus, due to delay in filing of Form-10, the Assessing Officer denied the benefit of section 11(2) to the assessee. Accordingly, the accumulated unutilized income/fund of Rs.36,59,504/- was treated as income of the assessee and subjected to tax. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals). By the impugned order, learned Commissioner (Appeals) disposed of the appeal by upholding the addition made by the Assessing Officer.

4. I have heard learned Departmental Representative and perused the materials on record. Specific issue raised by the assessee in ground no. 1 is, learned Commissioner (Appeals) has

not allowed reasonable opportunity of being heard to the assessee before disposing of the appeal. On a perusal of the impugned order of learned Commissioner (Appeals) and, more particularly, the observation made by learned Commissioner (Appeals) in paragraph 3 of the impugned order, it is observed, a notice of hearing was issued to the assessee on 02.03.2022 with a direction to appear in the hearing of the appeal on or before 11.03.2022. As it appears, the assessee responded to the notice on the very same day. However, without granting any further opportunity to the assessee, learned Commissioner (Appeals) proceeded to dispose of the appeal. This, in my view, is not in accordance with principles of natural justice. More so, considering the fact that the first appellate authority has observed in the body of the order that certain attachments are not visible in ITBA. When the attachments uploaded to the system of the department were not visible, better course would have been to call upon the assessee to furnish these documents again. Without providing any such opportunity, learned Commissioner (Appeals) has disposed of the appeal. Thus, prima facie, it appears that the appeal was disposed of without considering the material facts.

4. In view of the aforesaid, I set aside the impugned order of learned Commissioner (Appeals) and restore the matter back to him for de novo adjudication after providing due opportunity of being heard to the assessee. Accordingly, grounds are allowed for statistical purposes.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 24th June, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 24th June, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi