

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NOs. 2176/MUM/2022 (A.Y. 2016-17)

Income Tax Officer (E)-2(2) Room No. 616, 6th Floor MTNL Building, Cumballa Hill Mumbai - 400026	v.	OERC Academy 902/903, 9 th Floor Thane-Belapur Road Akshar Blue Chip Corporate Park Turbhe, Navi Mumbai - 400705 PAN: AAACO6689C
(Appellant)		(Respondent)

Assessee by	:	None
Department by		Shri Manoj Sinha
Date of Hearing	:	28.09.2022
Date of Pronouncement	:	30.09.2022

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 06.07.2022 for the A.Y.2016-17.

2. Briefly stated the facts are that, the assessee is a trust engaged to operate as an academy for imparting education in mercantile marine field and filed return of income on 10.10.2016 declaring total income of ₹. NIL. The case was selected for scrutiny under CASS and notice u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response, none appeared nor any reply was furnished before Assessing Officer.

3. During the assessment proceedings as no reply was received, Assessing Officer in order to protect the interest of the revenue proceeded to pass the Assessment Order and assessed the income of the assessee at ₹.3,03,88,470/-. Aggrieved, assessee filed appeal before Ld.CIT(A). On appeal, the Ld.CIT(A) considering the evidences and various submissions of the assessee, directed the Assessing Officer to grant exemption u/s. 11 as claimed by the assessee.

4. Aggrieved, revenue is in appeal before us raising following grounds in its appeal: -

1. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in granting relief beyond the scope of ground raised which was The AO has not considered the submission made by the AO on portal 19.12.2018 and also earlier submissions"?

2. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the disallowance of Rs. 3,24,18,913/- and allowing the grant exemption u/s. 11 without discussing the merits of the case"*

5. In spite of issue of notice none appeared on behalf of assessee nor any adjournment was sought. Thus, we proceed to dispose of this appeal on hearing Ld.DR on merits.

6. Ld. DR brought to our notice the facts of this case and vehemently supported the orders the Assessing Officer.

7. Considered the submissions of Ld.DR and material placed on record. On a perusal of the order of the Ld.CIT(A), we find that Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the Assessment Order and directed the Assessing Officer to grant exemption u/s. 11 as claimed by the assessee. While holding so, the Ld.CIT(A) observed as under: -

"4. Through written submissions the assessee has stated that they had initially submitted certain details vide email dated 11.07.2017. Subsequently, the details were submitted online on 19.12.2018 which was three days before the conclusion of assessment. The assessee further submitted that in spite of furnishing details through online portal, the AO has held that no details were filed and has disallowed the entire exemption claimed u/s 11. The assessee has submitted that there is no violation of section 13 in his case which is the only reason for which the exemption u/s. 11 could be denied. The assessee has furnished balance sheet, income & expenditure statement, audit report in Form

10B as well as the schedules thereto and the computation of income. The assessee has also furnished the entire trail mail to establish that the details were emailed to the AO as well as submissions were made online. The assessee has also enclosed printout of the email which show that the AO has issued notice u/s 143(2), in reply to which the assessee has furnished basic details. Further, the e-acknowledgement having uploaded the details of addition to fixed assets, bank statements, creditors & debtors, details of expenses, bank account statements have also been furnished before me. The submissions of the assessee in this regard are as under:

Your Appellant had initially submitted all the deserved details before the Learned Assessing Officer vide email dated 11.07.2017 at the official id mumbai.ito.exmp2.2@incometax.gov.in. The Learned Assessing Officer ignored the said submissions and failed to consider the same on records conveniently stating that the Appellant failed to submit the details called for (COPY OF EMAIL TRAIL IS ENCLOSED HEREWITH).

The details called for were submitted online on 19.12.2018 whereas the AO without considering the same passed an order on best judgment u/s 144 making an addition on account of non allowance of exemption u/s 11 6 & addition of Rs 3,24,18,913 was done in Assessment order.

Screenshot of Submissions Made Online Dated 19 12 2018 on Income tax portal are as follows:

Further the Acknowledgement Letter received from department portal is enclosed for your reference.

Even after (sic) submissions of the details dated 19 12 2018 called for by the Assessing Officer in relation to Assessment Proceedings, the Learned Assessing Officer passed an Assessment Order dated 22.12.2018 which has been digitally signed by him on 24.12.2018 with disallowance of complete exemptions claimed by the Trust u/s 11. 12 and 13 of the Income Tax Act.

The Appellant request your kind attention in the matter of the addition made u/s 11 on basis of denial of exemption. The Appellant

would like to submit that Denial of Exemption u/s 11 can only be done on account of conditions as specified u/s. 13.

The Appellant has not violated any of the conditions. They have filed Returns of income, filed Form 10B attended scrutiny assessment (there was genuine reasons for delay in submissions of required documents) and tiled details called for by Assessing Officer before passing of Assessment Order The Appellant's only mistake was not submitting requirements on timely basis to Assessing Officer. Your Appellant has submitted all required documents well before the completion of the Assessment proceeding by the Learned Assessing Officer. The Appellant submits your Honour the genuine reasons due to which your appellant could not comply to the notices on timely basis and request you to pardon your Appellant by condoning the cause and hearing the appellant afresh, anew. Apart from that, the said documents called for by the Assessing Officer were uploaded on Income Tax portal on 19.12.2018, without considering the same Assessing Officer passed an order dated 22.12.2018 on 24.12.2018 The Appellant has not violated any conditions or explanation u/s 11 to 13 under Income Tax Act.

5. *The matter has been carefully considered. The only grievance of the assessee is against the disallowance of exemption u/s.11 claimed. As discussed earlier, the AO has disallowed the same on the grounds that no details were filed before him. However, the evidence furnished by the assessee clearly indicates that first email was sent by him to the AO including basic details such as balance sheet, income & expenditure statement, notes to accounts, computation of income and Form 10B on 11.07.2017. This was in response to the email from the AO seeking these details dated 06.07.2017. Subsequently, the AO issued a notice dated 02.12.2018 requesting compliance by 05.12.2018. It is seen that the time barring date for this assessment was 31.12.2018 and the AO has granted only three days' time for the assessee to upload the details called for. The assessee has complied with this on 19.12.2018. However, for some strange reasons, the AO has not only overlooked this submission but has mentioned that no details were filed which is clearly not the case. The AO is clearly in error in not considering the details filed by the assessee which were 12 days prior to date of limitation. In the circumstances, the disallowance of Rs.3,24,18,913 is deleted and the AO is directed to grant exemption u/s.11 as claimed. Ground 1 is allowed."*

8. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we observe that revenue is aggrieved because of Ld.CIT(A) has given relief based on the evidences submitted by the assessee. The evidences submitted were not controverted by the revenue. Further in Ground No. 2, it is aggrieved because Ld.CIT(A) has not adjudicated the appeal on merit. We observe that Assessing Officer has not assessed the income of the assessee judicially even though assessee has filed the information somewhere on 11.07.2017. He cannot set-aside the information available with him. Hence, we do not find any infirmity in the order passed by the Ld.CIT(A) in deleting the disallowance of ₹.3,24,18,913/- and directing the Assessing Officer to grant exemption u/s. 11 as claimed by the assessee. Grounds raised by the revenue are dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 30.09.2022.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 30/09/2022
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum