

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[CONDUCTED THROUGH VIRTUAL COURT]

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 28/Rjt/2022  
Assessment Year 2017-18**

The Swaminarayan Mandir Kundal, At Kundal, Swaminarayan Mandir, Taluka-Bharwala, Botad-382450 PAN: AAOTS8180M (Appellant)	Vs	The DCIT/ACIT(CPC), Bengaluru (Respondent)
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**Assessee by: Ms. Devina Patel, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 20-10-2022  
Date of pronouncement : 31-10-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2017-18, arises from order of National Faceless Appeal Centre (NFAC), Delhi vide DIN and Order No. ITBA/NFAC/S/250/2021-22/1037858859(1) dated 16-12-2021, in proceedings under section 143(1) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has taken the following grounds of appeal:-

*“1. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in dismissing appeal of the Appellant in limine.*

*2. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi failed to appreciate that the Appellant had filed adjournment applications in response to notices u/s 250 issued, which were not rejected by the CIT(A).*

*3. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, on merits, erred in upholding action of the CPC in making adjustments to the returned income of the Appellant by denying benefit of Sec. 11 of Rs. 2,36,655/- claimed in the return of income filed for the year by failing to appreciate that this was not a case of prima facie adjustment.*

*4. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in sustaining action of CPC in not giving deduction of Rs. 1,79,505/- being amount applied for charitable purposes/objects of the trust during the year.*

*5. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi, erred in sustaining action of CPC in not giving*

*deduction of Rs. 57,150/- being amount accumulated or set apart for application u/s 11(l)(a) of the Act.*

6. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.*

*Total tax effect Rs. 73,130/-”*

3. The brief facts of the case was the return of income was filed by the assessee on 30-07-2017 declaring total income of ₹ 1,44,340/-, in the status of AOP/BOI. The assessee received intimation under section 143(1) of the Act computing income of ₹ 3,80,999/- by way of not granting deduction claimed under section 11 of the Act. The reason for the said adjustments mentioned in the said intimation was that the audit report in Form 10B was not e-filed along with the return of income. The assessee filed rectification application on 04-04-2019, which was rejected and the assessee received order under section 154 of the Act on 07-06-2019 stating that the reason for rejection is that form 10B was not filed along with the return of income.

4. Appeal of the assessee before Ld. CIT(Appeals) was dismissed on the ground that there was a delay of 87 days in filing the appeal before Ld. CIT(Appeals), and accordingly the Ld. CIT(Appeals) dismissed the assessee's appeal on the ground that the assessee was not able to explain the delay in filing of appeal. In the appeal order, the Ld. CIT(Appeals) did not discuss the merits of the case and appeal was dismissed on the ground that

the assessee could not give a reasonable explanation and hence was not entitled for condonation of delay in filing of appeal as a matter of right.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). Before us, the counsel for the assessee submitted that the assessee has good case on merits and accordingly, Ld. CIT(Appeals) erred in facts and in law in dismissing appeal of the assessee ex parte and without giving reasonable opportunity of being heard to the assessee. The counsel for the assessee also submitted that clearly in the instant set of facts denial of deduction under section 11 of the Act cannot be a subject matter of prima facie adjustment under section 143(1) of the Act. The assessee is eligible to claim deduction under section 11 of the Act, and the said deduction cannot be denied to the assessee by Ld. CIT(Appeals) without affording an opportunity of hearing to the assessee and dismissing the appeal summarily only on the ground that there was a delay of 87 days in filing of appeal. Accordingly, the counsel for the assessee submitted that the case may be restored to file of Ld. CIT(Appeals) so as to allow the assessee and opportunity of presenting its case on merits. The learned DR also did not oppose the request of the assessee to set aside the case of the assessee to file of Ld. CIT(Appeals) so that the case may be heard on merits.

6. In view of the above, we are restoring the case back to the file of Ld. CIT(Appeals) so that the assessee is able to present its case on merits before Ld. CIT(Appeals), in the interests of justice.

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

Order pronounced in the open court on 31-10-2022

Sd/-

(WASEEM AHMED)  
ACCOUNTANT MEMBER  
Ahmedabad : Dated 31/10/2022

Sd/-

(SIDHHARTHA NAUTIYAL)  
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Rajkot