

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1791/Ahd/2019
Assessment Year : 2015-16

Sarjan Foundation 4 th Floor, Arya Apartment B/h. LD Engineering College Hostel Polytechnic Ahmedabad - 380 015	Vs	The DCIT (CPC) Bengaluru
PAN: AAATS 6262 L		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.N. Divatia, Adv.
Revenue by :	Shri Ravindra, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19 /10/2022
घोषणा की तारीख /Date of Pronouncement: 21/10/2022

आदेश/ORDER

This appeal is filed by the Assessee against the order dated 04/10/2019 passed by the Commissioner of Income-tax (Appeals)-9, Ahmedabad ["CIT(A)" in short] for Assessment Year 2015-16.

2. Grounds of appeal are as under:

1.1. The order passed u/s.250 on 04.10.2018 for AY 2015-16 by CIT(A)-9, Abad upholding the rejection of rectification application u/s.154 and the adjustment made by way of disallowance of accumulation of income of Rs.50 lakhs u/s.11(2) by CPC, Bengaluru is wholly illegal, unlawful and against the principles of natural justice.

1.2. *The Ld.CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition of Rs.50 lakhs.*

2.1. *The Ld.CIT(A) has grievously erred in law and on facts in confirming the disallowance of accumulation of income of Rs.50 lakhs u/s.11(2) by CPC, Bengaluru.*

2.2. *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the disallowance of accumulation of income of Rs.50 lakhs u/s.11(2) by CPC, Bengaluru.*

3.1. *The Ld.CIT(A) ought to have appreciated that the amendment relating to e-filing of Form no.10B was not applicable to the year under appeal but from A.Y. 2016-17 so that there was no violation of section 11(2).*

3.2. *That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have held that form no.10B was to be filed electronically before the filing of due date of return and therefore form no.10 filed in physical form on 21/5/2018 ought to have been treated due compliance and the accumulation of income of Rs.50 lakhs u/s.11(2) ought to have been allowed in computing total income. Thus, there was a mistake of law apparent on record.*

3. The assessee is public charitable trust and registered under the Bombay Public Trust Act as well as Income Tax Act. It had filed its return of income for A.Y. 2015-16 on 30.09.2015 declaring total income at Rs. Nil after claiming accumulation of income of Rs. 50 lakhs u/s 11(2). It was processed u/s 143(1) by CPC Bengaluru vide intimation dated 10.11.2017 wherein the claim of accumulation of income of Rs. 50 Lakhs was rejected and demand of Rs. 10,84,600 was raised. The assessee filed online application u/s 154 on 30.11.2017 with CPC which was disposed of by order dated 06.05.2018 wherein the claim was rejected on the ground that the assessee did not file

Form-10 within due date of filing return u/s 139(1) as per provision of 12(2) r.w.r 17.

4. Being aggrieved by the said rectification order dated 06.05.2018, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the delay in e-filing of Form 10 had occasioned for sufficient cause in as much as it had filed through oversight and ignorance Form 10 in physical form on 21.05.2018 which was later on e-filed. The amendment requiring e-filing of Form 10 was made effective from 01.04.2016 relevant to A.Y. 2016-17 and hence, not applicable to the year under appeal. The assessee also relied upon CBDT circular no. 273 dated 03.06.1980. However, the CIT(A) rejected all the contentions holding that there was no mistake in the initiation processed by CPC and the delay in filing Form - 10 could be raised before the concern CIT(Exemption). The Ld. AR further submitted that vide order dated 02.09.2022, the CIT(Exemption) has condoned the delay in filing Form 10 for A.Y. 2015-16. The Ld. AR prayed that since the delay is condoned by the CIT(Exemptions), the Assessing Officer may be directed to grant the claim of the assessee.

6. The Ld. DR relied upon the rectification order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the delay in e-filing of Form 10 has now been condoned by the CIT (Exemption) vide order dated

02.09.2022, hence, it is appropriate to direct the Assessing Officer to look into the claim of the assessee as per Section 11(2) after verifying the same on merit and as per law. The appeal of the assessee is partly allowed.

8. In result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 21st October, 2022 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Ahmedabad, Dated 21/10/2022

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-9, Ahmedabad
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

//True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad