

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.447/M/2022
Assessment Year: 2016-17**

M/s. Shramik Mahila Mandal, Room No.12, Shiv Shakti Nagar-2, Road No.16, Sai Baba Nagar, Thane West, Maharashtra – 400 604 PAN: AAKTS9483K	Vs.	Income Tax Officer (Exemptions), Thane Room No.208, 2 nd Floor, REAC Thane, Qureshi Mansion, Thane, Maharashtra – 400 602
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Krishna Kumar, D.R.

Date of Hearing : 14 . 11 . 2022
Date of Pronouncement : 30 . 11 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Red Hat India Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 22.12.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2016-17 on the grounds inter-alia that :-

“1. In the facts and circumstances of the case, the Ld. ITO has erred in levying tax on the gross Income of the Trust.

2. In the facts and circumstances of the case, the Ld. CIT(A) has erred in not entertaining additional claim of exemption u/s 10(23)(iiiad), thereby departing from the law laid by Hon. Apex Court in the case of Goetze India v. CIT (284 ITR 323).

3. The Assessee craves leave to add, amend, alter, vary or withdraw any or all the grounds of appeal before or at the time of hearing of appeal.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: assessee being a charitable trust registered under section 12A of the Income Tax Act, 1961 (for short ‘the Act’) has filed the return of income in time declaring nil income, which was processed under section 143(1) of the Act by the Assessing Officer (AO) [CPC, Bangalore) and thereby made an addition of Rs.10,02,135/- to the total income of the assessee thus raised a demand of Rs.1,92,510/-. Subsequently, assessee filed a rectification application under section 154 of the Act dated 10.12.2020 before the AO who has dismissed the application vide order dated 02.03.2021.

3. Assessee carried the matter before the Ld. CIT(A) by way of challenging the order passed by the AO under section 154 of the Act who has dismissed the same. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. Notice was issued to the assessee through RPAD for 20.06.2022 on which date none appeared on behalf of the assessee. Thereafter, next notice was issued for 20.07.2022 on which date one Shri Rohan Dedia put in appearance on behalf of the assessee vide attorney dated 17.06.2022 brought on record and the case was adjourned to 14.11.2022 at the request of Ld. A.R. for the assessee, on which date none appeared on behalf of the assessee nor any

request for adjournment was filed. So the Bench has decided to dispose of this appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. I have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. Undisputedly return of income was filed by the assessee within time declaring nil income which was processed by AO, CPC Bangalore under section 143(1) of the Act. It is also not in dispute that by declining the exemption alleged to have been claimed by the assessee trust under section 11 of the Act addition was made and demand was raised on account of non filing of audit report in form No.10B for the year under assessment, for which assessee trust moved a rectification application under section 154 of the Act which has also been dismissed by the AO.

7. From the aforesaid undisputed facts it has come on record that the assessee has failed to file the audit report in form 10B along with return of income, however, during the course of appellate proceedings before the Ld. CIT(A) it is contended by assessee trust that the Trust had spent a sum of Rs.10,42,284/- on the objects of the Trust needs to be verified. The Ld. CIT(A) decided the aforesaid contentions raised by the assessee by returning following findings:

“It is only after the submissions of the necessary evidences in this regard that the statement of the appellant can be considered. However this is a long drawn process and cannot be considered as a mistake

apparent from record and therefore does not come within the scope of provisions of section 154 of the Income Tax Act.”

8. Assessee also raised contentions before the Ld. CIT(A) that assessee trust is also exempted under section 10(23C)(iiiad) which contention has also not been accepted by the Ld. CIT(A) by observing that this is a fresh alternate claim being made by the assessee and it requires detail examination whether appellant fulfils the conditions for claiming exemption under section 10(23C)(iiiad) of the Act.

9. Aforesaid finding returned by the Ld. CIT(A), though made while deciding the appeal against the order passed under section 154 of the Act, are not sustainable because when assessee has come up with specific contention that the trust had spent a sum of Rs.10,42,284/- on the object of the trust the same was not examined by the AO during passing of the order under section 154 of the Act, I am of the considered view that when addition has been made on non sustainable grounds by ignoring the contention of the assessee the same is certainly a mistake apparent on record and the issue was required to be decided by verifying the facts pleaded by the assessee. Furthermore, another contention of the assessee that trust is also exempted under section 10(23C)(iiiad) could have been accepted during the proceedings under section 154 of the Act as the same is also a mistake apparent on record and the addition made and demand has been raised on the basis of mechanical process carried out by the AO/CPC Bangalore.

10. In view of what has been discussed above, I am of the considered view that order passed by the Ld. CIT(A) is not

sustainable in the eyes of law, hence set aside. Since contentions raised by the assessee that trust had spent a sum of Rs.10,42,284/- on the object of the trust and that the trust has not claimed any exemption, needs to be verified, the case is remitted back to the AO to decide afresh after verifying the contentions raised by the assessee by providing opportunity of being heard to the assessee. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30.11.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 30.11.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.