

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
ALLAHABAD BENCH, ALLAHABAD  
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.38/Alld./2022  
Assessment Year: 2018-19

Umrao Singh Smarak Samiti, 465 Mumfordganj, Allahabad - 211002,U.P.	v.	ITO-CPC, Bangalore.
<b>PAN:AAATU2575N</b>		
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Shri Rabin Chaudhari, CIT DR
Date of hearing:	23.02.2023
Date of pronouncement:	23.02.2023

**ORDER**

**PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:**

This appeal, filed by assessee, being ITA No.38/Alld./2022 for assessment year 2018-19, is directed against an appellate order dated 18.11.2022 in Appeal No. CIT(A),Allahabad/10093/2020-21(DIN & Order No. ITBA/NFAC/S/250/2022-23/1047496818(1)) passed by learned Commissioner of Income Tax (Appeals), National faceless Appeal Centre (NFAC), Delhi (hereinafter called "the CIT(A)"), the appellate proceedings had arisen before learned CIT(A) from rectification order dated 10.08.2020 passed by CPC, Bangalore (hereinafter called "the AO") (Document Identification No. CPC/1819/U7/2003607531) under Section 154 of the Income-tax Act,1961(hereinafter called "the Act") disposing of rectification application dated 13.07.2020 filed by the assessee .We have heard this appeal through physical hearing mode in Open Court proceedings.

2. The grounds of appeal raised by assessee in ITA No. 38/Alld./2022 for assessment year 2018-19, in memo of appeal filed with Income-Tax Appellate Tribunal, Allahabad Bench, Allahabad(hereinafter called “ the tribunal”) , reads as under:-

*(i) That in view of the matter the order passed under Section 154 by order dated 10.08.2020 on income of Rs.94,60,424/- is bad both on the facts and in law.*

*(ii) That in view of the matter CPC, Bangalore was not correct in disallowing benefit of Section 11 to 13 under Section 154 of the Act since it is not apparent mistake from record and needs detail scrutiny which was not done hence the order under Section 154 as passed by CPC Bengaluru is highly unjustified.*

*(iii) That in view of the matter the learned CIT (Appeal) was wrong in framing the order **ex-parte** without providing opportunity to the assessee and without considering the facts available on record hence in general and casual manner order was passed which is highly unjustified.*

*(iv) That in view of the matter the assessee society has already been granted registration under Section 12A & 80G of the IT Act and department has been allowing the benefit under Section 11 to the society year after year but for the said year the same was denied on the ground that the audit report in form 10B was uploaded subsequent to filing of return but the fact remains **that both filing of return as well as uploading on form 10B was done before due date** hence the genuine claim of deduction should have been allowed.*

*(v) That in view of the matter finding an observation of both the two lower authorities with regard to the claim of exemption under Section 11 to 13 is totally incorrect and contrary to the actual facts of the case.*

*(vi) That in view of the matter the assessee reserve his right to take any fresh ground of the appeal before hearing of appeal.”*

3. The brief facts of the case are that the assessee filed return of income on 26<sup>th</sup> July, 2018 for ay: 2018-19 which was processed by CPC , Bangalore under Section 143(1) vide order dated 26.09.2019 (Document Identification No. CPC/1819/A7/1915206392), wherein income of the assessed was assessed at Rs. 94,60,424/- as against ‘NIL’ income declared by the assessee in return of income

filed with the Revenue. The CPC Bangalore denied the benefit of deduction u/s 11 and 12 of the 1961 Act, wherein claim of the assessee for application of income to the tune of Rs. 1,26,66,292/- was denied/rejected by CPC, Bangalore. The assessee filed rectification application u/s 154 of the 1961 Act , dated 13.07.2020 . The aforesaid rectification application filed by assessee was dismissed by CPC, Bangalore, vide rectification order dated 10.08.2020 passed by CPC, Bangalore u/s 154, wherein income of the assesses was again computed at Rs. 94,60,424/- .

4. The assessee being aggrieved by rectification order dated 10.08.2020 passed by CPC , Bangalore u/s 154, filed first appeal before Id. CIT(A), who dismissed the appeal of the assessee , by holding as under:

*“The appeal was instituted on 08/09/2020 against the order dated 10/08/2020 passed under section 154 of the Income-tax Act, 1961 by the Deputy Commissioner of Income tax, CPC, Bangalore for the assessment year 2018-19. Subsequently, the appeal was migrated to the National Faceless Appeals Centre in terms of Notification No. 76 dated 25.09.2020 issued from Central Board of Direct Taxes. The appellant submits as under:-*

*2.”That the above named society is running an educational institution and already granted registration u/s 12A and 80G of the Act in the year 2008. For doing. such educational activities regular books of accounts are maintained which are audited and Form 10B filed year after year and the said society has been granted exemption year after year except the year under consideration by CPC, Bengaluru without going into the facts of the case and simply in arithmetical/computation form benefit of section 11 to 13 was denied and before denying section 11 to 13 of the Act no reasonable cause was stated and simply in casual manner deduction was denied when assessee claimed in the return filed online on 26.07.2018 and Form 10B was uploaded on 08.08.2019 (i.e. ITR and Form 10B filed within due date). In this way the genuine claim of the assessee was denied when the society is already registered u/s 12A of the Act and once 12A is granted benefits of section 11 to13 should have been allowed which was not*

done in present order earlier processing u/s 143(1) was done on 26/9/2019 and thereafter response u/s 154 of the Act was also filed before CPC, Bengaluru which was also not accepted which highly unjustified hence being aggrieved with the order the assessee is filing appeal on following grounds for adjudication"

**3. Grounds of Appeal:**

1. That any view of the matter rectification order u/s 154 of the IT Act vide order dated 10/08/20 on income of Rs. 94,60,424/- is bad both on the facts and in law.
2. That in any view of the matter CPC, Bengaluru was wrong in not allowing benefit of section 11 to 13 of the IT Act when the society is registered u/s 12A and 80G of the Act.
3. That in any view of the matter it is settled law that once registration is granted u/s 12A of the Act benefit of section 11 to 13 should have been allowed which was not done hence the order of rejection of rectification passed vide order under u/s 154 dated 10/08/20 is not correct.
4. That in any view of the matter benefit of section 11 to 13 has been allowed by CP, Bengaluru in earlier and in subsequent years hence the denial of genuine claim by the society for the said year is uncalled for.
5. That in any view of the matter interest as charged u/s 234B and 234C is incurred in the facts and circumstances of the case.

**4. Briefly the statement of facts if as under;**

The appellant filed Return of income on 26.07.2018 showing gross receipts of Rs.94,60,424/- and income applied for charitable or religious purposes of Rs.1,26,66,292/-. The return was processed by the CPC u/s 143(1) dated 26.09.2019. Thereafter, an order was passed under section 154 of the Income-tax Act, 1961 by the Assistant Director of Income tax, CPC, Bangalore by disallowing the claim of deduction u/s.11(1)(a) and taxing the gross receipts of Rs.94,60,424/- in view of non-filing of the audit report (Form-10B) along with the return, as required u/s.12A(1)(b) of Income tax Act read with 1st Proviso to Rule 12(2) of the Income Tax Rules. The appellant is a Public Charitable Trust registered with the Charity

Commissioner and also with the Income Tax under section 12AA of the Act.

During the year, assessee trust received voluntary contributions of Rs.94,60,424/- and claimed that the entire receipts were applied for charitable purpose. The appellant submits that it has filed both return and income and Audit report before the due date for filing the return and hence the deduction claimed u/s. 11(1)(a) towards application of income is allowable.

5. I have considered the facts of case and submissions of the appellant made during the course of appeal proceedings. In this case even though assessee has filed the return and audit report before the due date, the audit report was not filed along with or before filing of the return. The return of income was filed on 26.07.2018 and the audit report was filed on 08.08.2018. As per CPC communication us 143(1)(a)(i) & (ii) dated 16.08.2019 & 28.02.2019 the exemption claimed u/s. 11(1)(a) is not allowable for the following reasons:

“As per Section-12A(1)(b) of Income tax Act read with 1st Proviso to Rule 12(2) of the Income Tax Rules, where the total income of the trust or institution without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax, the audit report in Form- 10B has to be E-filed along with the return of income. Since assessee has not E-filed the Audit Report in Form 10B along with or before filing of the Return of income, the exemption u/s-11 i.e. sr.no 1 & Sl. No. 4i to 4viii in Schedule Part B-TI is not allowed.”

6. Since, the appellant has failed to furnish the audit report along with the return of income as required u/s.12A(1)(b) of Income tax Act read with 1st Proviso to Rule 12(2) of the Income Tax Rules, the deduction claimed under section 11 is not allowable. Accordingly, since the requisite conditions were not satisfied, order u/s 154 was correctly passed disallowing deduction claimed u/s. 11(1)(a).

7. Condonation of delay: The appellant has not filed the Audit report in Form- 10B along with the return and filed the same at a later date. The Board, vide CIRCULAR NO. 2/2020 [F. NO. 197/55/2018-ITA-I], DATED 03-01-2020, has delegated the

*power to the Commissioners of Income Tax to condone such delay in filing Form-10B relating to AY 2018-19, if such delay is less than 365 days. Further, the Board, vide CIRCULAR NO. 16/2022 [F. NO. 197/89/2022-ITA-I], DATED 19.07.2022, has delegated the power to the Pr. Commissioners of Income Tax/ the Chief Commissioners of Income Tax, if the delay is more than 365 days upto three years in filing Form-10B for the AY 2018-19 and subsequent years for condonation of delay. Hence, appellant may approach the jurisdictional Commissioners of Income Tax for condonation of delay in filing the required Form. Accordingly, the grounds raised in this appeal is dismissed.*

*8. In the result. Appeal is dismissed.”*

5. Aggrieved by the aforesaid appellate order passed by Id. CIT(A), the assessee has filed second appeal with the Tribunal. None appeared on behalf of the assessee when this appeal was called for hearing before the Division Bench nor any adjournment application was filed. The Learned CIT DR submitted that the assessee has filed audit report late and hence, the claim of the deduction u/s 11 to 13 was rightly denied by authorities below. The Id. CIT DR relied upon appellate order passed by Id. CIT(A)

6. We have considered the contentions of Id. CIT DR and perused the material on record. We have observed that the assessee has submitted following statement of facts, along with memo of appeal filed with tribunal:

*“That the assessee society is registered society and engaged in educational activity for the last number of years. The said society has already been granted registration under Section 12A and 80G of the Act since 2008. For such activities regular books of account are maintained which are audited and in this regard all the necessary*

*formalities such as filing of 10B, filing of audit report as well as filing of return is being complied with within time each year. For the said year return was filed online on 26.07.2018 and form 10B was uploaded on 08.08.2020. In this way for said year both the ITR as well as audit report in form 10B was uploaded within due date. However, while processing the return the benefit of section 11 & 12 was not allowed on the ground that audit report in form 10B was uploaded after filing of the return and thus the genuine claim of the society was denied. Against the said intimation order under Section 143(1) assessee filed petition under Section 154 which was also turned down by order dated 10.08.2020. However, against the said order first appeal was filed before CIT (Appeal) who vide order dated 18.11.2022 dismissed the appeal without providing opportunity to the assessee and the facts was not properly considered by both the lower authorities and genuine exemption under Section 11 & 12 was denied which is highly unjustified and thus being aggrieved with the order the assessee is filing appeal on following grounds for adjudication.”*

Thus, on perusal of the grounds of appeal filed by the assessee before tribunal and the appellate order passed by ld. CIT(A), we have observed that ld. CIT(A) passed an *ex-parte* appellate order without providing any opportunity to the assessee to explain its case, as it appears from the appellate order passed by ld. CIT(A) that no opportunity was provided by ld. CIT(A) to the assessee to submit its explanations, before dismissing the appeal of the assessee. The grievance of the assessee vide Ground of Appeal No. (iii) is that the ld. CIT (A) has dismissed the appeal of the assessee without providing an opportunity to the assessee to explain its case. We understand that the appeal was decided under faceless scheme, but adherence to Principles of natural justice is one of the most important pillar of the effective judicial delivery system, as no person should be condemned unheard. Thus, the ld.

CIT(A) ought to have given an opportunity to the assessee so that the assessee may put forward his claim/contentions before ld. CIT(A) as per the scheme/guidelines of faceless proceedings, and in any case the submissions/contentions of the assessee are to be evaluated/verified by ld. CIT(A) on merits in accordance with law. Thus, in the instant case, there is clearly breach of principles of natural justice, as the assessee was condemned by ld. CIT(A) without providing proper opportunity to the assessee to explain its case. Thus, keeping in view facts and circumstances of the case, we are setting aside the appellate order passed by ld. CIT(A) and restoring the matter back to the file of ld. CIT(A) for fresh adjudication on merit in accordance with law, after giving opportunity to the assessee to explain its case. We clarify that we have not commented on the merits of the issue in this appeal. The appeal of the assessee is allowed for statistical purposes. We order accordingly.

7. In the result, appeal filed by assessee in ITA No. 38/Alld/2022 for ay: 2018-19 is allowed for statistical purposes. We order accordingly.

Order pronounced in open Court on 23.02.2023 at Allahabad, U.P. after conclusion of hearing in the presence of Ld. CIT-DR.

***Sd/-***  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

DATED: 23/02/2023  
KD Azmi

***Sd/-***  
**[RAMIT KOCHAR]**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant – Umrao Singh Smarak Samiti, 465 Mumfordganj, Allahabad,
2. Respondent – ITO-CPC, Bangalore/The AO, Allahabad, U.P.
3. The CIT, Allahabad, U.P.
4. The ld. CIT- DR. ,ITAT, Allahabad, U.P./ The ld. Sr. DR, ITAT, Allahabad , U.P.
5. The Guard File

By Order

P.S.