

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष

[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 381/Kol/2022
Assessment Year: 2009-10

Shrijani Agarwal Trust. (PAN: AAHTS 0832 M)	Vs.	ITO, Ward-36(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	29.11.2022
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	23.02.2023
For the Appellant/ निर्धारिती की ओर से	Shri Rakesh Jain, FCA
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR


ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 05.05.2022 for the AY 2009-10.

2. The only issue challenged by the assessee in the various grounds of appeal is against the order of Ld. CIT(A) upholding the order of AO therein the AO has rejected the claim of the assessee trust of Rs. 1,00,000/- under chapter VIA on the ground that rectification application was not filed within four years from the end of financial year in which the order sought to be amended was passed.

3. Facts in brief are that the assessee filed the return of income on 4.3.2010 which was processed u/s 143(1) of the Act raising a demand of Rs. 1,23,191/- by rejecting the claim of assessee of Rs. 1,00,000/- under Chapter VIA u/s 80C of the Act on the ground that the assessee is a trust as mentioned in the PAN and therefore the assessee is not entitled any deduction as such. The assessee moved rectification petition which was rejected by the AO on 26.06.2018 which is reproduced as under for the sake of ready reference:



आयकर अधिकारी का कार्यालय, वार्ड - 36(2), कोलकाता
OFFICE OF THE INCOME TAX OFFICER, WARD-36(2) KOLKATA
 "आयकर भवन पूर्वा"
 "AAYAKAR BHAWAN POORVA"
 110, शान्तिपल्ली, 8वां तल. ई. एम. बाईपास, कोलकाता - 700 107
110, SHANTIPALLY, 8TH FLOOR E.M. BYEPASS, KOLKATA - 700 107
 E-mail: kolkata.ito36.2@incometax.gov.in Office Phone No.: 033-24410388

No. ITO/Ward-36(2)/ Kol./Misc.-rectification /AAHTS0832M/2018-19/ 332 Date: 26.06.2018

To
 M/s Shrijani Agarwal Trust
 26 Strand Road,
 1st Floor,
 Kolkata-700 001

Sir/Madam,

Sub: Rectification petition for the AY 2009-10- matter reg.
Ref: Your rectification petition dated 19/02/2018.

Please refer to the above.


Since status of your PAN is a trust and deduction u/s 80C is not applicable for Trust assesses, you are therefore not eligible to claim deduction u/s 80C under Chapter VI.


In view of the above, demand raised in order u/s 143(1) of the I T Act is genuine and accordingly your petition for rectification is not tenable at this end.

Thanking you.

Encl: copy of intimation u/s 143(1)

No. ITO/Ward-36(2)/ Kol./Misc.-rectification / AAHTS0832M/2018-19/
 Copy for information to:
 1. Addl. CIT, Range-36, Kolkata



Yours faithfully

 (Ujjwal Kumar)
 Income Tax Officer, Ward-36(2), Kolkata

उज्ज्वल कुमार
 UJJWAL KUMAR
 आयकर अधिकारी, वार्ड-36(2), कोलकाता
 Income Tax Officer, Ward-36(2), Kol.
 WPS/Code No. WBOW-10000
 Date: 26.06.2018

(Ujjwal Kumar)
 Income Tax Officer, Ward-36(2), Kolkata

4. The said order was challenged before the Ld. CIT(A) by the assessee trust and the Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

“7.5. Ground no. 4,5 and 6 pertain to order passed u/s 154. On examining the purported order u/s 154, it is seen that the appellant is claiming the letter written by ITO, Ward-36(2), Kolkata as rectification order. Actually, the said document is not an order u/s 154 of the I.T. Act, 1961 but an answer to the appellant regarding his application for rectification. In this letter which copied above in para 7.2 is a communication from Ld. AO to the appellant. In this letter, the Ld. A.O has stated that since the status of appellant’s PAN is a trust and deduction under 80C is not applicable to Trust assesseees and hence, appellant was not eligible to claim deduction under 80C under Chapter VIA. The AO further communicated that the demand raised in order u/s 143(1) of I.T. Act is genuine and accordingly, the petition for rectification is not tenable at this end.

On examination of Section 154(7) it is seen that no amendment u/s 154 can be carried out after expiry of four years from the end of financial year in which the order sought to be amended was passed. In the present case, the order sought to be amended/s 143(1) which is dated 28.03.2011. Hence, four years from the end of the financial year would be ended by 31.03.2015. The letter sent by the AO is dated 26.06.2018 and thus, it cannot be by any stretch of imagination an order u/s 154 of I.T. Act, 1961 against which the appellant is in present appeal.

As per Section 246- Appealable orders letter sent by the AO dated 26.06.2018 is not an appealable order and hence, the appeal filed by the appellant on a non-appealable letter is an invalid appeal and hence, dismissed. For hearing the case on merits, the order needs to fulfill the basic conditions as laid in the Income Tax Act which have not fulfilled in the present case and hence, the issue is not discussed on merits.”

5. After hearing the rival contentions and perusing the material on record, we observe that the assessee is a minor beneficiary trust which has to be assessed as individual assessee. We note that in the subsequent year the assessee status have been accepted as an individual and the deduction under Chapter VIA has been allowed to the assessee which is the undisputed position not controverted by the revenue. At the time of hearing, we note that the only ground on which the appeal was dismissed by upholding that the rectification should have been within four years from the end of the financial year in which the order sought to be amended was passed in terms of provisions of Section 154(7) of the Act. The Ld. CIT(A) observed that since the order sought to be amended is an intimation u/s 143(1) of the Act dated 28.03.2011 and four years from the financial year could have expired by 31.03.2015 but the AO sent letterdated 26.06.2018 by rejecting the contentions of the assessee which is not an

order u/s 154 of the Act. We have perused the facts on record and find that the rectification order passed by the AO which was appealed before the Ld. CIT(A) but the Ld. CIT(A) refused to accept the same as rectification order. We also note that there was no dispute that rectification was not filed within four years from the end of financial year in which the order u/s 143(1) was passed on 28.03.2011. Neither the revenue has denied this fact during the course of hearing. We have also asked revenue to place on record, a rectification petition moved by the assessee in order to ascertain whether the petition was filed in time or not. But the same was not placed before us by citing the reasons that same is not traceable. Under the circumstances, we are inclined to give the benefit of doubt to the assessee by reversing the order of Ld. CIT(A) and consequently the AO is directed to allow the deduction under Chapter VIA.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 23rd February, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 23rd February, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Shrijani Agarwal Trust, 15/63, Rudra House, Civil Lines, Kanpur, Uttar Pradesh-208001.
2. Respondent – ITO, Ward-36(2), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata