

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri George George K., Judicial Member  
and**

**Ms. Padmavathy S., Accountant Member**

<b>ITA No. 862/Coch/2022</b> (Assessment Year: 2019-20)		
M/s. Equip India Mission Charitable Trust 407A, Kodassery Kuttichira Chalakkudy 680724 PAN – AAATE8310P (Appellant)	vs	The Income Tax Officer Ward - 2(1) Aayakar Bhavan Trissur 680001 (Respondent)

Assessee by:	Shri Anil Kumar, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of hearing:	28.02.2023
Date of pronouncement:	03.03.2023

**ORDER**

**Per: George George K., J.M.**

This appeal at the instance of the assessee is directed against the order of the CIT(A)/NFAC, Delhi dated 20.06.2022. The relevant assessment year is 2019-20.

2. The facts as mentioned by the assessee before the Tribunal (statement of facts) are as follows: -

*“The appellant is a Charitable Trust came into existence on 12.11.2004 under a document which the Trust was created and was registered with the Registrar of Documents. All the objects of the trust are notably Charitable without violating the expression Charitable Purpose as defined under Section 2(15) along with two provisos of the Income tax Act 1961.*

*Appellant filed the return of income for the A.Y 2019-20, on 28.12.2019 beyond the time prescribed under section 4A of section 139. Appellant filed Return of Income in ITR-7 exclusively meant for charitable institutions. This return was accepted and acted upon without having recourse to section 139(9) of the Act. While processing return u/s. 143(1) of the Act, vide intimation dated 11.05.2020 with a note that registration under Section 12A/12AA is not furnished by which, the entire claim of expenditure including Administrative expenditure was disallowed and put to tax. It is evidenced from the return of income the Revenue expenditure is classified into a) Administrative Expenditure b) Expenditure incurred for charitable purpose and the appellant had correctly filled the above columns while filing the returns. The Assistant Director, Centralized processing Centre while processing the returns rejected the claim of administrative expense issued intimation under Section 143(1) of the Act without allowing the legitimate claim of the assessee's expenditure towards administrative expenses incurred for earning the income. The authority that passed the intimation under Section 143(1) of the Act finalized the proceedings without affording an effective opportunity to respond to the proposal. The Assistant Director, CPC had sent a notice through the portal without any real time notification to the appellant and finalized the proposal during the nationwide lock down due to Covid pandemic.*

*The CIT(A) also rejected the appeal purely on some technical grounds even without affording an effective opportunity for hearing. The CIT(A) in his order had mentioned that around twelve online notices had issued for personnel hearing but the appellant had failed to appear or even not responded to the above notices. The above notices was sent by the CIT(A) through the portal that to without giving any real time intimation cannot be treated as a properly served notice . The first appellate authority also disallowed the claim of the appellant regarding the administrative expenses on the ground that the appellant is not a registered trust. Appellant prayed before the Commissioner of Income Tax that he may be treated as an AOP and the return filed by him on ITR-7 may be treated as appropriate return and the income may be put to tax at maximum marginal rate after deducting the administrative expenses. The first appellate authority gravely erred in not considering the prayer of the appellant in a judicial manner and dismissed the appeal on a mechanical manner.”*

3. Aggrieved by the order of the learned CIT(A) the assessee filed the present appeal before the Tribunal raising the following grounds: -

- “1. *The learned Commissioner of Income Tax and learned Assistant Director of Income Tax, Central Processing Centre, Bangalore erred not only in law, but also in the facts and circumstances of the case.*
2. *The authorities below erred in disallowing the claim of the appellant without affording an opportunity for personnel hearing both the authorities below issued notices on the portal but failed to provide a real time alert through mobile or mail regarding the electronic communication.*
3. *The learned Commissioner of Income Tax Appeals erred in law by not considering the prayer of the appellant to treat him as an unregistered trust and assess to tax at maximum marginal rate after allowing the administrative expenses as an AOP.*
4. *The learned Commissioner of Income tax Appeals erred in not considering the prayer of the appellant that the return filed in ITR-07 may be treated as proper return for an AOP for the purpose of assessment proceedings.*
5. *The Learned Commissioner of Income Tax Appeals rejected the claim of administrative expenses of appellant on the ground that the return is not filed u/s 139(1). The applicable provisions doesn't postulate any such conditions.*
6. *Such other grounds as may be raised at the time of hearing the appeal.”*

4. The learned A.R. relied on the grounds raised and the statement of facts.

5. The learned D.R., on the other hand, relied on the order of the CIT(A).

6. We have heard the rival contentions and perused the material on record. The first appellate authority has primarily rejected the appeal of the assessee since no written submissions were filed pursuant to the 12 notices issued by the CIT(A). The assessee claims that notices were sent through online portal for furnishing written submissions and no real time intimation was given to

the assessee. It is submitted that in such circumstances it cannot be stated that there is proper service of notice. We are of the view that the assessee has erred in not responding to the several notices issued for furnishing written submissions and we strongly deprecate the attitude of the assessee. However, in the interest of justice and equity, we are of the view that one more opportunity should be granted to the assessee to present its case.

7. The assessee has also submitted that it may be treated as an AOP and the return filed by him in ITR-7 may be treated as proper return. It was further submitted that the income may be computed by assessing to the maximum marginal rate after deducting the allowable administrative expenses. Since the above prayer of the assessee cannot be adjudicated by the CPC while issuing the intimation under Section 143(1) of the Act, we are of the view that the remand on the facts of the instance case should be to the jurisdictional AO. Accordingly the issues raised in this appeal are restored the file of the jurisdictional AO. The assessee is directed to cooperate with the Revenue and shall not seek adjournment without reasonable cause. The AO is directed to afford reasonable opportunity to the assessee to present its case before a decision is taken in the matter. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 3<sup>rd</sup> March, 2023.

Sd/-  
**(Padmavathy S.)**  
**Accountant Member**

Sd/-  
**(George George K.)**  
**Judicial Member**

Cochin, Dated: 3<sup>rd</sup> March, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -NFAC, Delhi*
4. *The CIT -*
5. *The DR, ITAT, Cochin*
6. *Guard File*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Cochin*

n.p.