

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.112/Hyd/2023		
Assessment Year: 2016-17		
Indian Red Cross Society, Hanamkonda, Warangal PAN:AABII2634P	Vs.	Income Tax Officer (Exemption) Ward 1(4) Hyderabad
(Appellant)		(Respondent)
Assessee by:	Shri K.V. Chalamaiah, CA	
Revenue by:	Shri Kumar Aditya, DR	
Date of hearing:	20/03/2023	
Date of pronouncement:	23/03/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 16.12.2022 of the learned CIT (A)-NFAC, relating to A.Y.2016-17.

2. This is the 2nd round of litigation before the Tribunal. Facts of the case, in brief, are that the assessee is a Trust and filed its return of income declaring 'Nil' income after claiming exemption u/s 11 of the I.T. Act. The case was selected for scrutiny and the assessment was completed on 20.12.2018 at an assessed income of Rs.15,08,580/-.

3. The assessee filed appeal before the CIT (A) who dismissed the appeal filed by the assessee and on further appeal filed by the assessee, the Tribunal vide order dated 23.12.2019 restored the issue to the file of the CIT (A) with a direction to provide one more opportunity to the assessee. However, despite notice dated 30.12.2020, 29.4.2022 and 10.11.2022 asking the assessee to file reply, there was no response from the side of the assessee for which the learned CIT (A) in the ex-parte order passed by him dismissed the appeal filed by the assessee by observing as under:

“4. Further, the applicant had filed appeal before Ld. CIT(A)-9, Hyderabad. The Ld. Commissioner of Income Tax (Appeal)-9 Hyderabad has disallowed the appeal and applicant filed appeal before Hon'ble ITAT "B", Bench Hyderabad. The Hon'ble ITAT vide its order dated 23.12.2019 to consider the Ld. has directed to Commissioner of Income Tax (Appeal) to consider the appeal afresh by providing one more opportunity to the assessee of being heard. During the course of appellate proceedings vide notices The appellant was requested to file reply. However no submissions were made during the appellate dated 30.12.2020, 29.04.2022 and 10.11.2022. entire appellate proceedings. The appellant during the appellate proceedings did not comply with the notices and hence made no submission in support of grounds of appeal. So it is held that the appellant had nothing more to submit except for raising the ground.

4.1 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee, 118 ITR 461 (SC) held that the appeal does not mean merely filing of the appeal but effectively pursuing it. Keeping in view of the aforesaid factual position, the appeal filed by the appellant is, therefore, decided on merits.

5. In the instance of the case the appellant failed to make any submissions in support of grounds of appeal, this gives rise to an undisputable conclusion that the assessee has got nothing more to say in this regard. I have gone through the record before me and based on the record I have decided to adjudicate the issue on the merits of the case. In the instant case the Assessing Officer has rightly assessed an income of Rs. 15,08,580/- under the head income on account of income claimed as exemption u/s 11 in the absence of registration u/s 12A of Rs.15,08,577/ Since the appellant failed to substantiate appellant's claim and addition made by the Assessing Officer of Rs. 15,08,5771- is hereby confirmed.”

4. Aggrieved with such order of the learned CIT (A) the assessee is in appeal before the Tribunal by raising the following grounds:

“1) The learned CIT (A) is not justified in dismissing the appeal without giving a reasonable opportunity to the appellant as per the directions of Hon'ble ITAT order dated 23.12.2019.

2) The learned CIT (A) ought to have consider that there is no change in objects of the society for the A.Y 2016-17 and for the A.Y 2019-20 when the registration was granted u/s 12A of the I.T. Act.

3) The learned CIT (A) is not justified in considering the whole of the donations received during the relevant accounting year as income of the appellant society on the facts and in the circumstances of the case.

4) Any other ground or grounds of appeal that may be urged at the time of hearing”.

5. The learned Counsel for the assessee filed a copy of the notice issued by the CIT (A) on 10.11.2022 and submitted that after issue of this notice, the learned CIT (A) passed the order without affording any opportunity to the assessee. Therefore, this matter should be restored to the file of the CIT (A) for fresh adjudication.

6. The learned DR, on the other hand, strongly objected to the arguments advanced by the learned Counsel for the assessee and submitted that in the 2nd round of litigation before the CIT (A), the assessee was non-cooperative and there should not be any further remand to the CIT (A) and the appeal filed by the assessee should be dismissed.

7. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that the Tribunal vide order dated 23.12.2019 restored the issue to the file of the learned CIT (A) with a direction to give one more opportunity to the assessee of being heard. We find despite 3 notices dated 30.12.2020, 29.4.2022 and 10.11.2022 respectively issued by the CIT (A) NFAC the assessee never bothered to appear before the CIT (A) by filing the requisite details. The submission of the learned Counsel for the assessee that it is a charitable organization and the Collector is the President of the Society cannot absolve the assessee from the responsibility cast on it by filing the requisite details before the CIT (A) for getting the case heard. We deplore such type of attitude on the part of the assessee and levy a cost of Rs.5000/- for its inaction in not appearing before the CIT (A) and again coming to the Tribunal against the ex-parte order passed by the CIT (A). The amount of Rs.5000/- be paid to the High Court Legal Services Committee of the Hon'ble High Court of Telangana so that it is not repeated again in future. With this direction, we restore the issue to the file of the CIT (A) NFAC with a direction to give one last opportunity to the assessee to substantiate its case and decide the issue as per fact and law. If the assessee fails to appear before the CIT (A) NFAC for whatsoever reason, the CIT (A) NFAC is at liberty to pass appropriate order as per law. We hold and direct accordingly. The grounds raised by the assessee are therefore, allowed for statistical purposes.

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

Order pronounced in the Open Court on 23rd March, 2023.

Sd/- (LALIET KUMAR JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 23rd March, 2023

Vinodan/sps

Copy to:

S.No	Addresses
1	Indian Red Cross Society, 2-7-939 Opp: Collectorate, Subedari, Hanamkonda, Warangal 506001
2	Income Tax Officer (Exemptions) Ward 1(4) Aayakar Bhavan, Opp:LB Stadium Basheerbagh, Hyderabad 500004
3	CIT -NFAC
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order