

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'एसएमसी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.553/Kol/2022
Assessment year: 2014-15

Sana Tondon Benefit Trust.....Appellant
4, Copper Street,
Richi Park,
Kolkata-700020.
[PAN: AADAS8436Q]

vs.

ITO (Exemption), Ward-1(3), Kolkata.....Respondent

Appearances by:

Shri Miraj D Shah, AR, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : February 13, 2023

Date of pronouncing the order : May 01, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 13.09.2022 of the National Faceless Appeal Centre [hereinafter referred to as the 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. At the outset, the ld. counsel for the assessee has submitted that the assessee is a benefit trust formed on 27.03.2009 and registered by a deed executed on 15.06.2010. The assessee filed its return of income by declaring Rs.1,01,590/- as income. However, while filing of return of income, the assessee mistakenly filed ITR 7 instead of ITR 5. The

mistake was not done deliberately and neither with any mala fide intention. The assessee received a defect notice u/s 139(9) of the Act on 08.09.2015 against which a revised return in ITR 5 was filed successfully. The return filed i.e. ITR 5 in response to the defect notice was rejected by Central processing cell and original return i.e. ITR 7 was processed u/s 143(1) of the Act. The assessee, therefore, was taxed at a maximum marginal rate, whereas, the contention of the assessee is that the assessee was liable to be taxed at the rates as applicable to an individual or association of persons.

3. Being aggrieved by the above order of the central processing centre passed u/s 143(1) of the Act, the assessee preferred appeal before the CIT(A). However, the ld. CIT(A) without considering the merit of the case, dismissed the appeal of the assessee for want to prosecution. The assessee thus come in appeal before us.

4. The ld. counsel for the assessee has invited our attention to the acknowledgement relating to the e-filing of the rectified return in the prescribed proforma. The assessee inadvertently filed the return in ITR 7, however, when the defect was pointed out, the assessee rectified the defect and filed return in ITR 5. It has been held time and again that the Income Tax Authorities are not supposed to punish assesseees for their bona fide mistake. We, therefore, set aside the impugned orders of the lower authorities and restore the matter to the file of Assessing Officer with a direction to examine the contentions raised by the assessee and tax the assessee at the rates as applicable to the assessee-trust considering the revised return filed by the assessee.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Kolkata, the 1st May, 2023.

Sd/-
[मनीष बोरड /**Manish Borad**]
लेखा सदस्य /**Accountant Member**

Sd/-
[संजय गर्ग /**Sanjay Garg**]
न्यायिक सदस्य /**Judicial Member**

Dated:01.05.2023.

RS

Copy of the order forwarded to:

1. Sana Tondon Benefit Trust
2. ITO (Exemption), Ward-1(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches