

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.287/Bang/2023
Assessment Year: 2014-15

K.K. Foundation and Public Charitable Trust No.48, Chamundeshwari Studio Miller Tank Roda Contonment Bangalore 560 052 PAN NO : AABTK1463A	Vs.	Deputy Commissioner of Income-tax CPC Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri Madhukeshwar Hegde, A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	22.06.2023
Date of Pronouncement	:	22.06.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC u/s 250 of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2014-15 dated 8.2.2023. The assessee has raised following grounds:

- 1 The Order of the Authorities below, in so far as these are against the assessee, is opposed to law, weight of the evidence, probabilities, facts and circumstances of the Appellant's case.*
- 2 The appellant denies himself to be liable to be assessed on a total income of Rs. 7,29,38,157/- as against returned income of Rs. Nil/- as per the facts and circumstances of the case.*

- 3 *The CPC erred in passing the impugned order u/s 154 of the Act rejecting the online rectification request made by appellant on the facts and circumstances of the case.*
- 4 *The CPC is not justified in passing the order u/s 154 of the Act rejecting the rectification request made by the appellant without affording any opportunity of being heard and thus in gross violation of principles of natural justice on the facts and circumstances of the case.*
- 5 *As the Appellant has rightly considered Net Consideration from the sale of immovable property as the Income of the trust, and has promptly spent the same for acquiring the new capital assets and balance applied for Charitable Purposes as detailed in the statement of facts, the appellant's taxable income should be NIL.*
- 7 *The learned Commissioner of Income Tax (Appeals) erred in passing the order without considering the Remand report submitted by the jurisdictional assessing officer.*
- 8 *For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed, and the addition made by the CPC and sustained by the Commissioner of Income Tax (Appeals) be deleted in the interest of equity and justice.*

Tax effect: Rs.3,02,88,711/-

2. Facts of the case are that the assessee being aggrieved by the order passed by the Deputy Commissioner of Income Tax, Centralized Processing Cell, Bangalore (for short 'the CPC') under section 154 of the Act preferred this appeal in respect of assessment year 2014-15. The assessee was served with the order u/s 154 of the Act by email dated 07.11.2016. The facts that are relevant for the appreciation of this appeal are as follows:

2.1 The assessee is a public charitable trust registered under section 12A of the Act vide certificate bearing no. DIT(E)BLR/12A/K-815/AABTK1463A/ITO(E)-1/Vol-2008-09 dated 30.06.2008. The assessee filed its return of income for the assessment year 2014-15 declaring taxable income as NIL on 26.09.2014.

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2.2 The assessee had, in the return of income declared long term capital gain from sale of immovable property at Rs.3,61,91,000/-. The long-term capital gains so computed was after considering the indexation benefit. The assessee-trust also had income under the head of other sources amounting to Rs.1,48,262/- and thus a total income of Rs.3,63,39,262/- before claiming exemption u/s 11 & 12 of the Act.

2.3 The assessee-trust claimed accumulation of 15% of the income on the above at Rs. 54,50,889/- u/s 11(1)(a) of the Act and thus had income that was not applied during the assessment at Rs. 2,99,31,957/- which was accumulated u/s 11(2) of the Act and thus the returned income was NIL. In respect of this, the assessee-trust e-filed Form 10 along with the return of income which was also e-filed on 26.09.2014.

2.4 The return of income of the assessee was processed u/s 143(1) of the Act and intimation issued there under on 10.03.2016 in which the following adjustments have been made as seen from the said intimation:

- (i) The long-term capital gain was computed at Rs. 7,91,97,200/- as against the Rs.3,61,91,000/- which was properly computed in the return of income.
- (ii) The accumulation u/s 11(1)(a) of the Act at 15% of the income being Rs. 54,50,889/- has not been allowed.
- (iii) Further, the accumulation u/s 11(2) of the Act of Rs. 2,99,31,957/- was also not considered in the intimation u/s 143(1) of the Act.

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In the result, the balance tax liability payable along with interest after set off of TDS was determined at Rs. 3,02,88,711/-.

2.5 The assessee-trust, being aggrieved by the above intimation issued u/s 143(1) of the Act made an online request for rectification of the said intimation u/s 154 of the Act on 01.09.2016 by filing the particulars same as in the return of income originally filed and indicated that the error was in processing of the return by the CPC.

2.6 The above rectification request u/s 154 of the Act made by the assessee-trust online came to be rejected by the CPC vide its communication reference no. CPC/1415/T13/1539639908 dated 05.09.2016 and was served to the assessee by email dated 07.11.2016. The reason provided in the said rejection order is reproduced as follows:

"On Verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore your application for Rectification under sec. 154 is rejected for the following reason (if any)"

As seen from the e-filed return of income and rectification request filed, there is no mistake in the intimation u/s 143(1) to be rectified. As seen from the details furnished in SCH I of the Return, the assessee has not accumulated or set apart for specified purposes are required in section 11(2) and/or has not invested or deposited the amount in the modes specified in section 11(5) during the previous year relevant to the assessment year 2014-15.

In view of the above, this rectification request is rejected."

2.8 Against this assessee went in appeal before NFAC, who has confirmed the order of lower authorities by observing as follows:

"In these grounds the appellant has stated that the order u/s 154 passed by the AO CPC is in violation of principle of natural justice and proper opportunity of being heard was not provided to the appellant. However, this is not borne out from the facts, and how the e-filing system works. At the time of processing, if

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the CPC system finds if any adjustment to the total income is to be made as per the rules, the proposed changes are sent to the appellant by email and 30 days' time is given to the appellant to respond. If the Assessee responds, the response is duly considered. In the instant case the Assessee did not respond to this mail. Then the Assessee filed a rectification application u/s 154 and the same was duly considered and the order passed. These are system related procedures which are sacrosanct and it is no possible to digress from these. Accordingly, it is held that there is no violation of principle of natural justice in these proceedings u/s 154 of the Act. The grounds of appeal no.1, 2 and 3 are dismissed.”

Against this assessee is in appeal before us.

3. We have heard the rival submissions and perused the materials available on record. Before the AO, CPC while examining the return of income, CPC wanted to make certain adjustments u/s 143(1) of the Act and the same has been proposed to the assessee. The assessee has been given 30 days time to respond. However, the assessee did not respond to the mail sent by the CPC. Hence, the AO, CPC disallowed the claim of assessee with regard to issue raised before us. The assessee filed petition u/s 154 of the Act also before CPC, which has also been rejected. Before us, ld. A.R. submitted that an opportunity may be given to present the assessee's case before CPC as the assessee was failed to respond to the mails before passing intimation u/s 143(1) of the Act. Further, the assessee filed petition u/s 154 of the Act seeking the rectification of intimation issued u/s 143(1) of the Act. Same has been rejected by CPC vide reference dated 5.9.2016. Now the contention of the ld. A.R. is that AO for rejecting the online rectification request u/s 154 of the Act made by the assessee was rejected without providing opportunity of being heard. The finding of ld. CIT(A) that there was no violation of principles of natural justice in these proceeding is incorrect. We have carefully gone through the argument of ld. A.R. Admittedly, the

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assessee has not responded to the mail sent by the CPC with regard to adjustment to be made u/s 143(1) of the Act. Even during the course of proceedings u/s 154 of the Act, there was no reference to giving any opportunity of being heard to the assessee. Hence, in our opinion, it is fair and just to give one more opportunity to the assessee to present the case before the lower authorities. Accordingly, all the issues in dispute before us raised by the assessee are remitted to the file of CPC to give an opportunity to the assessee with a direction to the assessee to file necessary details to support the claim made in the return of income filed by the assessee for this assessment year. Ordered accordingly.

4. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 22nd June, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 22nd June, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.