

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1370/M/2023
Assessment Year: 2018-19**

M/s. Radheshyam Foundation, G-1, Building No.6, Sugra Apartment, Church Road, Near Nazrat Church, Bhayandar (W)-401 101 PAN: AACTR7492R (Appellant)	Vs.	National E-Assessment Centre, Delhi, Government of India, Ministry of Finance, Delhi (Respondent)
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Present for:

Assessee by : None
Revenue by : Shri B. Laxmi Kanth, D.R.

Date of Hearing : 11 . 07 . 2023
Date of Pronouncement : 20 . 07 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Radheshyam Foundation Carrier (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 27.02.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2018-19 on the grounds inter-alia that :-

"A) Making an addition of Rs.4,35,358/- on account of accreted income u/s. 115TD.

1) The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] erred on facts and in

law in upholding the order passed by the Assessing Officer (AO) making an addition of Rs. 4,35,358/- by holding that the AO does not have any option than to consider the original income tax return and compute the income accordingly.

2) The learned CIT(A) erred in not appreciating that he was not bound by the original return of income and he could consider claims made by the appellant during the course of assessment proceedings and delete the addition made by the AO of Rs. 4,35,358/- on account of accreted income u/s. 115TD.

3) The learned CIT(A) erred in not appreciating that the conditions for taxability laid down u/s. 115TD were not fulfilled in the case of the Appellant and hence the addition of Rs. 4,35,358/- made by the AO was liable to be deleted.

4) The appellant prays that the addition made by the AO u/s. 115TD and confirmed by the CIT(A) of Rs. 4,35,358/- may be deleted.

B) General

5) The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee being an Association of Persons (AOP) filed its return of income for the year under consideration declaring total income of Rs.14,206/- which was subjected to scrutiny. Notices were issued to the assessee which were duly served. The assessee claimed accreted income of Rs.4,35,358/- as per schedule 115TD of the Income Tax Return. On failure of the assessee to substantiate its claim by filing the detail of accreted income the Assessing Officer (AO) proceeded to treat the amount of Rs.4,35,358/- as bogus one and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’).

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal due to non prosecution. Feeling aggrieved with the

impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. Notice of the appeal was issued to the assessee on the given address as per Form 36 but received back with the report that “the assessee was not found residing at the given address”. It appears that except the address mentioned in Form 36 there is no other address available with the registry or the Revenue Department. So the Bench has decided to proceed with the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

5. I have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

6. I have perused the order passed by the Ld. CIT(A) who has confirmed the addition by returning following findings:

“5.1 During the assessment proceedings, the AO ascertained that as per ITR, the appellant has shown accreted income of Rs.4,35,358/- as per Schedule 115TD. The AO has stated in the assessment order that the appellant has not furnished details for the genuineness of the accreted income which cannot be verified and hence treated as bogus. Accordingly, the AO taxed the accreted income of Rs.4,35,358/- u/s 115TD of the Act.

5.2 During the appellate proceedings, the appellant filed written submission dated 14.02.2023 wherein it is stated that the appellant has already submitted their submission before the AO. It is stated that the appellant has by mistake filed the total of balance sheet in Column 115TD as Rs. 4,35,358/- and the appellant has not done any activity related to Section 115TD.

5.3 After considering the findings of the AO as per the assessment order and written submission of the appellant, it is seen that there is a contradiction that on the one hand the AO is stating that the appellant has not furnished any reply and on the other hand the appellant is stating that the appellant has submitted their submission at the time of

scrutiny assessment itself. Having said that, it is stated, the appellant has filed the return of income wherein there is a verification column which is duly verified and duly signed and therefore, the appellant solely responsible for the mistakes in the ITR. Further, in case of any mistake, as per the provisions of the Act, the appellant could have filed the revised return of income. In the absence of revised return of income, the AO does not have any option other than to consider the original ITR and compute the income accordingly. In case, the original return of income is to be discarded due to the so called mistake, there is no way that the AO could compute the total income as the AO has to solely rely upon the return of income before him. Therefore, it is held that the AO has rightly computed the income as per the ITR filed by the appellant and hence the action of the AO is upheld. Accordingly, this ground of appeal is dismissed.”

7. Before the Ld. CIT(A) the assessee has candidly admitted that by mistake he has filed the total of balance sheet in the column 115TD as Rs.4,35,358/- whereas the assessee has not done any activity related to section 115TD. Before the Tribunal the assessee has not come up to explain if he has filed any revised return under the provisions contained in Income Tax Act. Moreover, since Ld. CIT(A) is empowered to entertain and decide the claim of assessee even without having filed any revised ITR by the assessee, if there is actual mistake on the part of the assessee, the appeal was not required to be dismissed summarily. So to decide the issue once for all, the impugned order is set aside and Ld. CIT(A) is directed to decide it afresh after providing opportunity of being heard to the assessee. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.07.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 20.07.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.