

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

(THROUGH VIRTUAL HEARING)

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.98/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2014-2015)

Sri Dattatreya Sai Ashram Trust, Plot No.4706/5845, Gajapati Nagar Sainik School Road, Bhubaneswar	Vs	ITO (Exemption), Bhubaneswar
PAN No. : AAJTS 1630 D		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri S.K.Sarangi, CA
राजस्व की ओर से / Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	26/06/2023
घोषणा की तारीख / Date of Pronouncement	:	26/06/2023

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 29.12.2022, passed in DIN & Oder No.ITBA/NFAC/S/250/2022-23/1048333358(1), for the assessment year 2014-2015.

2. It was submitted by the Id. AR of the assessee that the assessee is a charitable trust filing its return of income regularly. It was the submission that originally the return filed by the assessee for the relevant assessment year admittedly did not accompany the Form 10 as was required to be filed. Consequent to non-filing of the Form 10, the intimation came to be issued u/s.143(1) of the Act bringing to tax the excess of income over expenditure. On appeal before the Id. CIT(A), the assessee had filed the requisite Form 10 along with Form 10B and the copy of the resolution for

accumulation of the unutilized income. The Id. CIT(A) vide an order dated 03.11.2017 in appeal No.265/2016-17 had for the purpose of necessary verification with regard to the claim of the assessee in respect of the accumulation, have restored the issue to the file of AO. The AO again passed an order giving effect to the order of the Id. CIT(A) on 28.12.2018 holding that the Form No.10 had not been furnished before the expiry of the time allowed under sub-section 1 of Section 139 of the Act.

3. It was the submission that against this order, the assessee had filed an appeal before the Id. CIT(A) and the Id. CIT(A) upheld the order of the Id. AO. It was the submission that Form No.10 was before the AO when the order giving effect to the order of the Id. CIT(A) dated 03.11.2017. It was the submission that if the AO is in possession of the Form No.10 when the assessment proceedings was before him then the assessee should not be denied the benefit of the accumulation. It was the prayer that the AO may be directed to grant the assessee the benefit of accumulation as claimed.

4. In reply, Id. DR vehemently supported the order of the Id. AO and CIT(A).

5. We have considered the rival submissions. A perusal of the decision of the Hon'ble Supreme Court in the case of Nagpur Hotel Owners' Association, reported in 247 ITR 201 shows that it is necessary that the Assessing Authority must have information at the time he completes the assessment. In absence of any such information, it is not possible for the Assessing Authority to give the assessee the benefit of

such exclusions. Once the assessment is so completed, it would be futile to find fault on Assessing Authority for having included such income in the assessable income of the assessee. The facts of the present case shows that the Form No.10, Form No.10B and the resolution for accumulation was before the Id. CIT(A) when the order was passed by the Id. CIT(A) on 03.11.2017. It is trite law that when an appeal is pending before the Id. CIT(A), it is nothing but extension of assessment proceedings and such details could be produced even at the stage of the appeal. The Hon'ble Supreme Court in the case of Jute Corporation India Ltd., reported in 187 ITR 688 (SC) has categorically held that the Id. CIT(A) is vested with wide powers u/s.251(1)(a) of the Act while hearing an appeal against the order of the assessment made by the AO. While considering the scope and powers of the appellate authority, Courts have consistently held that the power of the First Appellate Authority can do what the AO ought to have done and also direct the latter to do what he has failed. Here in the present case, clearly the requisite details were filed before the Id. CIT(A) - 1, Bhubaneswar, who has passed the order dated 03.11.2017 and it is after being in possession of the said details the issue was restored to the file of the AO for verification. The word used by the Id. CIT(A) is to verify the claim of the assessee in accordance with the provisions of law and revise the processed income if required. The Id. CIT(A) did not direct the AO to re-examine the allowability or not of the accumulation of income. This being so, clearly the Id. AO while passing the order u/s.251/143(1) of the Act dated 28.12.2018 while giving effect to the order of the Id. CIT(A)

dated 03.11.2017 has fallen into error in re-examining the issue instead of verifying the claim of accumulation.

6. It may be worthwhile to mention here that the Hon'ble Bombay High Court in the case of Sakal Relief Fund, reported in 295 CTR 561 (Bom) has held that even if the Form No.10 is filed during the reassessment proceedings, the benefit of accumulation u/s.11(2) of the Act is available. The Hon'ble Bombay High Court in the case of Mumbai Metropolitan Regional Iron & Steel Market Committee, reported in 378 ITR 103 (Bom) has categorically held that the appellate proceedings before the Id. CIT(A) were a continuation of assessment and, therefore, late filing of the required documents would not disentitle the assessee from the benefits of Section 11 of the Act. If the assessee is required to file Form 10 and other documents before the completion of the assessment and there is only a technical plea raised by the revenue then that should not take away the benefit of accumulation in accordance with law.

7. The Hon'ble Delhi High Court in the case of Daulat Ram Education Society, reported in 278 ITR 260 after referring to the decision of the Hon'ble Supreme Court in the case of Nagpur Hotel Owners' Association, referred to supra, considered the question as to whether the prescription of Form No.10 for the purpose of accumulation u/s.11(2) of the Act was mandatory or directory, and came to the conclusion that the requirement of filing of Form No.10 at the time of assessment was only directory and it would suffice if the same while filing even thereafter so long as in support

of the claim of the accumulation was furnished by the assessee even at the time of assessment.

8. This being so, as it is noticed that the Form No.10 and relevant documents were filed before the Id. AO when the consequential order giving effect to the Id. CIT(A) was passed, the denial of the benefit of accumulation to the assessee is unsustainable. Consequently, the AO is directed to grant the assessee the benefit of accumulation as claimed by the assessee.

9. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 26/06/2023.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

कटक Cuttack; दिनांक Dated 26/06/2023

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Sri Dattatreya Sai Ashram Trust,
Plot No.4706/5845, Gajapati Nagar
Sainik School Road, Bhubaneswar
2. प्रत्यर्थी / The Respondent-
ITO (Exemption), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack