

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, KOLKATA

Before

Shri Sanjay Garg, Judicial Member

&

Dr. Manish Borad, Accountant Member

I.T.A. No.639/KOL/2023

Assessment Years: 2022-23

N H K Foundation Padumbasan, P.O & P.S. Tamluk, district Purba Medinipur, Pin-721636. (PAN:AABTN0258N)	Vs.	Income Tax Officer, Ward-27(3), Haldia
(Appellant)		(Respondent)

Appearances by:

Shri K. M. Roy, CA appeared for Appellant.

Shri Sunil Kr. Agarwala, CIT, DR appeared for Respondent.

Date of concluding the hearing : 07.08.2023

Date of pronouncing the order : 09.08.2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short “AY”) 2022-23 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Id. Commissioner of Income-tax (Appeals), NFAC, Delhi [in short Id. “CIT(A)”] dated 14.06.2023 arising out of the intimation passed u/s 154 r.w.s. 143(1) of the Act by Ld. DCIT, CPC, Bangalore.

2. Assessee has raised following grounds of appeal:

1. that the Trust should be given the benefit of application of income and only the surplus amount of Rs.10,58,065.82 may be taxed.

2. That the income is otherwise exempt as the institution is existing solely for the purpose of education and the receipts are less than 5 Crores. Hence no

liability is envisaged even by the default of any other provision as per section 10(23C)(iiiad).”

3. At the outset, Ld. Counsel for the assessee submitted that Ld. CIT(A) has not dealt with ground no. 2 and 3 raised in the appeal before him and has dismissed the appeal only by disposing of ground no. 1. He further submitted that so far as ground no. 1 is concerned, assessee has not challenged the said ground. However, assessee is quite hopeful to succeed in ground no. 2 and 3. He further stated that in ground no. 2, assessee has claimed that addition should not have been made by treating the gross receipts as income for the year and only the surplus amount i.e. gross receipt less expenditure incurred may have been subjected to tax. Without prejudice to the contentions made for ground no. 2, he also submitted that since the gross receipt of assessee is less than Rs. 5 Cr. and it is existing solely for the purpose of imparting education, the assessee deserves to the benefit of exemption u/s. 10(23C)(iiiad) of the Act. Reference was also made to the detailed written submission filed on 07.08.2023 and also the audited financial statement of the assessee along with a copy of judgments relied in support of the grounds.

4. On the other hand, Ld. DR vehemently supported the order of the lower authorities.

5. We have heard the rival contentions and perused the material placed before us. We notice that the assessee is a non-profit making charitable trust and runs educational institution under its banner one by the name of Tamralipta Public School and another in the name of Tamralipta Institute of Management & Technology. The assessee is a society and is registered u/s. 12A of the Act. It filed the return of income for AY 2022-23 on 05.11.2022 but failed to file Form No. 10B on or before the specified due date on 07.10.2022. The assessee society uploaded the Form 10B on 21.10.2022. Since the assessee

failed to file form No. 10B before the due date, the CPC denied the benefit of exemption u/s. 11 of the Act and gross receipts of the assessee society was assessed as NIL. The assessee filed the application u/s. 154 of the Act but did not get any relief. Thereafter, assessee filed appeal before the Ld. CIT(A) raising following grounds of appeal:

“1. Ground No.1. That the assessing officer has erred in not considering the Form 10B which was fled prior to furnishing of Return. The date of Audit Report is 21.10.2022 which is prior to date of fling the Return and hence it should not be rejected.

Ground No.2. That without prejudice to the above ground taken, the trust should be given the benefit of application of income and only the surplus amount may be taxes.

Ground No.3. That the income is otherwise as the institution is existing solely for the purpose of education and the receipts are less than 5 crores and hence no tax liability is envisaged even by the default of any other provision.”

6. We further observe that Ld. CIT(A) has only dealt with ground no. 1 regarding delay in filing form No. 10B and referring to decision of the coordinate Bench, Ahmedabad in the case of Ambika Sarbojonin Trust Enclave Vs. PCIT, CPC, ITA No. 355 & 356/Ahd/2021 dismissed ground no. 1 raised by the assessee holding that the intimation u/s. 143(1) issued by DCIT, CPC is strictly in accordance with law and does not warrant any interference. So far as ground no.1 is concerned, assessee has not challenged the finding of the Ld. CIT(A) before this Tribunal. The only prayer is that Ld. CIT(A) has not dealt with ground nos. 2 and 3 wherein the assessee has claimed that firstly addition should not have been made for the gross receipt and only the net income (gross receipts less expenditure) should have been subject to tax and the alternate ground is that in view of the provisions of section 10(23C)(iiiad) the income of the assessee is exempt from tax as the assessee society is solely existing for the purpose of imparting education and the gross receipts for the year are less than Rs. 5 Cr.

7. We find force in the contention of the Ld. Counsel for the assessee and are of the view that Ld. CIT(A) ought to have dealt with the ground nos. 2 and 3 raised before him failing which the assessee's grievance could not be resolved at the first appellate level. We thus, restore both the issues raised before us in ground nos. 1 and 2 to his file to adjudicate them after affording reasonable opportunity of hearing to the assessee. The assessee is also given liberty to file written submission along with documents in support of its claim without asking any adjournment unless required for reasonable cause.

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

Order is pronounced in the open court on 09.08.2023.

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 09.08.2023

J.D. Sr. PS.

Copy of the order forwarded to:

1. **Appellant** –
2. **Respondent**
3. CIT(A), NFAC, Delhi.
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata