

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH KOLKATA

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.348/Kol/2023
Assessment Year: 2019-20**

Income-tax Officer, Ward-1(2), Kolkata.	Vs.	Behala Navajivan Welfare Society 166/8, Rai Bahadur Road, Behala, Kolkata-700034. (PAN: AAATB6226D)
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Akshat Meharia, Advocate
Respondent by : Shri B.K. Singh, JCIT (Sr.DR)

Date of Hearing : 25.07.2023
Date of Pronouncement : 09.08.2023

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1049266484(1) dated 31.01.2023 passed against intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 11.12.2020 for AY 2019-20.

2. Grounds of appeal of revenue are reproduced as under:

“1. Whether on the facts & circumstances of the case Ld. CIT(A), NFAC, Delhi has erred in directing the assessing officer to ask for correct particulars of income or loss from the assessee and incorporate the same in return of income by not appreciating the law that any claim of income or loss has to be made the assessee only through filing of revised return.

2. Whether from the facts & circumstances of the case Ld. CIT(A), NFAC, Delhi has erred in law by allowing appeal by holding that claim of the assessee is allowable even if the same has not been made through revised return.”

3. Brief facts as recorded in the statement of facts furnished by the Ld. AO are that assessee is a Trust and filed its return on 23.03.2020 reporting total income as 'Nil'. Due date for filing the return was 31.10.2019 which was subsequently revised on 15.09.2020. Assessee filed its Form 10B audit report on 20.06.2020. While processing the return u/s. 143(1) originally filed on 23.03.2020, claim of the assessee u/s. 11 and 12 was disallowed and gross receipts of Rs.1,51,95,510/- was treated as total income. Subsequently, revised return filed on 15.09.2020 was also processed u/s. 143(1) wherein addition of income chargeable u/s. 11(3) amounting to Rs.2,13,86,316/- was treated as total income of the assessee.

3.1. It is important to note that assessee has filed wrong particulars of claiming deduction u/s. 11 and 12 in both the original as well as the revised returns. On the demand raised, arising out of processing of the return, assessee went in appeal before the Ld. CIT(A) against the intimation issued on processing of the revised return.

4. While disposing of the appeal, ld. CIT(A) also took note of the fact of filing wrong particulars by the assessee repeatedly in the returns. Ld. CIT(A) took a justice oriented approach and observed that it does not seem rational and judicious that the assessee be made to pay tax if none is due or less is due. He held that justice should not be denied to anybody if bona fides are otherwise correct. He thus, directed for verification of the claim of the assessee in the light of correct facts to be provided by the assessee so as to incorporate correct particulars in the return and compute tax, if any, accordingly.

5. On this finding of Ld. CIT(A), revenue is in appeal before the Tribunal to contest that assessee has failed to furnish its correct particulars through filing of revised ITR. According to the Ld. AO, any claim of deduction can be made only through filing revised return. Ld. AO in the statement of facts has submitted that assessee was requested to furnish correct particulars of income and. Since nothing came up on record an effect giving order was passed with notional tax effect of Rs.74,49,161/- determined by the Ld. AO holding that appeal effect has to be given if the verification of particular is in favour of the assessee

5.1. Ld. Counsel in this respect submitted that assessee had furnished an application for rectification u/s. 154 against the intimation u/s. 143(1) on 11.12.2020. Thus, assessee had taken two pronged approach of filing a rectification petition before the Ld. AO u/s. 154 against the intimation under section 143(1) and at the same time, filed an appeal before the Ld. CIT(A) contesting the demand raised vide intimation u/s. 143(1).

5.2. Ld. AO has passed the rectification order dated 16.09.2021 wherein rectification claimed by the assessee has been accepted and the total income as returned at 'Nil' has been accepted in the said order. This order of rectification u/s. 154 merges with the intimation passed u/s. 143(1). Subsequently, Ld. CIT(A) has disposed of the appeal vide his order dated 31.01.2023 which is against the intimation u/s. 143(1) wherein the appeal has been partly allowed and the same is subject to verification of the correct particulars to be furnished by the assessee. While disposing the appeal, Ld.

CIT(A) has taken note of the details furnished by the assessee which is as under:

“...the total receipt of the appellant trust is Rs.1,52,34,470/- and spent by the trust during the year was Rs.1,23,76,109/- during the assessment year under appeal. As 15% of the gross receipt is allowed to be accumulated and set apart during the year, Rs.22,85,170/- (15% of Rs.1,52,34,470/-) was accumulated and set apart and balance of Rs.5,73,190/- was invested by the trust under section 11(5) and therefore there shall be nil taxable income.”

6. We note that verification requirement directed by Ld. CIT(A) on the above factual details has already been complied with by the Ld. AO while passing the rectification order u/s. 154 read with section 143(1) dated 16.09.2021. Considering this fact on record, we find that there is no grievance of the revenue which remains to be adjudicated upon. From the ground taken by the revenue, Ld. AO has claimed that Ld. CIT(A) has erred in directing the AO to ask for correct particulars of income which can only be appreciated by filing revised return. This grievance has already been addressed in the rectification order passed by the Ld. AO as stated above. Accordingly, grounds taken by the revenue are dismissed.

6. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 9th August, 2023.

Sd/-

(Rajpal Yadav)
Vice President

Sd/-

(Girish Agrawal)
Accountant Member

Date:9th August, 2023

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:
 3. CIT(A), NFAC, Delhi
 4. CIT,
 5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata