

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

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.460/Bang/2023
Assessment year : 2021-22

Arsha Vidya Sevashram Trust, 131, Off Bannerghatta Road, Kammanahalli Main Road, Bangalore South, Bangalore – 560 076. PAN: AAATA 7317E	Vs.	The Assistant Director of Income Tax, Central Processing Centre, Bengaluru / ITO (Exemptions), Ward 1, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sundararaman, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	07.08.2023
Date of Pronouncement	:	17.08.2023

ORDER

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1052278546(1) dated 23.04.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2021-22 on the following grounds:-

- “1) The order of the CIT(A) is bad erroneous and against the principles of natural justice
- 2) The CIT(A) erred in not considering the contention of the appellant in proper perspective that when a debatable issue arises, it cannot be adjusted merely by way of intimation under Section 143(1)(a) of the Act, since sec.143(1) deals

only with prima facie adjustments in respect of any apparent information in the return.

In other words, the CIT(A) erred in not considering the fact that when a claim made by the appellant requires further inquiry, it cannot be disallowed without hearing the parties and / or giving the party an opportunity to support its claim which is possible u/s.143(3) and not u/s.143(1).

- 3) The CIT(A) erred in not appreciating the fact that what can be taxed for a Trust is only the income computed on commercial principles and not the entire gross receipts
- 4) The CIT(A) erred in denying the claim of exemption, though the Form 10B was filed before the 139(1) time limit and was available at the time of processing with the CPC.
- 5) Without prejudice to the first 4 grounds, the order of the CIT(A) requires to be set aside, for the order contains facts pertaining to some other case which has been "CUT, COPIED AND PASTED" in the appellant's order, which clearly shows passing of stereotyped orders by conveniently brushing aside all the written submissions made by the appellant.

In other words, the CIT(A), erred in not considering, the written submissions made by the appellant in proper perspective at all.

And for other reasons that may be adduced at the time of hearing, including submission of additional evidences, the appellant prays that this appeal be admitted, considered and justice be rendered.”

2. The brief facts of the case is that the assessee is registered u/s. 12A as a public charitable trust and the extended due date for filing return u/s. 139(1) for AY 2021-22 was available till 15.03.2022 and Form 10 was required to be filed 30 days prior, i.e. 28.02.2022. The assessee filed return of income along with audit report in Form 10B on 15.03.2022. The assessee declared income of Rs.3,36,850, whereas

the CPC determined the income at Rs.15,31,192/- denying exemption u/s. 11 & 12 of the Act. The assessee's tax liability was of Rs.4,517 on the income declared. The assessee received error message in the 143(1) proposal stating that the trust has not e-filed the audit report in Form 10B one month prior to the due date for filing return u/s. 139(1), hence exemption claimed u/s. 11(1)(d) and Sr. No. 4i to 4viii of Part B-TI is not allowable. The assessee raised objections before the CPC that audit report could not be filed within the stipulated date due to several glitches in the New E filing portal and also the CA faced technical glitches in filing the same. The filing of audit report is directory and not mandatory and exemption cannot be denied merely for that reason. It was submitted that the above grievance of the assessee was not adjudicated on merits stating that the reply was received after the stipulated date, whereas the due date for response of the assessee was on 07.10.2022 which was filed on the same date. However, the CPC computed the total income at Rs.15,31,192 on the total receipts of the assessee denying the exemption. Aggrieved by the intimation u/s. 143(1) dated 25.11.2022, the assessee filed appeal before the CIT(Appeals).

3. The assessee filed detailed written synopsis before the CIT(A) objecting the addition made and also relied on some case laws. The ld. CIT(Appeals) observed the assessee has not filed Form 10B in time and also not applied for condonation of delay before the appropriate authority as per CBDT Circular No.16/2022 dated 19.07.2022 and he relied on various decisions in this regard. He therefore upheld the

action of the CPC. Aggrieved, the assessee is in appeal before the Tribunal.

4. Ground No.1 is general in nature.

5. Ground No.2 raised by the assessee that intimation u/s. 143(1) deals only with prima facie adjustments in respect of apparent information in the return and when a claim requires further inquiry, it cannot be disallowed without giving opportunity to the assessee. This issue is settled by the Hon'ble Madras High Court judgment in the case of Veerappampalayam Primary Agricultural Co-op. Credit Society [2022] 121 taxmann.com 571 (Madras) in favor of the revenue, accordingly this ground is dismissed.

6. Vide ground No.3 the assessee submits that the income has to be computed on the total income and not on the entire gross receipts. The CPC has considered the entire gross receipts as income which is not correct. He submitted that the total income computed by the assessee is Rs.3,36,850 on which assessee has paid taxes. I note that ITAT Chennai in ITA No.1327 & 1328/Chny/19 dated 5.9.2019 in the case of M/s. Srinivasa Educational Trust on this issue has held as follows:-

“4. We heard Shri Sridhar Dora, the Ld. Departmental Representative also. We find some substance in the submission of the Ld.counsel for the assessee. Admittedly, registration under Section 12AA of the Act was not available to the assessee during the year under consideration. Therefore, income of the assessee has to be computed commercially by allowing all the expenditure for earning the income. In other words, the total expenditure incurred by the assessee for earning the income has to be reduced and whatever remains has to be brought for taxation. As rightly

submitted by the Ld.counsel for the assessee, the corpus donation has also to be taken as income / receipt. Since such an exercise was not done, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly, orders of both the authorities below are set aside and the Assessing Officer is directed to take the net income after reducing the expenditure and levy tax thereon. We are conscious that proceeding arises for considering is under Section 143(1) of the Act. This is prima facie adjustment, therefore, the Assessing Officer while considering the matter, has to keep in mind the provisions of Section 143(1) of the Act which enables him to make prima facie adjustment.”

7. However in the case of M/s. Srinivasa Educational Trust (supra), the assessee was not registered u/s. 12A of the Act, but in the present case it is registered u/s. 12A. As held in the above decision, tax should be charged on the total income and not on the entire gross receipts. Further, I also note that the intimation is passed u/s. 143(1) by the CPC. The assessee has filed return declaring income of Rs.3,36,850 which has not been examined by the lower authorities and therefore for computation of income as per the Act, the matter should go back to the AO for computation of total income in the above terms. Accordingly, this issue is remitted to the AO for the purpose of verification and computation of total income as per law after giving reasonable opportunity of being heard to the assessee. The assessee is directed to file necessary documents and not to seek unnecessary adjournment.

8. Regarding ground No.4, the Id. AR reiterated the submissions made before the CIT(Appeals) and submitted that audit report could not be filed in time due to technical glitch in the e-portal of the department. In this regard, the assessee filed its grievance before the

CPC which was not considered. He submitted that filing of audit report is directory and not mandatory. He reiterated the case laws relied on before the CIT(A). He also relied on the Hon'ble Supreme Court judgment In Re Cognizance for Extension [2022] 134 taxmann.com 307 (SC) on account of COVID-19, has held that in computing period of limitation, period from 15.03.2020 to 28.2.2022 shall stand excluded and in cases where limitation would have expired during the above period, time limit of 90 days or actual balance time (whichever is higher) shall be available from 01.03.2022 for filing appeals etc. Therefore he submitted the limitation period will not apply in this case.

9. The ld. DR relied on the orders of lower authorities and strongly submitted that the assessee did not file any condonation application for belatedly filing Form 10B before the appropriate authority as per CBDT Circular, therefore the claim of the assessee should not be accepted.

10. Considering the rival submissions, I note that the assessee is registered u/s. 12A of the Act and filed return of income u/s. 139(1) along with audit report in Form 10B on 15.03.2022. The CPC denied exemption u/s. 11 & 12 of the Act for belated filing of Form 10B and computed income on the gross receipts. There is precondition for getting exemption u/s 11 that the assessee should get the audit report in Form 10B and it should be furnished within one month before the due date for filing of return u/s. 139(1) of the Act. The assessee has

submitted the reasons for non-filing of audit report within the stipulated date due to technical glitches in filing the audit report on the e-portal of the department and this grievance was submitted to the CPC. The Id. AR placed reliance on the judgment of the Hon'ble Supreme Court where it is held that period from 15.3.2020 to 28.2.2022 shall stand excluded and in cases where limitation would have expired during the above period, time limit of 90 days or actual balance time (whichever is higher) shall be available from 01.03.2022 for filing appeals etc. Further, it is noted that Form 10B which was filed along with return on 15.03.2022 due to technical glitches in filing the Form 10B in the e-portal of the department as explained above by the assessee. In view of Hon'ble Supreme Court judgment cited supra there is no delay in filing of Form 10B by the assessee and it is within the time allowed. The AO is directed to grant exemption claimed by the assessee in accordance with law.

11. Ground No.5 is general in nature in support of other grounds which has been adjudicated in the above paragraphs and requires no separate adjudication.

12. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 17th day of August, 2023.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 17th August, 2023.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.