

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “C”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1947/M/2023  
Assessment Year: 2017-18**

M/s. Iris Knowledge Foundation, T-131, Tower International Infotech Park, Navi Mumbai, Vashi- 400 701 <b>PAN: AACCI1544G</b>	Vs.	CIT(A), National Faceless Appeal Centre (NFAC), Delhi.
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri. Chaitanya Joshi, CA  
Revenue by : Shri. H.M. Bhatt, Sr. AR

Date of Hearing : 28. 08 . 2023  
Date of Pronouncement : 29. 08 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Iris Knowledge Foundation (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 28.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2017-18 on the grounds inter-alia that :-

*“1. GROUND NO. 1: PASSING OF AN EX-PARTE ORDER IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE ON ACCOUNT OF NON-CONSIDERATION OF APPELLANT'S REQUEST FOR ADJOURNMENT:*

*1.1. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in passing an ex-parte order, on alleged non-compliance on the part of the Appellant, disregarding the Appellant's adjournment request for filing its submissions.*

*1.2. The Ld. CIT(A) failed to appreciate and ought to have considered that non- consideration of Appellant's adjournment request vide letter dated March 15, 2023 requesting further time to make the submissions upto March 30, 2023, amounted to violation of principles of natural justice.*

*1.3. The Appellant prays that the order passed by the Ld. CIT(A) u/s 250 of the Act be held as bad in law and same be quashed/set aside.*

**WITHOUT PREJUDICE TO GROUND NO. 1;**

**2. GROUND NO. 2: VIOLATION OF PRINCIPLES OF NATURAL JUSTICE FOR NOT PROVIDING AN OPPORTUNITY OF CROSS EXAMINATION:**

*2.1. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of the Id. AO of not providing an opportunity to the Appellant to cross-examine the parties based on the statements of whom the claim of exemption was denied to the Appellant.*

*2.2. The Ld. CIT(A) also failed to appreciate and ought to have appreciated that not granting an opportunity to the Appellant to cross-examine the parties amounts to violating the principles of natural justice.*

*2.3. The Appellant prays that the order passed by the Ld. CIT(A) affirming the order of the Id. AO be quashed for want of natural justice.*

**WITHOUT PREJUDICE TO GROUND NO. 1 & 2;**

**3. GROUND NO. 3: DENIAL OF EXEMPTION U/S. 11 OF THE ACT:**

*3.1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in denying the exemption u/s. 11 of the Act by applying the proviso to section 2(15) r.w.s 13 of the Act.*

*3.2. The Appellant prays that the exemption u/s. 11 claimed by the Appellant be allowed.”*

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is a trust registered under section 12A of the Income Tax Act, 1961 (for short 'the Act') as well as with Charity Commissioner, Bombay.

Assessee's return of income for the year under consideration declaring total income at Rs.Nil was subjected to scrutiny. Assessing Officer (AO) after declining the contentions raised by the assessee proceeded to hold that no exemption under section 11 of the Act is available to entities which cannot be construed to be charitable in view of the provisions contained under section 2(15) of the Act and such object as well as activities of the assessee fall under advancement of any other object of general public utility and thereby framed the assessment at the total income of Rs.34,92,961/- under section 143(3) of the Act.

2. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal due to non prosecution by the assessee. Feeling aggrieved with the impugned order passed by the Ld. CIT(A), the assessee has come up before the Tribunal by way of filing present appeal.

3. We have heard the Ld. Authorised Representatives of the parties to the appeal, 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 law applicable thereto.

4. Bare perusal of the impugned order passed by Ld. CIT(A) goes to prove that he has dismissed the appeal filed by the assessee due to non prosecution on the ground that the assessee has not preferred to file any response to the notices issued to him. The Ld. CIT(A) has not disposed of the present appeal on merits. The assessee is a trust registered under section 12A of the Act and is also registered with Charity Commissioner, Mumbai. It is settled

principle of law that the Ld. CIT(A) is not entitled to dismiss the appeal on account of non prosecution by the assessee without deciding the merits even if the assessee is ex-parte as has been held by the Honourable Bombay High Court in case of Commissioner of Income-tax (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF) [2016] 69 taxmann.com 407 (Bombay)

5. Even otherwise to decide the issue once for all and to curtail the multiplicity of proceedings one more opportunity is required to be given to the assessee as it is stated by the assessee that no such alleged notice issued to the assessee has ever been received.

6. So we are of the considered view that the order passed by the Ld. CIT(A) for want of prosecution by the assessee is not sustainable in the eyes of law, hence set aside and remitted back to the Ld. CIT(A) to decide afresh after providing adequate opportunity of being heard to the assessee. The Ld. A.R. for the assessee assured the Bench that the assessee will appear before the Ld. CIT(A) on each and every date to be fixed in this case.

7. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 29.08.2023.**

**Sd/-**  
**(S RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

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

Mumbai, Dated: 29.08.2023.

\* 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.