

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.116/Jodh/2021
Assessment Year: 2017-18**

Jaisalmer Vikas Samiti, C/o Surendra Chopra 67, Manak Sec. 7 Exten. NPH road, Jodhpur. [PAN:AAATJ8086D] (Appellant)	Vs.	Income Tax Officer, (Exemptions), Jodhpur. (Respondent)
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Appellant by	Sh. Surendra Chopra, CA.
Respondent by	Ms. Nidhi Nair, JCIT DR

Date of Hearing	10.10.2023
Date of Pronouncement	13.10.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the NFAC, Delhi, order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for A.Y. 2017-18. The impugned order was emanated from the order of the CPC, Bengaluru,[in brevity ‘the AO’] order passed u/s 143(3)/154 of the Act.

2. The assessee has taken the following ground:

“1. That under the facts and circumstances of the case, the Id. CIT(A) NFAC grossly erred in confirming the action of assessing officer CPC u/s 154 read with S. 143(1) for making prima facie adjustment and thereby computing the total income of the appellant institution at Rs. 930659/- as against NIL returned income on the reasoning that the accumulation of income u/s 11(2) has correctly been allowed at Rs. 420986/- instead of Rs. 1351645/- claimed by the appellant particularly when such prima facie adjustment is not in consonance with the provisions of 143(1)(a)(ii) of the Act.

2. That under the facts and circumstances of the case, the Id. CIT(A) NT AC was not justified factually and legally in restricting the accumulation of income u/s 11(2) at Rs. 420986/- instead of Rs. 1351645/- claimed by the appellant particularly when ample evidences were before the competent AO CPC indicating accumulation of income u/s 11(2) at Rs. 1351645/- and, therefore, the prima facie adjustment made in question u/s 143(1) and thereafter confirmed u/s 154 should have been deleted by Id. CIT(A) NFAC which he failed to do.

3. That the appellant craves leave to add, alter or amend the grounds of appeal before or at the time of hearing of appeal.”

3. Brief fact of the case is that the assessee is a trust and registered under section 12A(a) of the Act. In the impugned assessment year, the return was filed

and in the return the assessee claimed u/s 11(2) being set apart from application in succeeding year, as resolution passed by the assessee institution for this purpose amount to Rs. 13,51,645/-. Although, in the return the assessee claimed the amount to Rs.4,20,986/- which is @ 15% of income of the assessee institution which was accumulated within the meaning of section 11(1) of the Act. During filing in audit report in Form No. 10 dated 28.10.2017 both amounts are interchanged, and the form was filed with mentioning the wrong amount by mistake. After realising this mistake, the assessee filed the rectified Form No. 10 on dated 23.11.2018 through Auditor incorporating correct figures in the specific column. The CPC issued intimation u/s 143(1) dated 27.03.2018 restricted accumulation of income u/s 11(2) amount to Rs.4,20,986/- instead of 13,51,645/- and the tax was calculated on the amount to Rs.9,30,659/- and tax liability was calculated amount to Rs. 1,37,998/-. The assessee made the rectification u/s 154 but the ld. AO had not accepted and confirmed the demand in intimation u/s 143(1). Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

4. We heard the rival submission and consider the documents available in the record. The ld. AR submitted a written submission which are kept in the record. The issue is well settled, and the ld. DR has also accepted that the mistake occurred only in the audit report and the claim of the assessee is

genuine. The Id. AR invited our attention in the **APB pages 7 to 8** related ITR 7 where it is mentioned that the correct figures in claim of section 11(1)(2) of the Act. The assessee submitted the Form No. 10 in **APB page-10** and modified Form is in **APB page-11** where the rectification was done by the auditor. It is very clear that there is no mistake in the return of income but mistake was occurred in the audit report which was duly rectified by the said auditor. The Id. AR relied on the order of the ITAT Bangalore Bench in the case of **M/s Bunts Sangha Vs. ITO (Exemption) ITA No. 569/Bang/2018 order dated 03.08.2018**. The relevant paragraph 9 is reproduced as below:

“9. The view taken by the Tribunal in the aforesaid decision following the decision of Hon'ble Supreme Court in the case of Nagpur Hotel Owners Association (supra) is that intimation required under s. 11 has to be furnished before the assessing authority completes the concerned assessment. In the present case, there was no assessment proceeding and there is only intimation u/s, 143(1) of the Act. An intimation u/s. 143(1) is not an assessment as laid down by the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers in Civil No.2830 of 2007, judgment dated 23.05.2007. in view of the legal position as explained above, we are of the view that the AO ought to have accepted the application for rectification u/s. 154 of the Act. We accordingly direct the AO to allow application u/s. 154 of the Act and rectify the intimation.

10. In the result, the appeal by the assessee is allowed.”

4.1 Accordingly we accept that the said mistake is apparent from the record which has covered u/s 154 of the Act. The ld. DR was not able to submit any contrary judgment or fact against the assessee's submission. Accordingly, we accept the ground of the assessee and sent back the matter to the file of the ld. AO with direction, the ld. AO rectified the intimation u/s 143(1) and pass the order accordingly.

5. In the result, the appeal of the assessee bearing ITA No. 116/Jodh/2021 is allowed.

Order pronounced in the open court on 13.10.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

(On Tour)

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order