

IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH, GUWAHATI

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**ITA No. 44/GTY/2023
Assessment Year: 2013-14**

CMJ Foundation Modrina Mansion, Laitumukhrah, Shillong-793003. PAN: AAATC 6117 A (Appellant)	Vs.	ITO, Ward-2(4), Exemp., Shillong. (Respondent)
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Present for:

Appellant by : Shri Jaspal Singh Sethi, Advocate
Respondent by : Shri Chandan Dutta, DR

Date of Hearing : 11.10.2023
Date of Pronouncement : 20.10.2023

ORDER

PER SONJOY SARMA, JM:

This appeal of the assessee for the assessment year 2013-14 is directed against the order dated 28.02.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

- i. That the appellate order as passed is against law and facts of the case.*
- ii. That the ld. CIT(A) has erred in not allowing sufficient time for filing written submissions in online manner despite specific request to the fact that the voluminous paper book is required to be filed which may run into 100 of pages on the specific pretext.*
- iii. That the ld. CIT(A) has erred in confirming the order passed by the assessing officer when the notice u/s 148 of the I.T. Act is void-ab-initio being issued in a mechanical manner and without assuming a proper jurisdiction.*

iv. That the ld. CIT(A) has erred in confirming the addition of Rs. 11,93,43,122/- made by the assessing officer inspite of the assessing officer accepting the registration of trust u/s 12AA of the I.T. Act.

v. That the ld. CIT(A) has erred in confirming the addition of Rs. 31,69,89,936/- upon disallowing exemption u/s 11(2) of the I.T. Act and an isolation of the facts and circumstances of the case.

vi. That ld. CIT(A) has passed the appellate order in complete isolation of the fact that the new infrastructure of online and faceless appeals requires new challenges vis-à-vis filing of 100 of documents and without providing ample opportunity to the appellant.

vii. That the assessment order/appellate order as passed is not sustainable on the facts and circumstances of the case.”

2. Brief facts of the case are that the assessee is a trust and did not file its return of income for A.Y. 2013-14. The ld. AO issued notice u/s 148 of the Act after obtaining necessary approval from the competent authority. In response to the notice, assessee filed return of income declaring total income at Rs. Nil. The ld. AO after examining various details and submissions made by assessee framed the assessment order by making additions of Rs. 43,63,33,098/- in the hands of assessee.

3. Aggrieved by the above order, assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Feeling aggrieved by the above order, assessee is in appeal before the Tribunal raising multiple grounds of appeal. However, going through the various grounds the main contention of the assessee is that the ld. CIT(A) did not allow sufficient time for filing written submission in online manner despite specific request made by assessee by stating that voluminous paper book is required to be file which may run hundreds of pages. However, the contention of the assessee was not

considered by the ld. CIT(A) and pass the impugned order against assessee. Therefore, the ld. AR prayed before the bench to set aside the impugned order to the file of ld. CIT(A) for fresh adjudication of the issues involved in this appeal.

5. On the other hand, ld. DR supported the decision rendered by the authorities below on this issue.

6. We after hearing the rival submission of the parties and perusal of the material available on record. We find that in response to notices issued on 15.02.2023 and 16.02.2023 by the ld. AO, the assessee had submitted its response on 22.02.2023 before the ld. AO in the following manner which is reproduced as under:

“The appellate trust is in receipt of two notices u/s. 250 dated 15.02.2023 and 16.02.2023. In this connection, it is submitted as under:

In reply to the notice dated 15.02.2023

1. The assessee trust had filed written submissions on 07.12.2022 vide Acknowledgement No. 8377963691071222 wherein a time of three weeks has sought for filing the submission. It is however submitted that the undersigned is finding some technical glitches in submitting the detailed submissions. It is further submitted that the submissions to be made are quite voluminous in nature and lots of references have to be made before making final submissions. It is really appreciated that your good-self have been pleased to allow a few opportunities to the appellate trust. However, it is very humbly prayed the time for filing detailed submissions ground wise along with the supporting evidence may be extended for some more time to enable the assessee trust to find ways and means to present the case in the online manner (only) under faceless appeal.

2. (a) It may kindly be noted that after the seizure of documents, the assessee had filed multiple petitions before the respective agencies, the High Court of Meghalaya and the Hon'ble Supreme Court of Meghalaya and despite directions from the Hon'ble Supreme Court of India, the documents have not been able to release for want of technical requirements. The compilation of the various orders

are again into hundreds of pages which is requiring much more time for the assessee to file the submissions.

3. The due date of filing of ITR and Form-10 as per S.139(1) of the I.T. Act for the year under appeal was 31st October 2014. As submitted earlier since the documents pertaining to the accounts, banks were seized by the Government authorities, thereby restraining the assessee trust to file the return of income in time.

4. It is once again humbly prayed that due to the enormity of the additions made vide the order u/s. 147/143(3) of the I.T. Act and the vast nature of documents required to be uploaded only in the online format under the newly inducted faceless appeal system, A is taking longer than expected time for the assessee trust to manage to file all the submissions. It is thus requested that the due date of submissions in the given appeal may kindly be extended for some more time.

In reply to the notice dated 16.02.2023 application u/s 119 of the I.T. Act was filed for condonation of delay in filing return and claim of refund for the year under assessment. The same was submitted with the office of Commissioner of Income Tax (Exemptions), Kolkata. The copy of the acknowledgement of the application is enclosed herewith for your kind information and record.

Thus the accommodation sought here shall be allowed.”

7. We after going through the contention of the assessee and perusal of the impugned order, we find that certain documents needs to be filed by the assessee in order to substantiate its claim before the ld. CIT(A). However, those were not available at the time of hearing before the ld. CIT(A) and had needed much more time to upload the same. The ld. CIT(A) while passing the impugned order did not take into consideration of the submission made by the assessee and pass the order in mechanical manner. Therefore, it is necessary to grant one more opportunity to the assessee in order to substantiate its claim before the ld. CIT(A) by producing necessary document to prove its case. Accordingly, we feel it necessary to set aside the issue involved in the present appeal to the file of CIT(A) for de novo adjudication after

granting adequate opportunity of being heard to the assessee in order to substantiate its claim before him. In terms of above, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 20.10.2023

Sd/-

**(MANISH BORAD)
ACCOUNTANT MEMBER**

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Kolkata, Dated: 20.10.2023
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: CMJ Foundation.
2. The Respondent: ITO, Ward-2(4), Exemp., Shilling.
3. The CIT,
4. The CIT (A)
5. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata