

आयकर अपीलीय अधिकरण, “एस.एम.सी” न्यायपीठ,कटक

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य के समक्ष ।

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं/ITA No.308/CTK/2023

(निर्धारण वर्ष / Assessment Year :2017-2018)

M/s Suprativa, Fakirpada, Cuttack-754100	Vs	ITO, Ward-2(2), Cuttack
PAN No. :AASAS 9915 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Pradeep Kumar Pattnaik, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	07/12/2023
घोषणा की तारीख/Date of Pronouncement	:	07/12/2023

आदेश / O R D E R

This is an appeal filed by the assessee against the order of the Id CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 10.08.2023, passed in DIN & Order No.ITBA/NFAC/S/250/2023-24/1055034411(1) for the assessment year 2017-2018.

2. It was submitted by the Id AR that the assessee is a society registered u/s.12A of the Act. It was the further submission that Form 10B was filed belatedly. It was the submission that when the return of income was filed by the assessee, the same was processed by issuance of intimation u/s.143(1) of the Act, wherein the entire expenditure claimed by the assessee was disallowed by raising a demand of Rs.5,89,164/-. On appeal, the Id. CIT(A) upheld the adjustment done by the Id. AO on account of belatedly filing of Form 10B by the assessee. Consequently, the Id. CIT(A) dismissed the appeal of the assessee. It was the submission that the assessee has not received any show cause notice

before issuance of intimation u/s.143(1) of the Act, which was not permissible under the provisions of Section 143(1) of the Act. It was the prayer that the intimation issued u/s.143(1) of the Act may kindly be annulled and the appeal of the assessee be allowed. Apart from the above, Id. AR has filed his written submissions which read as under :-

1. That, the learned CIT(A) has erred in denying the exemption u/s.11 by stating that audit report in Form No.10B has not been filed before the due date of filing return of income u/s.139. In this regards, it is humbly submitted that filing of audit report is a substantive requirement but the mode and stage of filing is a procedural one and the appellant had already filed the audit report in Form-10B on 17.07.2023. the Hon'ble ITAT "D" Bench, Ahmedabad in ITA No.245/Ahd/2021 dated 16.06.2023 had allowed the appeal. Copy of the said order is enclosed for your kind perusal.

PRAYER

Considering the submissions made herein before it is humbly prayed that a judicious order on merits may kindly be passed taking into consideration the above fact and circumstances of the case.

And for this act of your kindness, the appellant as in duty bound shall every pray.

3. In reply, the Id. Sr. DR submitted that no specific reply to the query of Id. CIT(A) regarding filing of Form 10B within the stipulated time, has been submitted by the assessee. It was the submission that the adjustment on account of not considering the expenses towards charitable/religious purposes during the year has been done by the CPC correctly in absence of electronically filed Form No.10B. It was the prayer that the order of the Id. CIT(A) is liable to be upheld.

4. I have considered the rival submissions. A perusal of the intimation issued u/s.143(1) of the Act by the AO, clearly shows that the same has been issued in violation of the proviso to Section 143(1) of the Act, insofar

as the show cause notice as required under the proviso to Section 143(1) of the Act, has not been issued to the assessee. This being so, admittedly the adjustments as has been done by the AO is not something that can be done in an intimation u/s.143(1) of the Act without issuing any show cause notice to the assessee. This fact has not been considered by the Id. CIT(A) while passing the impugned order. Consequently, the intimation issued u/s.143(1) of the Act stands quashed and the appeal of the assessee is allowed.

5. In the result, appeal filed by the assessee stands allowed.

Order dictated and pronounced in the open court on 07/12/2023.

Sd/-
(जार्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 07/12/2023

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s Suprativa,
Fakirpada, Cuttack-754100
2. प्रत्यर्थी / The Respondent-
ITO, Ward-2(2), Cuttack
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)
आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack