

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

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.912/Bang/2023
Assessment year : 2013-14

M/s. TSO JHE Khangsar Charity Hospital Society, Bylakupe, Mysuru – 571 140. <b>PAN: AABAT 3689A</b>	Vs.	The Income Tax Officer, Exemption Ward 1, Mysore.
APPELLANT		RESPONDENT

Appellant by	:	Ms. Sunaina Bhatia, Advocate
Respondent by	:	Shri Subramanian, S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.01.2024
Date of Pronouncement	:	15.01.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order No.ITBA/NFAC/S/250/2023-24/1057195931(1) dated 18.10.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2013-14 on the following grounds:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in dismissing the appeal on the ground that there was no order which requires rectification since the appellant had filed a revised return of income under the facts and in the circumstances of the appellant's case.

2.1 The learned CIT[A] failed to appreciate that the intimation u/s. 143[1] of the Act was processed based on the original return of income filed ignoring the revised return filed on the very same day since the acknowledgement for having filed the revised return was not sent to the CPC within 30 days from date of filing the return and hence, the intimation continued to exist in the eyes of law and the same ought to have been rectified by considering the claim of exemption in the revised return under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] failed to appreciate that the appellant had committed a bonafide error in filing up the columns while filing the original return of income and hence, the appellant had filed a revised return of income also on the very same day, which even contains the e-filing acknowledgement number and therefore, the learned A.O. ought not to have rejected the petition for rectification on the ground that the revised return of income claimed to have been filed by the appellant was not authenticated under the facts and in the circumstances of the appellant's case.

4. Without prejudice to the above, the learned CIT[A] ought to have appreciated that the Intimation U/s 143(1) of the Act was erroneous since it was based on the wrong data or filing up in the ITR as per the original return of income and the said errors were corrected in the revised return of income filed, which errors were verifiable and hence, the learned A.O. ought to have rectified the Intimation by granting the exemption claimed u/s 11(1) of the Act instead of relying upon the original return filed and holding that there was no error apparent on record under the facts and in the circumstances of the appellant's case.

5. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

2. The brief facts of the case are that the assessee filed return of income on 29.10.2013 bearing Ack. No.826815890291013 declaring NIL income and no refund was claimed. Later on, the same day the assessee filed revised return bearing Ack. No.826905000291013 and copy of acknowledgement in ITR-V was sent on 20.10.2017 after the due date. The CPC processed the original return on 12.03.2015 raising a demand of Rs.20,38,178. The assessee filed rectification application before the ITO(E), Mysore on 16.08.2017 against demand notice of Rs.20,87,210 vide communication letter dated 16.01.2017. The AO rejected the rectification request by order dated 04.09.2017 against which assessee filed appeal before the CIT(Appeals).

3. The CIT(Appeals) also rejected the appeal of the assessee by observing as under:-

“5.1 Ground No. 1 to 4 of the appellant pertains to the order passed by A.O. u/s 154 of the Act on 04.09.2017, the same is reproduced as under:-

"The assessee, a Charitable Trust registered u/s.12A, filed its return of income for the assessment year 2013-14 on 29.10 2013 declaring the total income at Rs. NIL. The return of income was processed u/s. 143(1) raising a demand of Rs.20,87,210/-. The assessee vide its letter dated 24th August, 2017 has stated that while filing its return of income for the assessment year 2013-14 on 29.10.2013, it had erroneously put figures under different columns rather than in the appropriate columns and therefore it had filed another return on the same day, i.e. on 29.10.2013 filing the columns properly and claimed refund of TDS of Rs 55,620/- The assessee further stated that the 2nd return was treated as invalid and the reason is not known and requested to take cognizance of the same and rectify the Intimation u/s. 143(1) and grant refund claimed.

On verification of the records available it is noticed that only one return of income on 20.10.2013 as per which the assessee had declared a sum of Rs.53,94,723/- in the column - income in respect of which exemption u/s 11 is not amiable by virtue of provisions of sect or 13 and a sum of Rs.4,61,529/- is shown under the head 'income from other sources'. The assessee claims that a reused return was filed on 29.10.5013 filling the column property the same is not authenticated by the assessee. Therefore, the return has been processed as per the income declared in the return and accordingly the tax has been correctly computed. Hence, the request made the assessee for rectification for allowing exemption. It cannot be considered as there is no mistake apparent on record."

5.2 As per the A.O. not claiming exemption u/s 11 is not mistake apparent from record on the other hand the appellant admitted the mistake which he has done in the original return filed on 29.10.2013. The appellant further submitted in Para 7.1 of his written submissions that it was a technical mistake. I have gone through the contention of the appellant and find that the appellant has already filed a revised return hence there is no cause of action lying with the original return there is a no order before the A.O. which was required rectification u/s 154. The rectification is only to rectify the mistake apparent from record in case of any order passed as mentioned in the said section. As discussed in this case there is no order which requires rectification. These grounds of the appeal of the appellant are rejected."

4. The Id. AR reiterated submissions made before the lower authorities and submitted that rectification application was filed against intimation u/s. 143(1). The assessee had filed original return of income in which certain erroneous figures were entered. Noticing the same the assessee immediately uploaded a revised return on the very same day. However, the assessee omitted to send copy of ITR-V to CPC to authenticate the revised return. Hence the CPC processed the original return. The assessee made an application for rectification of

the intimation stating the aforesaid facts and the AO wrongly refused to rectify the same since it is not a mistake apparent from record. She submitted that the total income as per Income & Expenditure account is Rs.58,56,251 which included interest income of Rs.4,61,528. This sum is filled up in the return of income at Sl.No.1[F][1] of Schedule-OS. The balance sum of Rs.53,94,723 was erroneously filled up at Sl.No.7 of Part B-TI of the return, which required the appellant to state the income in respect of which exemption u/s. 11 of the Act was not available. Apart from the aforesaid mistake, the appellant also erred in reporting the income applied for charitable purposes. The total revenue expenditure for the year is Rs.85,36,706 and instead of reporting this sum as application of income, the same was reported as "Income claimed as exempt u/s. 10. Due to these errors, the total income was calculated at Rs.0 in the return. However, on the same day the appellant filed a revised return on 29.10.2013 rectifying the above mistake and the appellant reported the entire total of the Income & Expenditure account as well as the expenses in Schedule-OS and arrived at a loss of Rs.26,80,456.

5. Thus it is submitted that there has been error only in filling up the figures in the return of income which figures are undisputedly derived from the audited balance sheet before the AO. The appellant omitted to send the acknowledgement for filing revised return in ITR-V by oversight. However, the revised return is also reflected in the e-filing portal as is evident from the screenshot (at page 51 of PB).

6. Although the aforesaid intimation had been generated, the same was not served on the appellant and consequently the appellant unaware of the demand raised of Rs.20,87,210 until the appellant was served with a letter dated 16.1.2017. The appellant filed a rectification letter on 16.8.2017 informing the AO that a revised return of income had been filed reporting a loss of Rs.26,80,456 inter alia claiming a refund of Rs.55,620. The AO thereafter passed order u/s. 154 dated 4.9.2017 rejecting the rectification on the ground that revised return filed on 29.10.2013 was not duly authenticated by the appellant. It is true that the appellant had not sent the acknowledgement of the revised return in ITR-V to the CPC as on the date of passing the order. However, the entire revised return itself had been furnished by the appellant to the AO on 16.8.2017 and therefore the AO was not justified in refusing to rectify the mistake apparent on record.

7. The Id. AR further submitted that assessee is registered u/s. 12AA of the Act dated 27.6.2008 (copy placed at page 52 of PB. And Form 10B (page 53-54 of PB). In view of this, there is only a mistake committed by the assessee in putting the figures in wrong column in the return. She also relied on the CBDT Circular No.14 [XL 35] of 1955 dated 11.4.1995 (page 48 of PB) wherein there is a clear instruction that the Officers of the department must not take advantage of the ignorance of the assessee and that it is their duty to assist the tax payer in every reasonable way to claim and secure reliefs due to them. Accordingly, she requested that the matter may be remitted to AO for fresh consideration.

8. The ld. DR relied on the orders of the lower authorities and submitted that the assessee has wrongly put the figures in the return of income and accordingly the CPC processed the return and raised the demand. He submitted revised return was filed on the same day, but signed acknowledgement was not sent to CPC within the specified date, therefore the revised return is non est in the eyes of law. He relied on the judgment of the Hon'ble Allahabad High Court in the case of Dhampur Sugar Mills Ltd. v. CIT [1973] 90 ITR 236 (All) and submitted that the revised return has no value.

9. Considering the rival submissions we note that the assessee filed original return on 29.10.2013 showing NIL income and no refund was claimed. Subsequently the assessee filed revised return claiming refund of Rs.55,623 which was not sent to CPC within the due date. The CPC processed the original return on 12.03.2015. The assessee sent the Acknowledgement of Revised Return in ITR-V to CPC on 20.10.2017. The assessee filed rectification application on 16.08.2017. We note that the assessee had put the figures in the wrong column in its original return instead of appropriate column which is a mistake apparent from record. Considering the CBDT Circular No.14 [XL 35] of 1955 dated 11.04.1995 cited by the ld. AR, the case is remitted back to the AO for rectifying the mistake in the original return filed by the assessee and decide the issue as per law. Needless to say that the assessee may be given reasonable opportunity of being heard and the assessee is directed to produce all the relevant documents to

substantiate its claim and avoid seeking unnecessary adjournment for early disposal of the case.

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

Pronounced in the open court on this 15<sup>th</sup> day of January, 2024.

Sd/-  
( GEORGE GEORGE K. )  
VICE PRESIDENT

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 15<sup>th</sup> January, 2024.

*/Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar  
ITAT, Bangalore.