

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" , HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

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| ITA No.456/Hyd/2023 | | |
| Assessment Year: 2012-13 | | |
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| Sri Sarada Vidya Peetham, Sy.No.295A, Anantharam Village, Bhongir Mandal, Nalgonda District. Telangana – 508116. PAN : AAGTS3296J. | Vs. | The Income Tax Officer, Ward – 15(2), Hyderabad. |
| (Appellant) | | (Respondent) |
| Assessee by: | Shri A.V. Raghuram, Advocate. | |
| Revenue by: | Shri Shakeer Ahamed, Sr. AR. | |
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| Date of hearing: | 27.02.2024 | |
| Date of pronouncement: | 28.02.2024 | |

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 25.07.2023 for the AY 2012-13 on the following grounds :

2. The grounds raised by the assessee reads as under :

“1. On the facts and in the circumstances of the case, the order of ld.CIT(A) is erroneous and unstainable in law apart from being passed in violation of principles of natural justice.

2. The ld.CIT(A) failed to appreciate that the notices issued on 08.09.2020, 10.11.2022 and 17.07.2023 were not served on the appellant as the email address on which notices were sent became in-operative as the appellant society became non-functional and therefore, the appellant could not functional and therefore, the appellant could not put forth their matter.

3. The ld.CIT(A) erred in sustaining the addition made by the Assessing Officer of Rs.56,70,705/- by disallowing the student fee refund, which the Assessing Officer did not consider in proper perspective.

4. The Id. CIT(A) erred in sustaining the addition made by the AO of Rs.32,49,752 by disallowing the depreciation on library books, which the Assessing Officer did not consider in proper perspective.”

3. Facts of the case, in brief, are that assessee, an Educational Society, running an Engineering college and filed its return of income for AY 2012-13 on 31.1.2013, admitting loss of Rs.1,94,736/-. Thereafter, the case was selected for scrutiny and the assessment u/s 143(3) of the Act was completed on 23.03.2015 determining total income at Nil after making certain additions and adjustment of brought forward loss from AY 2011-12 of Rs.14,94,686/-.

3.1. Subsequently, the Pr. Commissioner of Income Tax-7, Hyderabad, by invoking the powers vested with him u/s 263 of the Act, set aside the assessment order dt. 23.3.2015 and directed the AO to re-do the assessment. Accordingly, notice u/s 143(2) of

the Act dt. 11.9.2017 was issued and served on the assessee. In response to the notice issued, assessee appeared on 22.9.2017 and verbally reiterated the submissions already made. However, the assessee was asked to furnish books of account along with necessary evidence in support of the submissions. However, neither the AR of the assessee nor the assessee appeared nor filed any details as called for. Therefore, the assessee was issued show cause notice dt. 26.10.2017 requesting the assessee to furnish details as called for. Thereafter, the AR for the assessee appeared on 23.11.2017 and filed some of the details with respect to the issues raised in the show-cause notice. After verification of the details filed by the AR, the assessment was completed inter-alia making certain additions / disallowances and thereafter passed assessment order dt.29.12.2017 u/s 143(3) r.w.s. 263 of the Act, determining the total income at Rs.15,34,767/-.

4. Feeling aggrieved by the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A), who dismissed the appeal of assessee on account of non-prosecution and on merits.

5. Feeling aggrieved with the order of ld.CIT(A), assessee filed the appeal before the Tribunal. The Tribunal vide order dt.19.02.2020 had remanded back the matter to the file of ld.CIT(A) for deciding the issue afresh.

6. After the remand of the matter by ITAT, ld.CIT(A) in remand proceedings had issued the notices to the assessee on 08.09.2020, 10.11.2022 and 17.07.2023 on the e-mail id given by the assessee in Form 35. However, the assessee has not responded to the e-mails and such, the ld.CIT(A) had decided the appeal of the assessee ex-parte and passed the order.

6.1 Before us, ld.AR submitted that the learned lower authorities have decided the issue without considering the explanation offered by the assessee and that assessee failed to appear before the ld.CIT(A) due to unavoidable circumstances. It was submitted that the e-mail given by the assessee was not functional and the assessee was not regularly seeing the same and therefore, the mistake has been committed by the assessee in not giving reply to the ld.CIT(A). Ld.AR further submitted that as the assessee has sufficient cause from not putting up appearance before the ld.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication.

7. Per contra, the ld.DR has raised objection for remanding the matter back to the file of lower authorities.

8 We have heard the rival contentions of both the parties and perused the material available on record and also the order passed by the lower authorities. On perusal of the impugned order passed by ld.CIT(A), we found that ld.CIT(A) passed an order

confirming the action of the Assessing Officer in his assessment order passed u/s 143(3) r.w.s. 263 of the Act. The merits of the assessee's appeal before the ld.CIT(A) have neither been discussed nor decided by the ld.CIT(A). From para 5 at page 4 of the order of ld.CIT(A), it is clear that ld.CIT(A) was forced to decide the appeal on the basis of material available on record, as there was no representation on behalf of the assessee in the remand proceedings. In view of the above reasons, in our view, the ends of justice will be met if the matter is remanded back to the file of ld.CIT(A) with a direction to decide the issue after considering the documents available on record and affording one more opportunity of hearing to the assessee in accordance with law subject to payment of costs of Rs.5,000/- (Rupees Five Thousand only) in favour of Prime Minister National Relief Fund which shall be payable within one month or from the date of receipt of this order or whichever is earlier.

9. The assessee shall be at liberty to file documents, if any, as required for proving its case and the ld.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the ld.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the ld.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. It is made clear that in case, the assessee fails to appear

before the Id.CIT(A) on the date intimated to the assessee through e-mail address on ssistsscp@gmail.com given in Form 35 and also e-mail address on vinodvpuram@yahoo.com, given in Form 36 in the present appeal, then the Id.CIT(A) shall decide the issue in accordance with law. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication. Thus, the grounds of the assessee are allowed for statistical purposes.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 28th February, 2024.

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| Sd/- (R.K. PANDA) VICE PRESIDENT | Sd/- (LALIET KUMAR) JUDICIAL MEMBER |
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Hyderabad, dated 28th February, 2024.

TYNM/SPS

Copy to:

| S.No | Addresses |
|------|--|
| 1 | Sri Sarada Vidya Peetham, Sy.No.295A, Anantharam Village, Bhongir Mandal, Nalgonda District, Telangana – 508116. |
| 2 | The Income Tax Officer, Ward – 15(2), Hyderabad. |
| 3 | Pr.CIT(Central), Hyderabad. |
| 4 | DR, ITAT Hyderabad Benches |
| 5 | Guard File |

By Order