

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

SHRI DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

&

BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER

I.T.A. No. 10/Pat/2022

Assessment Year: 2014-15

Gurudwara Bal Leela Manini Sangat Trust Patna Sahib Patna City Patna - 800008 [PAN: AABTG9954E]	Vs	National Faceless Appeal Centre, Delhi
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri D.V. Pathy, Advocate & Shri Hiresh Karana, Advocate
Revenue by :	Md. A.H. Chowdhary, CIT D/R

सुनवाई की तारीख/Date of Hearing : 05/03/2024

घोषणा की तारीख /Date of Pronouncement: 21/03/2024

आदेश/ORDER

PER, DR. MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre (hereinafter the "Id. CIT(A)") dt. 29/12/2021, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. Though the assessee has raised eight grounds of appeal but the grievance are two fold:-

(i) the Id. CIT(A) erred in dismissing the appeal *in limine* for delay of 1423 days in filing of the appeal ignoring the fact that the delay occurred due to fault of the Counsel, who had *bona fide* belief that the impugned order is rectifiable.

(ii) that the CPC erred in framing the order u/s 143(1) of the Act treating the gross receipts as income and not allowing the expenditure incurred in carrying out the charitable activities.

3. At the outset, the ld. Counsel for the assessee referring the first issue submitted that the delay in filing of the appeal before the ld. CIT(A) for 1423 days was not an intentional delay and it was mainly on account of the *bonafide* belief of the Counsel that the adjustment made in the 143(1)(a) order can be rectified. In support thereof, an affidavit has been filed and the same reads as under:-

*"AFFIDAVIT*

*I, Subhash Chandra Ghosh son of Late Narayan Chandra Ghosh resident of 5B, Patliputra Colony 800013 do hereby solemnly affirm and declare follows: -*

- 1. That I am a chartered accountant by profession and also the counsel for Gurudwara Bal Leela Balmaini SangatTrust.*
- 2. That an order/intimation under Section 143 (1) of the Income Tax Act, 1961 for the Assessment Year 2014 - 15 was passed by the CPC Bangalore on 10.03.2016.*
- 3. That in the said order the income was computed on the voluntary contribution and income from other sources earned by the trust. Thus, the gross receipts itself was subjected to tax only on the ground that the trust was not registered under Section 12 A of the Income Tax Act, 1961.*
- 4. That since, the gross receipts itself was brought to tax I filed a petition for rectification before the assessing authority on the grounds inter-alia that the order/intimation passed under Section 143 (1) of the Act bringing to tax the gross receipts itself was contrary to several judicial pronouncements of the Hon'ble Income Tax Appellate Tribunal and therefore, the same is rectifiable within a period of four years from the end of the relevant assessment year in which the order was passed. On such understanding I filed a petition for rectification on 20.02.2020 which in my humble understanding was within the period of limitation contemplated under Section 154 of the Act.*
- 5. That the petition for rectification so filed was rejected on 24.02.2020.*
- 6. That after rejection of the petition for rectification I took advice of Mr D.V. Pathy, advocate who suggested to file an appeal before the Commissioner of income Tax (Appeal) as the order/intimation under Section 143 (1) was appealable. The said counsel also suggested that I had taken a wrong decision to seek a remedy of rectification rather than taking the sort to*

*an appellate remedy. At that point of time, I realized that I had taken or wrong decision to pursue a remedy of rectification under Section 154 of the Act.*

*7. That I admit that the delay in filing the appeal primarily arose due to a wrong decision of mine and was indeed my fault. I was apologetic for the delay in filing the appeal which was caused due to my fault as a counsel and that my clients who are charitable trust where in no way responsible for such delay. It's on this ground the appeal was filed before the Commissioner of Income Tax (Appeal) with a petition for condonation of delay.*

*8. That I reiterate that the delay in filing of the appeal arose primarily to the reason that in my humble opinion the order was rectifiable which later was corrected by the counsel from whom I took advice and file the appeal through him."*

4. On the strength of the above affidavit, prayer has been made that since the assessee is regularly engaged in charitable activities, an opportunity may be granted for appearing before the Id. CIT(A) for adjudication of the issues on merits. The Id. Counsel for the assessee also submitted that even CPC erred in processing the return u/s 143(1) of the Act by only considering the gross receipts as income ignoring the fact that expenditure during the year has also been incurred and even if the appellant is assessed as association of persons then also assessee deserves to get the deduction of expenditure incurred against the gross receipts during the year.

4.1. On the other hand, the Id. D/R though supported the orders of the lower authorities but did not controvert the contention that the issue may be restored to the Id. CIT(A) for fresh adjudication.

5. We have heard rival contentions that perused the record placed before us. We notice that the assessee is a charitable trust engaged in carrying out the charitable activities. Though, for the

year under consideration, the assessee trust was not registered but subsequently during FY 2014-15, the assessee got registered u/s 12A of the Act vide order dt. 24/02/2015 which thus proves that the assessee trust was found to be engaged in carrying out charitable activities. We notice that the assessee trust filed its income tax return in ITR-7 on 31/07/2014 declaring Nil income after claiming exemption u/s 10 at Rs.3,09,26,115/-. However, when the return was processed, the voluntary contribution and income from other sources were totaled and assessed as income. Before the Id. CIT(A), assessee failed to file appeal within the statutory time limit and there was a delay of 1423 days. We have gone through the affidavit placed on record signed by the deponent Shri Subhash Chandra Ghosh, who was the Counsel for the assessee trust. From going through the same, we notice that after receiving the intimation u/s 143(1)(a) of the Act, the Counsel who was looking after the work of the assessee was of the *bonafide* belief that the mistake was rectifiable u/s 154 of the Act and filed an application on 20/02/2020 and the same was rejected. Thereafter, the assessee filed appeal before the Id. CIT(A) and failed. We thus find force in the reasons stated in the affidavit and are of the considered view that the Id. CIT(A) ought to have considered the same and have dealt the issue on merits after considering the delay in filing of the appeal.

6. We, therefore, condone the delay of 1423 days occurred in filing the appeal before the ld. CIT(A) and remit the issues on merits for fresh adjudication which mainly include allowing of expenditure incurred during the year against the gross receipts of the assessee trust. Thus, all the grounds raised on merits are restored to the file of the ld. CIT(A) for adjudication. Needless to mention that the assessee be given sufficient opportunity of being heard to place all relevant details including financial statements i.e., balance sheet and income and expenditure account and also details of expenses incurred during the year, so that only net income/surplus earned during the year should be subjected to tax. The ld. CIT(A) should also consider the fact that the assessee trust has subsequently been registered u/s 12A of the Act vide order dt. 24/12/2015 and should decide, in accordance with law.

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

**Order pronounced in the Court on 21<sup>st</sup> March, 2024 at Kolkata.**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

*Sd/-*

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 21/03/2024

*\*SC Sarma*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , पटना /DR,ITAT, Patna,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Patna