

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 387/Bang/2024
Assessment year : 2022-23

M/s. El Shammah Ministries, Reds Road, Shanthinagar, Setthihalli B.O., Tumkur – 572 102. Karnataka. PAN : AAATE 4615P	Vs.	The Income Tax Officer, Ward-1 & TPS, Tumkur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, S.V., Advocate
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.04.2024
Date of Pronouncement	:	15.04.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the DIN & Order No.ITBA/APL/S/250/2023-24/1061097858(1) dated 19.02.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2022-23.

2. The brief facts of the case are that the assessee filed return of income on 28.07.2022 declaring gross total income at Rs.1,60,409.

The return was processed by CPC on 28.3.2023 and total income was determined at Rs.7,49,712 denying revenue expenditure of Rs.4,76,846 and accumulation of Rs.1,12,457 claimed by the assessee on the ground that no forms were filed.

3. Appeal was filed before the First Appellate Authority (FAA) against the intimation u/s. 143(1) with a delay of 71 days stating the reason that the professional consultant of the assessee did not file appeal within time. The FAA noted that assessee has neither mentioned any cogent or convincing ground for delay in filing the appeal nor furnished anything to prove that it had acted diligently and was not guilty of negligence. Therefore he did not condone the delay and dismissed the appeal of the assessee. Against this, the assessee is in appeal before the Tribunal.

4. The Id. AR submitted that the return was filed within due date and intimation generated electronically was handed over to tax consultant for filing appeal but due to his pre-occupation and professional commitments, it escaped his attention to file appeal. Thereafter the assessee approached other tax consultant and appeal was filed due to which there was a delay in filing appeal. But the FAA did not condone the delay and dismissed the appeal. He further submitted that net income should be taxed, however the CPC has not given benefit of expenditure and the entire income has been taxed. In support of his argument he relied on the coordinate Bench decision in the case of HMV Educational Cultural & Social Trust in ITA

No.9/Bang/2023 dated 23.3.2023. He further submitted that assessee is engaged in charitable activities and requested that delay may be condoned in filing appeal before the FAA and the matter may be sent back to AO for fresh consideration.

5. The Id. DR strongly opposed for condoning the delay and submitted that there is no cogent reason explaining the delay for filing appeal before the FAA and the reason given is casual in nature. He therefore submitted that the FAA has rightly not condoned the delay.

6. After considering the rival submissions, we note that the assessee is allotted PAN as a trust, however, the CPC has observed that it is AOP/BOI. The assessee has declared income of Rs.1,64,409 after claiming expenditure of Rs.4,76,846 and accumulation of income of Rs.1,12,457. The CPC has determined income of Rs.7,49,712. The FAA has not condoned the delay in filing appeal and dismissed the appeal of the assessee. We have gone through the reasons for delay in filing appeal and note that the assessee's tax consultant did not file the appeal within time and the assessee approached other tax consultant after which appeal was filed immediately with application for condonation of delay. In our opinion, there was sufficient cause for delay in filing the appeal and following the decision of the Hon'ble Supreme Court in Mst. Katiji, 167 ITR 471 (SC), we condone the delay of 71 days in filing appeal before the FAA.

7. We further observe that the entire receipts has been taxed by the CPC and no benefit of expenditure has been given to the assessee for

calculating taxable income. In the case of HMV Educational Cultural & Social Trust (supra) relied on by the Id. AR, it is held that no tax shall be charged on the entire receipts and tax may be levied only on the taxable income. Respectfully following the above decision, we remit the issue back to the Assessing Officer for de novo consideration and direct the AO to compute the income and charge tax as per law, after reasonable opportunity to the assessee. The assessee is directed to produce all the evidence in support of its case and not seek unnecessary adjournment for early disposal of the case.

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

Pronounced in the open court on this 15th day of April, 2024.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 15th April, 2024.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.