

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

ITA NO. 4327/MUM/2023 (A.Y: 2015-16)

SWASTH FOUNDATION 615-616, Palms II, Royal Palms Estate, Aarey Milk Colony Goregaon East, Mumbai – 400065 PAN: AAITS2522B	v.	ITO(EXEMPTION) WARD 2(3) 617, Cumballa Hill Mumbai - 400026
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Pritesh Mehta
Department Represented by	:	Shri Dr. Kishor Dhule
Date of conclusion of Hearing	:	30.04.2024
Date of Pronouncement	:	30.04.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the assessee is preferred against the order dated 29.06.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2015-16.

2. The grievance of the assessee read as under: -

"1. The assessment order is erroneous and bad in law. The CIT (A) has not taken note of the fact that the assessee has filed return of income on 12.09.2015 within the time limit prescribed u/s 139(1). As such, the entire assessment order is invalid and bad in law.

2. The CIT (A) has not taken note of the fact that the assessee has filed revised return of income on 01.12.2015. As such, the entire assessment order is invalid and bad in law.

3. The CIT (A) has made the assessment order based on alleged return of income filed by the appellant on 30.11.2015. The assessee has not filed any return of income on 30.11.2015. The assessment order has been made on the basis of a non-existent return of income and as such, the entire assessment order is invalid and bad in law.

4. The CIT (A) has failed to appreciate that the assessee has exercised option under clause (2) of explanation to section 11(1) whereby the amount deemed to have been applied for charitable activities during F.Y.2014-2015 is Rs.2,21,56,903/- in return of income filed on 12.09.2015 vide Part B - TI Clause 9(iv).

5. The CIT (A) has failed to appreciate that the assessee has exercised option under clause (2) of explanation to section 11(1) whereby the amount deemed to have been applied for charitable activities during F.Y.2014-2015 is Rs.2,21,56,903/- in Form 10B filed on 12.09.2015.

6. The CIT (A) has failed to appreciate that the assessee has exercised option under clause (2) of explanation to section 11(1) whereby the amount deemed to have been applied for charitable activities during F.Y.2014-2015 is Rs.2,21,56,903/- in revised return of income filed on 01.12.2015 vide Part B - TI Clause 9(iv).

7. The CIT (A) has failed to appreciate that no particular form or format has been prescribed by law for exercising the option under clause (2) of the Explanation to section 11(1). As such, it is submitted that the assessee has effectively exercised and intimated to the CIT (A) its option under clause (2) of the Explanation to section 11(1) by filing form 10B and filing the return of income in which such option has been exercised by the

assessee on 12.09.2015 i.e. before due date of filing return on income u/s 139(1).

8. The CIT (A) failed to appreciate the decision in the case of CIT v/s G.R. Govindarajulu & Sons Charities ([2005] 144 Taxman 300 (Madras)) where it has been held that there is no mandatory requirement under section 11(1) requiring an assessee to exercise option in a prescribed form, as contemplated under section 11(2), as it is enough for such assessee to submit a statement along with return to exercise such option for claiming benefit of section 11(1). The aforesaid decision has been confirmed by the Supreme Court vide 61 taxmann.com 400

9. The CIT (A) failed to appreciate that the assessee was under bonafide belief that by filing form 10B and return of income under which the option under clause (2) of the Explanation to section 11(1) was exercised, the assessee has intimated the CIT (A) that the said option had been exercised by it and that no further intimation was required

10. The appellant craves leave to add, amend, modify or alter the above grounds of appeal to any stage of appellate proceedings.

11. The appellant humbly prays that the appeal to be allowed in toto."

3. Representatives were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of ITAT Rules.

4. The appeal is delayed by 96 days. We have carefully perused the affidavit filed for condonation of delay. We are of the considered view that the assessee was prevented by sufficient cause for not filing the appeal on time. Therefore, the delay is condoned.

5. A perusal of the assessment record show that the Assessing Officer has proceeded on wrong facts which has resulted into the denial of the exemption claimed by the assessee.

6. The document shows that the assessee filed the original return of income under section 139 of Income-tax Act, 1961 (in short "Act") on 12.09.2015 which was revised on 01.12.2015. Whereas the Assessing Officer has proceeded by considering the return filed on 30.11.2015 and came to the conclusion that the assessee did not file the return under section 139 of the Act. The return filing history of the assessee exhibited at Page Nos. 52 to 58 of the Paper Book show that the assessee never filed any return of income on 30.11.2015. Therefore, the entire assessment is based on wrong assumption of facts. Since the Ld. CIT(A) has also confirmed the assessment, the order of the Ld.CIT(A) is also erroneous.

7. Therefore, in the interest of justice and fair play, we deem it fit to set-aside the issue to the file of the Assessing Officer. The Assessing Officer is directed to decide the issue afresh, after considering the return of income filed by the assessee original and revised and decide the issue

of claim of exemption, after affording a reasonable and adequate opportunity of being heard to the assessee.

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

Order pronounced in the open court on 30th April, 2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai / Dated 30.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum