

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS PADMAVATHY S, ACCOUNTANT MEMBER

I.T.A. No. 4501/MUM/2023
(A.Y.2014-15)

Nanik Education Society Ground Floor, Lal Mahal Society, Daulat Nagar, Thane(E)-400603, Maharashtra.	Vs.	ITO (Exemption)Ward, 2 nd Floor, Qureshi Mansion, Naupada, Thane-400602, Maharashtra.
PAN/GIR No. AAQPS2482L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Ms.Manisha Gind.AR
Revenue by	Shri Laxmi Kant.Sr. DR

सुनवाई की तारीख/Date of Hearing	07.05.2024
घोषणा की तारीख/Date of Pronouncement	10.05.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of the National Faceless Appeal Centre, Delhi, (NFAC)/ CIT(A) passed u/sec143(3) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3) of the act is invalid and bad in law.*

2. The learned CIT(A) (NFAC), has erred in upholding the Assessment Order passed by Assessing Officer without not only providing a reasonable opportunity of being heard but without even appreciating the facts and merits of the case.

3. On the facts and in circumstances of the case and in law, the learned CIT(A) (NFAC), is totally unjustified in not allowing exemption u/s.11 of the Income Tax Act, 1961.

4. The appellant craves leave to add, amend, alter and/or vary any of the grounds at the time or before the hearing of this appeal.

5. The appellant therefore prays that penalty levied by the Ld Assessing Officer and confirmed by Hon'ble CIT (A) not being in accordance with the provisions of law deserves to be & may please be deleted.

2. The brief facts of the case are that, the assessee is a charitable trust and is engaged in charitable activities and runs pre-primary, primary and secondary section at Kopri, Thane and the trust is registered under BPT Act, 1950 and under section 12A of the I T Act. The assessee has filed the return of income for the A.Y 2014-15 on 27.09.2014 disclosing a total income of Rs.Nil after claiming exemption u/sec 11 of the Act and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny under CASS and notice u/sec 143(2) and u/sec142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the copy of Audit Report in Form 10B, income and expenditure account and other details in support of the return of income filed. The Assessing Officer (AO) on perusal of the income and expenditure found that the

assessee has disclosed total gross receipts of Rs. 75,27,087/- and surplus after claiming deduction of expenses has worked out to Rs. 38,29,437/- and the assessee has claimed exemption u/sec 11(1)(c) of the Act. The assessee was called to produce the approval certificate of claiming exemption u/sec 11(1)(c) of the Act. Since no information was submitted in support of claim in spite of providing adequate opportunities. Finally, the AO has dealt at Para 4 of the order on the provisions and relied on the information available on record and observed that the assessee has not complied with the conditions as required u/sec 11(1)(c) of the Act and denied the exemption claimed by the assessee and assessed the total income of Rs. 27,00,370/- and passed the order u/sec 143(3) of the Act dated 22.06.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the AO and has issued notices of hearing and since there was no compliance by the assessee to notices. Therefore the CIT(A) considering the information on record has confirmed the action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the submissions made in the

assessment proceedings. Further the assessee has a good case on merits and Form no 10 was filed on 23-12-2015 and in the return of income filed, the amount set apart was inadvertently reported under different column. The assessee shall substantiate with the material evidences in support of claim of deduction and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the CIT(A) has passed the order considering the fact that there is no appearance in spite of providing adequate opportunity of hearing and the notices were issued. Therefore, the CIT(A) was of the opinion that the assessee is not interested in prosecuting the appeal and dismissed the appeal ex-parte confirming the action of the assessing officer. The Ld. CIT(A) has issued the notices of hearing on 15.03.2019, 23.12.2020, 01.11.2022 and 26.04.2023 referred at Page 2 Para 1.1 of the order, but there was no response and thus the Ld.CIT(A) came to a conclusion that the assessee is not interested and decided the appeal based on the information available on record. Whereas the assessee has raised grounds of appeal challenging the denial of claim of deduction/ exemption u/sec11 of the Act and there could be various reasons for non appearance which cannot be overruled. Therefore, considering the principles of natural justice shall provide with one more opportunity of hearing to the assessee to substantiate the case with evidences and

information. Accordingly, set aside the order of the CIT(A) and remit the entire disputed issues to the file of the Assessing Officer to adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information. Accordingly, we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 10.05.2024.

Sd/-
(**PADMAVATHY S**)
ACCOUNTANT MEMBER

Sd/-
(**PAVAN KUMAR GADALE**)
JUDICIAL MEMBER

Mumbai, Dated: 10/05/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai