

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.512/Bang/2024
Assessment Year: 2015-16

Centre for E-Governance Room No.108, 1 st Floor, 2 nd Gate Multi-storied Building Banalore PAN NO : AAAAC4156C	Vs.	DCIT (Exemptions) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Smt. Prathibha R., A.R.
Respondent by	:	Ms. Neera Malhotra, D.R.

Date of Hearing	:	08.05.2024
Date of Pronouncement	:	08.05.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2015-16 dated 19.1.2024. The assessee has raised various grounds of appeal.

2. Facts of the issue are that the Assessee is a registered Society established by Government of Karnataka under E-Governance Secretariat engaged in creating Platforms for conducting Tenders for various Government Organizations. The Assessee is also registered u/s.12A of Income Tax Act, 1961 (in short “The Act”) as a Charitable Organization, as its activity falls within the meaning of advancement of any other object of general public utility. For the Assessment year under consideration, the Assessee had filed return of income claiming deduction in respect of expenses incurred amounting to Rs. 10,56,60,590/- under section 11 of Income Tax Act. Original assessment order was passed u/s. 143(3) of Income Tax Act, dated

21.09.2017, wherein the assessed income was Rs. 71,29,93,675/-. In the original assessment, considering the Assessee as engaged in business as per the terms of section 2(15) r.w.s. 13(8), the Ld. Assessing Officer did not give deduction towards amount applied for projects as claimed. In the original assessment, revenue expenditure of was allowed as expenditure. Subsequently, an order u/s. 154 was passed by carrying out certain rectifications and reducing the revenue expenditure from Rs.10,56,60,590/- to Rs.1,97,26,655/-. The Society had filed delayed Form No. 10 for accumulating certain funds for Project Expenses of Rs.69,43,34,709/- and the Society had also made an application to ld. Commissioner of Income Tax (Exemptions) to condone the delay of filing Form-IO and the ld. Commissioner of Income Tax (Exemptions) has condoned the delay in filing Form No.10. After getting the condonation of delay from CIT(E), the Ld. Assessing Officer passed an order u/s.154 dated 01.03.2021, allowing the amount of Rs.69.43 Crs. as deduction u/s. 11(2) of Income Tax Act. The Assessee had filed an Appeal against the order u/s. 143(3) considering the gross income as taxable u/s. 13(8) to the CIT(A), National Faceless Appeal Centre, Delhi. In the mean time, the Ld. Assessing Officer has now passed the order u/s. 154 denying the benefit u/s. 11(2) of Rs.69.43 Crs. on the plea that since the assessment order has been passed as per provisions of section 13(8), considering the income of the Society as business, the Ld. Assessing Officer in the Rectification Order u/s. 154 dated 04.01.2023 has disallowed the deduction already given in respect of accumulation u/s. 11(2). Before passing the order, the Ld. Assessing Officer had given an opportunity to the Assessee to show cause why order u/s. 154 should not be passed for withdrawing the benefit given u/s.11(2) of the Act, by notice dated 20.12.2022. The Assessee had filed a letter in response to the notice stating that the question of passing the order by adopting the provision u/s. 13(8) is not acceptable and the matter is before the ld. CIT(A), withdrawing the

benefit u/s. 11(2) cannot be made by passing order u/s. 154 as that is not mistake apparent from record. The Ld. Assessing Officer has now passed the order u/s.154 and has stated that if the original appeal filed by the Assessee is allowed granting the benefit of application of income u/s. Section 11 by the ld. CIT(A), this benefit u/s. 11(2) would also be allowed. Now original assessment order passed u/se143(3) has been disposed off by the ld. CIT(A) against the Society and the Society is in the process of filing an Appeal before Income Tax Appellate Tribunal. Hence, to keep the matter in abeyance, this appeal questioning the jurisdiction of the Ld. Assessing Officer to pass the order withdrawing the benefit given u/s. 11(2) of the Act is being filed. Against this assessee went in appeal before NFAC who has confirmed the order of ld. AO. Once again, assessee came in appeal before us.

3. The ld. D.R. relied on the order of lower authorities.

4. We have heard the rival submissions and perused the materials available on record. The main contention of the ld. A.R. is that for the same assessment year, there was assessment order u/s 143(3) of the Act, against which assessee went in appeal before ld. CIT(A) as well as before the Tribunal and the Tribunal vide order dated 233 to 236/Bang/2013 dated 2.6.2023 remitted the issue in dispute back to the file of ld. CIT(A) by observing as under:

7. "We have heard the rival submissions and perused the material on record. The Hon'ble Apex Court in the case of Ahmedabad Urban Development Authority (supra) had laid down various principles as regards the interpretation of proviso to section 2(15) of the Act and section 11 of the Act. The said judgment of the Hon'ble Apex Court was rendered recently on 19.10.2022 and the benefit of the same was not available before the AO (there is no reference to the said judgment in the impugned orders of the CIT(A) though the same were passed after the judgment of Hon'ble Supreme Court). Since Hon'ble Apex Court has laid down principles as regards the interpretation to proviso to sections 2(15) and 11 of the Act, we are of the view that the entire issue raised before us needs to be reexamined by the CIT(A).

8. Moreover, the learned AR had submitted that the assessee's receipts from the commercial activities, if any, is much below the threshold limit

as prescribed under proviso to section 2(15) of the Act and this aspect has not been considered by the CIT(A). In this context, the learned AR, during the course of hearing, had taken us through the P & L A/c to drive home his contention that interest income from bank deposits is also taken for considering the gross receipts from commercial activities of the assessee. Further, the learned AR had also argued that assessee society is established by Government of Karnataka vide GO dated 29.09.2005 for implementing various e-Governance initiatives in the State to facilitate rapid and effective use of information technology for the benefit of the common man. It is stated that assessee's activities / functions are that of State functions and would be governed by article 289 of the constitution. Though this contention of the assessee has not been raised before the AO nor CIT(A), the same being purely a legal issue, also needs to be addressed while the matter is being reconsidered by the CIT(A). With these observations, we restore the matter to the file of the CIT(A). The CIT(A) shall take a decision in accordance with law after affording reasonable opportunity to the assessee to present its case. The assessee shall co-operate with the Revenue for an expeditious disposal of the case and shall not seek unnecessary adjournment. It is ordered accordingly."

4.1 The present appeal is emanated from the intimation passed by Id. AO u/s 154 r.w.s. 143(1) of the Act, which requires to be considered along with said appeal pending with the Id. CIT(A) for this assessment year as cited above. In view of this, in the interest of justice, we remit the entire issue in dispute to the file of Id. CIT(A) to decide the issue afresh after being heard the assessee along with quantum appeal pending with him for the very same assessment year which was emanated from the order passed u/s 143(3) of the Act. Ordered accordingly.

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

Order pronounced in the open court on 8th May, 2024

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 8th May, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**