

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

ITA. No. 4504/MUM/2023
(A.Y.2015-16)

BP Marine Academy, 7 th Flr,SaiPoojaChamber, Sector-11, CBD Belapur, Navi Mumbai-400614.	Vs .	DCIT-1(1), 6 th Floor, Cumballa Hill, MTNL Bldg, Pedder Road, Dr.Gopalrao Deshmukh Marg, Mumbai -400026.
PAN/GIR No. AACCB7698A		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri Bhupendra Shah.AR
Revenue by	Shri Laxmi Kant, Sr. DR

सुनवाई की तारीख/Date of Hearing	07.05.2024
घोषणा की तारीख/Date of Pronouncement	14.05.2024

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) against the order u/s 143(3) r.w.s 263 and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. In the facts and circumstances of the case and in law, the learned CIT[A] NFAC erred in passing order ex parte that too without deciding appeal on merits just because the emails sent for hearing could not be traced which went to spam folder.*

2. In the facts and circumstances of the case and in law, the learned A.O. erred in passing order by making the addition of Rs. 49055690/- on account of accumulated income u/s 11[2] due to delay in submissions of from no. 10. Without prejudice to the above and alternatively,

3. In the facts and circumstances of the case and in law, the learned A.O. erred in passing the assessment order the overlooking the fact that the appellant is already a petition for condonation of delay in filing form number 10 which is pending for disposal before the learned DIT (exemption), Mumbai. The said petition is also pending with the jurisdictional assessing officer for necessary verification.

4. In the facts and circumstances of the case and in law, the learned the assessing officer or in passing the assessment order by the overlooking the fact that they appellant had already filed appeal before the ITAT against order passed by DIT (exemption), Mumbai, which was pending for hearing at their end but restored back to DIT[Exemption]

5. In the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234 & initiating penalty u/s 271[1][c]..

2. The brief facts of the case are that, the assessee is a charitable organization registered u/sec 12A of the Act. The assessee has filed the return of income for the A.Y 2015-16 on 29.10.2015 disclosing a total income of Rs.Nil after claiming exemption u/sec11(2) of the Act and the return of income was processed u/s 143(1) of the Act. Subsequently the assessment was completed u/sec 143(3)

of the Act on 27.12.2017. Whereas the CIT(E) found that the assessment passed by the Assessing Officer (A.O) is erroneous and prejudicial to the interest of the revenue and observed that the assessee has accumulated of Rs. 4,90,55,690/- u/sec 11(2) of the Act and the A.O has allowed the claim in the order u/sec143(3) of the Act. Whereas the assessee has filed the Form No.10 on 23.12.2017 after due date specified u/sec 139(1) of the Act. Further the assessee has not filed the condonation application for delay in filling of Form.no10 and the A.O has not verified in the assessment proceedings and therefore the amount of Rs.4,90,55,690/- accumulated u/sec 11(2) of the Act should have been disallowed and passed the order U/sec263 of the Act dated19.03.2021.

3. Subsequently as per the directions of the CIT(E), the A.O has issued notice U/sec142(1) of the Act on various dates calling for details and information and there was partial compliance. Therefore the AO considering the information available on record dealt on the provisions of Sec. 11(2) of the Act and observed that since the assessee has not filed Form.No.10 on or before the due date of filing of the return of income u/sec139(1) of the Act, therefore the benefit of accumulation u/sec 11(2) of the Act is not available to the assessee and also the assessee has not applied for the condonation of delay in filling the Form.No.10. Finally, the A.O disallowed the claim of exemption u/sec11(2) of the Act and assessed the total income of Rs. 4,90,55,690/- and

passed the order u/sec 143(3)/263 r.w.s 144B of the Act dated 23.03.2022.

4. 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.

5. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the information submitted in the course of assessment proceedings. Further the Ld. AR submitted that the AO has erred in passing the assessment order overlooking the fact that the assessee has made an application for condonation of delay in filling form No. 10 which is pending before the DIT(E). The Ld. AR emphasized that the assessee has filed an appeal before the ITAT against order passed by DIT (E) and the matter was restored back to the DIT(E). Further the assessee has a good case on merits and shall substantiate with the material evidences in support of claim and prayed for an opportunity to explain before the lower authorities. Per Contra, the Ld.DR supported the order of the CIT(A).

6. 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 12.06.2023, 12.07.2023 & 27.07.2023 referred at Para 2 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 exemption u/sec11(2) of the Act and there could be various reasons for non appearance which cannot be overruled. The Ld.AR emphasized that the assessee has a good case on merits and referred to the paper book Page 1 to 12 the correspondence, letters, notice in respect of condonation of delay in filling Form.No.10 for claiming the benefit u/sec11(2) of the Act and the matter is pending with the authorities. Therefore, we considering the facts, circumstances and 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.

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

Order pronounced in the open court on 14.05.2024.

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

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

Mumbai, Dated: 14/05/2024

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