

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM**

**I.T.A. No. 4502/Mum/2023
(Assessment Year: 2013-14)**

Nanik Education Society Ground Floor, Lal Mahal Society, Behind Daulat Nagar, Maharashtra-400603. PAN : AAATN2115K	Vs.	ITO (Exemption) Ward 2 nd Floor, Qureshi Mansion, Naupada, Maharashtra-400602.
Appellant)	:	Respondent)

Appellant/Assessee by : Ms. Manisha Ghind., CA
Revenue/Respondent by : Shri Laxmi Kant , Sr. DR

Date of Hearing : 08.05.2024
Date of Pronouncement : 09.05.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] both dated 23.05.2023 for the AY 2013-14. The assessee raised the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the assessment order passed us 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 for vary any of the grounds at the time or before the hearing of this appeal.

5. The appellant therefore prays that disallowance / addition made by 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 assessee is a charitable trust registered under section 12A of the Income Tax Act, 1961 (for short 'the Act') and filed the return of income for AY 2013-14 on 26.09.2013 declaring the income of Nil. The Assessing Officer (AO) during the course of assessment noticed that the assessee has claimed as um of Rs. 28,02,816/- as exemption under section 11(1)(c) of the Act and called on the assessee to furnish the relevant documents in support of the said claim. The assessee submitted that –

Regarding exemption of Income u/s 11(1)(c) of the Income tax Act. 1962, I would like to say that the exemption of the Income of the Trust was to be claimed u/s 11(2) of the Income tax Act 1961 and thereafter the accumulated or set a part income has been invested by the said trust with Banks under fixed Deposits, held in the name of the said trust with renewal every year as specified subsection 5 of section II of the Income tax Act, 1961. I say trust has set aside the said accumulated funds with banks by way of fixed deposits held as the trust was to purchase their own land and construct the school building thereon, as the school imparting education to the poor and needy students with low fees structure and we are managing school activities in such a way to create better schooling with limited sources, even the school don't charge donations for admissions taken by the students in the said school,”

3. The AO from the perusal of the return of income filed by the assessee noticed that the accumulation of funds which the assessee has claimed to have

done under section 11(2) has not been furnished under Schedule I by the assessee and that even for the claim to be allowed under 11(1)(c), the disclosure in the return is not proper. The AO therefore held that the assessee that the assessee is misleading the revenue by incorrect disclosures and accordingly is not entitled for exemption under section 11(1)(c) of the Act to the tune of Rs. 28,02,816/-. However, the AO allowed the deduction of 15% of the gross receipt amounting to Rs. 9,40,513/- as exemption under section 11(1)(a) of the Act. The AO also made an addition of Rs. 13,606/- as undisclosed interest income. Aggrieved the assessee filed further appeal before the CIT(A). The assessee did not represent the case before the CIT(A) and did not furnish any further details. Therefore, the CIT(A) dismissed the appeal by holding that –

“4. After introduction of Faceless Appeal Scheme with effect from 25/09/2020, fresh notices u/s. 250 of the Act were issued on various dates as mentioned in Para 1.1 above. On all these occasions, the appellant neither made any written submissions nor filed any application seeking adjournment. After enabling the window for communication with the CIT(A), by the NFAC with effect from 31/10/2022 also, no communication has been received from the appellant. Considering the above facts, it is clear that, in this case, sufficient number of opportunities have already been granted to the appellant which the appellant has failed to avail. It may also be noted that this is an old appeal, filed before 01/04/2019, and is to be disposed off on priority basis as per Interim Central Action Plan 2023-24. Under these facts and circumstances, where the appellant's consistent non-compliance and indifference to the appellate proceedings is abundantly manifest, I do not have any alternative but to decide the appeal on the basis of facts available in grounds of appeal arid assessment order of the Assessing Officer. Hence, the appeal is being decided ex-parte on the basis of material available on record.

5. In the grounds of appeal, the appellant has objected to the AO's action in disallowing exemption claimed u/s 11(1)(c) of the Act. As mentioned above. the appellant failed to furnish any written submissions in support of the grounds taken in appeal. The AO has discussed the reasons for making the addition but no explanation has been submitted by the appellant to controvert the findings of the AO. The appellant has made various claims in the statements of facts but in the absence of written submissions, in response to notices issued by this office

u/s. 250 of the Act, these claims remain unsubstantiated. It seems that the present appellant is not interested in pursuing this appeal.

*6. It is clear from the discussion in para nos. 4 & 5 above that the appellant is not desirous of pursuing the grounds of appeal though more than adequate opportunities were provided. Under these circumstances, I have no other alternative but to dismiss the appeal following the ratio of the decision of the Hon'ble ITAT, Delhi Bench in the case of CIT Vs. Multiplan India Limited reported in 38 ITD 320 and also the decision of the Hon'ble MP High Court in the case of Estate of Late Tukhoji Rao Holkar Vs. CWT reported in 233 ITR 480. The law assists only those who are vigilant with their rights and not those who sleep over their rights. Following this principle as embodied in the well known dictum "vigilantibus non dormientibus, jura subveniunt", all the grounds raised in this appeal as reproduced in para 2 supra are **dismissed.**"*

4. We have heard the parties and perused the material available on record. We noticed from the order of the CIT(A) that the assessee was given opportunity to provide written submission on various occasions from March 2019 to April 2023. However, it is noticed that the assessee neither submitted any written submissions nor filed any documentary evidences contending the disallowance/additions made by the AO. We further notice from the perusal of the assessment order that the AO has not confronted issue of incorrect disclosure in the return of income with the assessee and has concluded that the assessee is trying to mislead the revenue. In our considered view the claim of the assessee towards accumulation needs factual verification and therefore in the interest of natural justice and fair play, we deem it fit to give one more final opportunity to the assessee to represent the case properly before the AO. Therefore the issue is restored back to the AO for fresh consideration. The assessee is directed to file the necessary documents as may be called on by the AO and co-operate with the assessment proceedings without seeking adjournments. It is ordered accordingly.

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

Order pronounced in the open court on 09-05-2024.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-
(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai