

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

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA 108/Mum/2024
(Assessment year: 2016-17)

Yusuf Meherally Center 2 nd Floor, National House, 6, Tulloch Road, Apollo Bunder, Mumbai-400 039 PAN : AAATY0426E	vs	ITO (Exem) Ward 2(4), Mumbai Piramal Chamber, Lal Baug, Parel Mumbai-400 012
APPELLANT		RESPONDENT

Assessee by : None
Respondent by : ShriDr. Kishore Dhule CITDR

Date of hearing : 29/05/2024
Date of pronouncement : 30/ 05/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2016-17, date of order 09.11.2023. The impugned order was emanated from the order of the Id. Income-tax Officer (Exem), Ward 2(4), Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act date of order 30/12/2018.

2. The assessee has taken the following grounds of appeal:-

1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION

1.1 *In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income - tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [‘Ld. CIT (A)’] be held as bad and illegal, as the same is framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.*

1.2 *Without prejudice to the generality of the above, the appellate order so passed is bad, illegal and void as the same is utterly cryptic and perverse.*

2. NATURAL JUSTICE

2.1 *It is submitted that, in the facts and the circumstances of the case, and in law,*

the appellate order so framed be held as bad and illegal, as:

(i) *The same is framed in breach of the principles of natural justice; and (ii) The same is passed without application of mind to the facts and the submissions brought on record by the Appellant.*

2.2 *Without prejudice to the generality of the above ground, in the facts and the circumstances of the case, the appellate order is bad and illegal as the Ld. CIT (A) erred in not granting proper, sufficient and adequate opportunity of being heard to the Appellant while passing the appellate order.*

3. EX-PARTE ORDER

3.1 *The Ld. CIT (A) erred in passing the order ex-parte.*

3.2 *While doing so, Ld. CIT (A) failed to appreciate that, the non-attendance / non-reply was for the reasons not attributable to the Appellant / beyond the control of the Appellant and not deliberate or intentional.*

3.3 *It is submitted that in the facts and the circumstances of the case, and in law, no such action was called for.*

WITHOUT PREJUDICE TO THE ABOVE

4. DENIAL OF EXEMPTION U/S. 11(l)(a) OF THE ACT

4.1 The Ld. CIT (A) erred in confirming the action of the A.O. in denying exemption u/s. 11 (1)(a) of the Act on the ground that the activities of the Appellant as not to be charitable in nature.

4.2 It is submitted that in the facts and the circumstances of the case, and in law, no such denial was called for.

4.3 Without prejudice to the above, assuming - not admitting - that the denial of the benefit of exemption u/s. 11 of the Act was proper, the Ld. CIT (A) failed to appreciate that the computation of the taxable income was arbitrary, excessive and not in accordance with the law. **WITHOUT FURTHER PREJUDICE TO THE ABOVE**

5. DENIAL OF EXEMPTION U/S. 11(2) OF THE ACT (RS. 76,20,000/-

5.1 The Ld. CIT (A) erred in confirming the action of the A.O. in denying the benefit of accumulation u/s 11(2) of the Act to the extent of Rs. 76,20,000/- on account of delay in submission of Form 10 by the Appellant.

5.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

5.3 Without prejudice to the above, assuming - but not admitting - that some addition was called for, it is submitted that the computation of the addition made by the A.O. is arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

6. DISALLOWANCE OF DEPRECIATION fRs.2,27,451/-

6.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of the claim of depreciation amounting to Rs. 2,27,451/- made and adding it to the total income u/s. 11 (6) of the Income - tax Act, 1961 ["the Act"].

6.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

6.3 Without prejudice to the above, assuming - but not admitting - that some disallowance was called for, it is submitted that the computation of the disallowance made by the A.O. is arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

7. ADDITION OF THE OUTSTANDING BALANCES OF SUNDRY

CREDITORS FOR RS. 13,57,953/-

7.1 *The Ld. CIT (A) erred in confirming the action of A.O. in making addition of the outstanding balances of the creditors, to the extent of Rs.13,57,953/-, to the income of the Appellant on the ground of the same being outstanding for more than three years.*

7.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

7.3 *Without prejudice to the above, assuming - but not admitting - that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition made by the A.O. was arbitrary, excessive and not in accordance with the law. .*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

8. ADDITION OF UNSPENT RELIEF FUND [RS. 5,34,039/-

8.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 5,34,0397- on the ground that the relief collection for Tara Relief Fund (Flood 1996 - 1997) had remained unspent.*

8.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*

8.3 *It is submitted that the CIT (A) erred in confining the action of the A.O. in adding the amount of Rs. 5,34,0397- while computing the total income instead of the actual amount Rs. 3,54,0397- as mentioned at Para 7.1 of the assessment order.*

8.4 *Without prejudice to the above, assuming - but not admitting - that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition made by the A.O. was arbitrary, excessive and not in accordance with the law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE Vv

9. DISALLOWANCE OF RS. 15,92,532/- ON ACCOUNT OF NON - PAYMENT OF THE EMPLOYEES 'CONTRIBUTION TOWARDS ; TARA EMPLOYMENT BENEFIT FUND

9.1. *The/-, being the employees' contribution towards Tara Employment Benefit Fund, u/s. 2(24)(x) of the Act, on the ground that the same was not paid within the due date prescribed under the respective statute. .*

9.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

9.3 *Without prejudice to the above, in the alternative, assuming - but not admitting - that some disallowance was called for, the Ld. CIT (A) failed to appreciate that the computation of the disallowance made by the A.O. was arbitrary, excessive and not in accordance with the law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

10. DISALLOWANCE OF RS. 1,43,150/- ON ACCOUNT OF NON - PAYMENT OF PROFESSIONAL TAX OF THE EMPLOYEES

10.1. *The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of Rs. 1,43,150/-, being professional tax of employees, on the ground that the same was not paid within the due date prescribed under the respective statute.*

10.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.*

10.3 *Without prejudice to the above, in the alternative, assuming - but not admitting - that some disallowance was called for, the Ld. CIT (A) failed to appreciate that the computation of the disallowance was arbitrary, excessive and not in accordance with the law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE

11. DISALLOWANCE OF INTEREST PAYMENTS ON AVAILMENT OF OVER DRAFT AND CASH CREDIT FACILITIES OF THE BANK IRS. 14,55,234/-

11.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in making disallowance of interest expenditure of Rs. 14,55,234/- on the overdraft (OD) and*

cash credit (CC) facilities availed by the Appellant, on the ground that the Appellant had not furnished the approval of the Charity Commissioner and details of the OD and the CC.

11.2 It is submitted that in the facts and the circumstances of the case, and in law, no such disallowance was called for.

11.3 While doing so, the Ld. CIT (A) failed to appreciate that such disallowance has led to double disallowance, as the same expenditure was in any case not allowed by the A.O. while computing the total income.

11.4 Without prejudice to the above, assuming - but not admitting - that some disallowance was called for, the Ld. CIT (A) failed to appreciate that the computation of the disallowance was arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

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12. DENIAL OF EXEMPTION U/S. 11(I)(d) [RS. 45,750/-

12.1 The Ld. CIT (A) erred in confirming the action of the A.O. in denying the exemption u/s. 11 (I)(d) of the Act amounting to Rs. 45,750/-, comprising of -

- (i) Total life membership fees transferred to corpus fund of Rs. 43,050/-;*
- (ii) Total collection at donation box kept at Bapu Kuti Complex of Rs. 2,700/- .*

12.2 It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

12.3 Without prejudice to the above, assuming - but not admitting -that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition was arbitrary, excessive and not in accordance with the law.

WITHOUT FURTHER PREJUDICE TO THE ABOVE

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13. UNEXPLAINED CASH DEPOSITS [RS. 16,50,820/-

13.1 The Ld. CIT (A) erred in confirming the action of the A.O. in making addition of Rs. 16,50,820/- on account of alleged unexplained cash deposits in the bank account of the Appellant.

13.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for. .*

13.3 *Without prejudice to the above, assuming - but not admitting - that some addition was called for, the Ld. CIT (A) failed to appreciate that the computation of the addition was arbitrary, excessive and not in accordance with the law.*

WITHOUT FURTHER PREJUDICE TO THE ABOVE 14. ADDITION OF RS. 1,21,250/- APPEARING AS LIABILITY UNDER THE HEAD 'PROVISION

14.1 *It is submitted that in the facts and circumstances of the case and in law, the addition of Rs. 1,21,2507-, being amount shown as liability under the head 'Promotion' made on the ground that the details were not furnished, was not called for.*

14.2 *Without prejudice to the above, assuming - but not admitting -.that some addition was called for, the computation of the addition was arbitrary, excessive and not in accordance with the law.”*

3. Brief fact of the case is that the assessee is a trust and registered under the Societies Registration Act and also registered under section 12A bearing No.10447 dated 11/03/1976. The assessment was framed under section 143(3) of the Act. The exemption under section 11(2) of the Act. So total income was calculated amount to Rs.4,37,14,659/- during the assessment. Aggrieved, assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) upheld the assessment order and passed an ex parte order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. When the appeal was called for hearing, none was present on behalf of the assessee. No adjournment petition was filed before the Bench. Considering the

merit of the case, we proceed to dispose of the matter exparte qua for assessee after hearing the Ld.DR.

5. The Ld.DR argued and placed that the assessee has not presented the matter before the Ld.CIT(A). The appeal order was passed exparte. The relevant paragraphs of the appeal order at paras 4.1.1 and 4.1.2 are reproduced below:-

“4.1.1 All the notices were delivered. The same is evidenced from the details available on the e-filing portal. There was no response whatsoever not even with the purpose to seek an adjournment. A perusal of the record reveals that the appellant has not complied with the above given notices till date. Further, after filing of appeal against the assessment order, it is the primary responsibility of the appellant to submit the documentary evidences in support of the grounds of appeal as mentioned in Form No.35, which was filed before the appellate authorities. However, in the instant case, it clearly shows that the appellant neither shown any commitment or interest or will in pursuing the appeal nor made any written submissions to substantiate the grounds of appeal. Further, it is relevant to the appellant to submit evidences to prove that the grounds of appeal mentioned in Form No.35 are genuine and burden of proof lies on the appellant to prove the grounds of appeal are genuine. As seen from the above facts & circumstances of case, the non-compliance on the part of the appellant to the notices issued appears to be intentional, ill-will and deliberate.

4.1.2 Following the principles of natural justice, by affording various opportunities to the appellant to substantiate the grounds of appeal mentioned therein Form No.35.'In-response, appellant failed to file any submissions in support of the grounds raised by him nor did appellant seek any adjournment. It is clear from the above that the appellant has been granted opportunities to represent the case in the appellate proceedings but has failed to make any submissions in support of the grounds of appeal. Appellant is not interested in

prosecuting the appeal filed. In the appellate proceedings, burden of proof lies on the appellant to prove that the facts and the findings of the Assessing Officer are incorrect. Since the appellant has chosen not to furnish any submissions in response to notices issued, the appeal is decided on the basis of material available on record. Hence, the appellant should not be allowed to be enriched or benefited unjustly for an act of his own wrongs i.e. non-compliance.”

6. We heard the submission of the Ld.DR, considered the documents available in the record and perused the orders of the revenue authorities. The assessee's case is completed under section 143(3) with a high demand and the total income was calculated amount to Rs.4,37,14,659/-. In the appeal, the assessee did not comply the notices and the exparte order was passed. The assessee was not able to get the opportunity to submit its evidence before the CIT(A). So the reasonable opportunity is denied for assessee. But Ld.CIT(A) has categorically made his finding and allowed the dates for appeal hearing which is informed through the website of Income-tax department. Hence, we are of the view that, in the interest of natural justice, that assessee may be given one more opportunity to represent its case properly before the Id. CIT(A). Since the assessee is not able to provide satisfactory explanation about noncompliance of notices issued by the Id. CIT(A), we are of the view that the assessee should we imposed a cost in order to make him understand the importance of income tax proceedings. Accordingly, we impose the cost amount to Rs.2,000/- (Rupees two thousand only) upon the assessee which shall be paid to the credit of Income Tax Department within two months from the date of receipt of this order.

Subject to the payment of above cost which shall be verified by the Id. CIT(A). All the issues are restored to the file of the Id. CIT(A) for adjudicating the case on

merits. We are not expressing any views on the merits of the case so as to limit the appellate procedure before the Ld. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing. The assessee should be diligent in appeal proceeding for expeditious disposal of appeal.

7. In the result, the appeal of the assessee bearing **ITA No.108/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 30th day of May, 2024.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 30/05/2024

Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**