

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B', अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.920/Ahd/2023  
Assessment Year : 2018-19

Surat Young Muslim Graduates Association Sagrampura Nr.Kshetrapal Mandir 395002 (Gujarat)	Vs	The Dy.CIT Circle-2 (Exempt.) Ahmedabad
PAN: AABTS 3221 Q		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Esmayeel Saherwala, AR
Revenue by :		Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 03/06/2024  
घोषणा की तारीख /Date of Pronouncement: 10/06/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER**

Present appeal by the Assessee is directed against the order of the Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, Delhi (NFAC) (hereinafter referred as "the Ld.CIT(A)"), dated 06-10-2023, against the order of CPC Bangalore u/s.154 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in relation to the Assessment Year (AY)2018-19.

**Facts of the case:**

2. The brief facts of the case are that the assessee filed its return of income for the AY 2018-19 and claimed exemption under section 10(23C)(vi) of the Act, 1961. However, due to a clerical error, the income was disclosed under the column for "Income from Other Sources" instead of the appropriate section in the return of income in form ITR 7.

2.1. The CPC processed the return of income u/s.143(1) of the Act disallowing the exemption u/s.10(23C)(vi) of the Act. The assessee filed rectification application u/s.154 of the Act with CPC and CPC processed the same without taking into consideration the reason for which application was made and passed an order under section 154 of the Act disallowing the exemption claimed by the assessee, without providing an opportunity of being heard to the assessee.

3. Aggrieved by the order of CPC, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) dismissed the appeal without examining the merits of the case, focusing solely on procedural aspects.

4. The assessee is now in appeal before us with following grounds:

"1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in concluding that the appellant ought to have corrected his return instead of filing rectification application before or filing appeal before CIT (A) on rectification order. The LD.CIT(A), NFAC has overlooked the legal provisions, judicial pronouncements and technical procedure for eligibility and availability for filing revised return and rectification application.*

2. *On the facts and in the circumstances of the case and in law, is Ld. CIT(A), NFAC justified in ignoring the fact that whether appellant is actually holding valid exemption vide Notification No.SRT/CCIT/ITO/OSD/10(23c)(vi)/009/03-04 Dated 30/04/2007 for AY.2018-19. read with CIRCULAR NO. 7/2010 [F. NO. 197/21/2010-ITA-1], DATED 27-10-2010 and eligible for exemption U/s.10(23C)(vi) of Rs. 63459317/- from its Gross Income for A.Y.2018-19?*
3. *Without prejudice to anything contained in above grounds, On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC has erred in concluding that the original return filed by the appellant was a belated return. Ld. CIT(A), NFAC has ignored the extension of due dates by Ld. CBDT for A.Y.2018-19.*
4. *The Appellant reserves the right to add, amend, replace or delete any grounds of Appeal before conclusion of the appeal.*
5. *(5) The Appellant prays to quash the order of Ld CIT(A), NFAC and allow the eligibility of application for rectification U/s.154 filed by the Appellant."*

**On the grounds of appeal:**

5. The Ld.Authorised Representative (AR) for the assessee, contended that the Ld.CIT(A) erred in not adjudicating the merits of the case and that the order was passed by the CPC under section 154 of the Act overlooking the legal provisions and technical procedure which was required to be followed by the assessee. The Ld.AR also pointed out the mistake which was committed by the assessee at the time of filing the return of income.

6. We have heard the rival submissions and perused the material available on record. It is evident that the exemption claimed by the assessee under section 10(23C)(vi) of the Act was disallowed due to a clerical error in the return of income.

Further, the order under section 154 of the Act was passed by the CPC without granting the assessee an opportunity of being heard, which is a violation of the principles of natural justice.

6.1. The Ld.CIT(A) in his order has commented on the procedural part of the processing of the return by CPC which we reproduce here -

*"11. ITR forms from 1 to 7 have been prescribed for various users and instructions are also given by CBDT to guide the assesseees for filing their tax returns. It is being provided to facilitate the assesseees to file a correct return and to assist CPC to process crores of returns in a systematic manner. It is an automated machine-driven system and the person filing the return has to follow those instructions scrupulously. The appellant cannot expect CPC to grant relief or exemption or deduction, even though the appellant themselves offered income in the return as income from other sources. In the present case, the appellant ought to have corrected his return instead of filing rectification application before CPC or filing appeal before CIT(A) on that rectification order referred above."*

7. Expressing our concern about the way, the Ld.CIT(A) at NFAC decides the issue being first appellate authority, we would like to underline that it is the settled legal proposition that the powers of Ld.CIT(A) are co-terminus with that of the Assessing Officer. Therefore, Ld.CIT(A) can decide the issue on merit rather than suggesting remedial action.

7.1. In view of the above, we are of the opinion that the Ld.CIT(A) should have adjudicated the appeal on its merits. Therefore, we set aside the order of the Ld.CIT(A) and restore the matter back to the file of the Ld.CIT(A) for fresh adjudication. The Ld.CIT(A) is directed to verify the exemption claimed by the assessee under section 10(23C)(vi) of the Act and to grant appropriate relief if the claim is found to be correct. The Ld.CIT(A) is also

directed to ensure that the assessee is provided with an adequate opportunity of being heard before passing the order.

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

**Order pronounced in the Open Court on 10 June, 2024 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 1-/06/2024

*टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
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