

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.5/DEL/2023
(Assessment Year: 2017-18)**

**ITA No.6/DEL/2023
(Assessment Year: 2017-18)**

Bharatiya Jnanpith,
18, Lodi Road Industrial Area,
New Delhi – 110 003.

vs. ITO,
Ward Exemption 1(3),
New Delhi.

(PAN : AAATB3539M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri C.S. Anand, Advocate
REVENUE BY : Shri Kanv Bali, Sr. DR

Date of Hearing : 27.06.2024
Date of Order : 28.06.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals by the assessee are directed against the respective orders of the ld. CIT (Appeals) both relating to assessment year 2017-18. One of the appeals i.e. ITA No.5/Del/2023 originates from order passed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') and another appeal being ITA No.6/Del/2023 emanates from the order passed u/s 154 of the Act by the AO of the same assessment year.

2. Grounds of appeal taken by the assessee read as under :-

ITA No.5/Del/2023

1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals) - National Faceless Appeal Centre, Delhi [lithe CIT(A) - NFAC"] has erred in upholding the assessment at the income of Rs.1,11,65,51/- as against NIL income declared. The Appellant denies its liability to be assessed at the income of Rs.1,11,65,510/-.

2. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC did not appreciate that inadvertently, interest income of Rs.1,11,51,493/- was offered to tax twice i.e. both in "Schedule-AI" and "Schedule-OS" and as such, income of Rs.1,11,65,510/-- was not liable to tax, for it has already been subjected to tax.

3. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC has erred in holding that income of Rs.1,11,51,493/- has offered to tax. Hence, it is a case of mistake, which is rectifiable but the assessment is not amenable to appeal.

4. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC erred in not appreciating that there is not estoppel against the statute. If an income is not taxable, the same cannot be taxed merely because it was offered to tax.

5. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC erred in not applying Circular No. 14 (XL-35) dated 11.4.1955, for it is the duty of the officer to assist an assessee in every reasonable way and to allow the due relief.

ITA No.6/Del/2023

1. That on the facts and circumstances of the case and in law, the Commissioner of Income tax (Appeals) - National Faceless Appeal Centre, Delhi ["the CIT(A) -NFAC"] has erred in holding that there was no mistake apparent from record in the order under section 154 of the Income Tax Act, 1961 ["the Act"] dated 21.9.2021, though admittedly, the interest income of Rs.1,11,51,493/ - was considered twice in computing the total income for the assessment year 2017-18.

2. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC did not appreciate that inadvertently, interest income of Rs.1,11,51,493/- was offered to tax twice i.e. both in "Schedule-AI" and "Schedule-OS" and as such, there was error apparent from record in computing the total income at Rs.1,33,13,734/-.

3. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC having dismissed the appeal against assessment order dated 30.12.2019 as not maintainable, for the remedy lies in rectification has erred in rejecting the appeal against 154 order holding that since income of Rs.1,11,51,493/- has offered to tax by the Appellant, therefore, it was not a case of rectification u] s 154 of the Act.

4. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC erred in not appreciating that there is not estoppel against the statute. If an income is not taxable, the same cannot be taxed merely because it was offered to tax.

5. That on the facts and circumstances of the case and in law, the CIT(A)-NFAC erred in not applying Circular No. 14 (XL-35) dated 11.4.1955, for it is the duty of the officer to assist an assessee in every reasonable way and to allow the due relief.”

3. The issue in dispute is that the assessee is a Trust registered under section 12A of the Act having objects to propagate knowledge by publishing books on literature, science, philosophy etc. And Award on literature. The claim of the assessee is that the assessee has made a clerical mistake in ITR forms and offered interest income of Rs.1,11,51,493/- twice under Schedule AI and once again under Schedule OS. Hence, assessee sought that double entry may be corrected and assessee may be given relief of Rs.1,11,51,493/- which has been offered twice. However, ld. CIT (A) did not agree with the assessee’s plea. He was of the opinion that assessee has himself offered the amount, hence it cannot now revise the return. Similarly, on the same issue,

assessee moved application under section 154 of the Act which was also rejected. We may gainfully refer to the order of Id. CIT (A) in ITA No.5/Del/2023 in this regard which will amplify the issue as under :

“ The contentions of the appellant have been duly considered. It is noted that the appellant itself had filed original return and a revised return declaring income of Rs. 1,11,65,510/-. The return was subjected to scrutiny assessment and this issue now being raised of the interest income being subjected to taxation twice was never raised in course of the scrutiny assessment proceedings. If the assessee itself files an original return and a revised return declaring an income of Rs.1,11,65,510/- and thereafter pursuant to scrutiny assessment this income as per original return as well as revised return is accepted, then how can the appellant have a grievance against the assessment order. The appellant claims that it has filed rectification order before the AO on 13.02.2020 which is pending. The appellant can file an appeal if the rectification application is rejected or if even after the limitation period, no rectification order is passed but in no case can it file an appeal against a scrutiny assessment order where the income as returned in the original return as well as revised return by the appellant itself, has been accepted.”

4. Against the above order, assessee filed appeals before us. We have heard both the parties and perused the records.

5. Ld. Counsel of the assessee pleaded that it was solely due to mistake that income amounting to Rs.1,11,51,493/- has been offered twice.

6. Per contra, Id. DR for the Revenue submitted that the details have not been furnished by the assessee at the appellate stage.

7. Upon careful consideration, we find that interest of justice in this case will be served if the matter is remitted to the file of AO. AO shall examine

the assessee's claim of having offered sum of Rs.1,11,51,493/- twice, if that be so assessee will be given necessary relief. Needless to add, assessee should be given adequate opportunity of being heard.

8. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on this 28th day of June, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 28th day of June, 2024
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**