

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

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.516/Ahd/2023
निर्धारण वर्ष /Assessment Year : 2011-12

Health Foundation & Research Centre GF Post Box No.156 Sheth Shri Girdharlal Marg Raliyati Road, Dahold - 389 151 (Gujarat)	बनाम/ v/s.	The ACIT Circle-2 (Exemption) Ahmedabad-380 015
स्थायी लेखा सं./PAN: AAATH 0867 J		
अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Sakar Sharma, AR	
Revenue by :	Shri Ashok Kumar Suthar, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 16/07/2024
घोषणा की तारीख /Date of Pronouncement: 23/07/2024

आदेश/ORDER

PER SHRI MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the Assessee as against the order dated 08/05/2023 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "the Ld.CIT(A)" in short], arising out of the assessment order dated 19/12/2018 passed by the Assessing Officer (AO) under section 143(3) r.w.s. 147 of the

Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (AY) 2011-12.

Facts of the case:

2. The assessee trust filed its return of income on 26-9-2011 declaring total income of Rs. NIL. Later, the case was selected for scrutiny by issuing notice u/s.143(2) of the Act and the order u/s.143(3) of the Act was passed by accepting the returned income. Thereafter, a case was reopened after recording the reasons and after issuing notice u/s.148 of the Act. The recorded reasons were emailed to the assessee through ITBA module and by speed post. In response to which the assessee requested the AO to treat the original return as return filed in response to notice u/s.148 of the Act.

2.1. Details were called for by issuing notice u/s.142(1) of the Act. The assessee was asked to furnish details. The relevant para of the order is reproduced hereunder:

“On verification of the case records, it is found that the chairman of Navjivan Roller & Pulse Mills P Ltd. is a promoter of the Trust. It is further noticed that the trust has created an earmarked fund amounting to Rs.1,32,82,150/- to provide free subsidized medical treatment out of interest income generated from the investment of the earmarked funds. The said fund comprises of the fund of Navjivan Roller & Pulse Mills P Ltd (Promoter's company) to the tune of Rs.25,00,000/-. It is further noticed from the staff benefit account of Navjivan Roller & Pulse Mills P Ltd. that all type of medical charges for the staff of promoter's company is deducted from the interest received of the earmarked fund of the aforesaid company which clearly shows that earmarked fund of the promoter is nothing but source of income indirectly being used for its company which attracts provisions of sec.13(1) where facilities provided to a trust under sec.11 are not allowable.

Considering all these facts, please furnish justification in respect of claim of capital expenditure of Rs.35,58,155/- as income applied for charitable purposes.....”.

2.2. The assessee submitted the reply, but being not satisfied with the reply of the assessee, the AO treated the assessee as AOP and recomputed the total income.

2.3. Not satisfied by the order of the AO, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) issued two notices on 04-02-2021 and 24-04-2023. The assessee failed to reply to these notices. Therefore, Ld.CIT(A) concluded that the assessee is not interested in pursuing its appeal and dismissed the appeal relying on the judgement of **Hon'ble Supreme Court in case of B.N. Bhattacharjee & Other 118 ITR 461.**

3. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us with following grounds of appeal:

1. *The Ld. CIT(A)-NFAC erred on facts and in law in deciding appeal ex-parte without giving reasonable opportunity of being heard and in not adjudicating the grounds of appeal on merit.*
2. *The Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating the ground relating to validity of assessment made u/s 147 by issuing notice u/s 148 after four years but without complying mandatory and statutory requirements u/s 147, 148, 149 and 151 of the Act.*
3. *The Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating ground relating to assessment of appellant as an AOP instead of AOP Charitable Trust.*
4. *The Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating ground relating to validity of assessment without issuing any show cause regarding applicability of provisions of section 13(1)(c)(ii) when no adverse inference is warranted under the said provision.*

5. *The Ld. CIT(A)-NFAX erred on facts and in law in not adjudicating ground relating to assessment of income at Rs. 20,67,810/- against returned NIL income by making disallowance of capital expenses of Rs. 35,58,155/- and depreciation of Rs.39,66,671/-.*

On the grounds of appeal

4. The Ld.Counsel for the assessee stated that the assessee could not respond to the notices of the Ld.CIT(A) because for effective representation of appeal assessee had stated *email-id* of its chartered accountant stationed at Baroda in Form No. 35. Notice of hearing dated 04-02-2021 could not be responded as said notice was issued during COVID-19 period, when office of Chartered Accountant was not functional. Further, notice was issued on 24-04-2023 which could not be responded as on the said date said chartered accountant had moved permanently out of India leaving his junior at Baroda, who had to look after the affairs of the assessee but incidentally said junior also got expired and, therefore, notice(s) served through email at *yiyerca@gmail.com* could not be communicated to the assessee leading to ex-parte disposal of appeal by the Ld.CIT(A)-NFAC. The assessee also filed an affidavit stating the circumstances.

4.1. The Ld.Counsel further submitted that under such circumstances, assessee changed the chartered accountant for preferring appeal before us. The Ld.Counsel for the assessee requested to adjudicate the appeal based on the material brought on record through paper book submitted on 04-09-2023.

4.2. The assessee has also raised one of the grounds for validity of reopening u/s.147 by issuing notice u/s.148 of the Act.

4.3. Since the matter is not decided by the Ld.CIT(A) on merit, we deem it fit to restore the matter back to the file of the Ld.CIT(A) to decide the matter on merit. The Ld.Departmental Representative (DR) supported our view.

4.4. Upon careful examination, we find merit in the assessee's arguments regarding the lack of a reasonable opportunity to be heard by the Ld.CIT(A). The circumstances provided, including the impact of the COVID-19 pandemic and the subsequent unavailability of the chartered accountant, are valid reasons for non-compliance with the notices.

4.5. Given that the Ld.CIT(A) dismissed the appeal without addressing the substantive grounds, we find it appropriate to remand the matter back to the Ld.CIT(A) for a comprehensive adjudication on merits. This ensures that the assessee is afforded a fair opportunity to present its case and that the issues raised, including the validity of reassessment and the applicability of section 13(1)(c)(ii) of the Act, are thoroughly examined.

4.6. In light of the above findings, we set aside the order of the Ld.CIT(A) and remand the case back to the file of the Ld.CIT(A) for a fresh adjudication on merits, ensuring the assessee is provided a reasonable opportunity to present their case. The Ld.CIT(A) is directed to consider the grounds raised by the assessee and pass a reasoned order in accordance with the law.

5. In the result, the appeal of the Assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 23 July, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

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

अहमदाबाद/Ahmedabad, दिनांक/Dated 23/07/2024

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), Delhi
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)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad