

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

BEFORE SHRIAMARJIT SINGH, ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A No. 2627/Mum/2024
(Assessment year 2013-14)

Trustees of Jnana Vistarak Sangh, 2, Dr Bhajekar Street, Khetwadi, Mumbai-400 004 PAN :AAATT0086B	vs	Income-tax Officer- Exemption Ward 2(4), Mumbai, 6 th Floor, MTNL Tel Ex. Building, Cumballa Hills, Pedder Road, Mumbai-400026
APPELLANT		RESPONDENT

Assessee by : Shri Abhishek Bhandari a/w
Shri Vishal D. Shah
Respondent by : Shri P.D. Choughule (ADDL.CIT)DR
Date of hearing : 22/07/2024
Date of pronouncement : 25/07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed 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 2013-14, date of order 15.03.2024. The impugned order was emanated from the order of the Income-tax Officer (Exemption)-2(4) Mumbai (in short, 'the A.O.') passed under section 143(3) of the Act, date of order 30/01/2016.

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

"1. On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the Assessment Order passed by the Ld. AO u/s 143(3) dt. 30,01.2016 which is bad in law.

2. a) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred dismissing the appeal preferred by the appellant merely on the grounds that the same was not filed electronically within the prescribed time limits of 30 days without appreciating the fact that appellant had duly filed the appeal in Form-35 with Ld. CIT(A) manually on 04.04.2016 which was well within the prescribed time limits.

b) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in not considering the fact that the Appellant is a Public Charitable Trust originally registered u/s 12A on 03.12.1962 and is performing Charitable Activities for over six decades now. The Ld. AO failed to appreciate the fact that Appellant Trust Office is not tech-sawy and that it was not aware of the very recent change in the method of filing an appeal electronically v/s. manually.

c) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that it was the first year of filing an appeal with Ld. CIT(A) in Form 35 online and merely a procedural lapse must not form basis of dismissing the appeal without providing an opportunity of being heard to the Appellant.

d) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that Appeal with Ld. CIT(A) was filed immediately online on 24.11.2018 upon receipt of notice from CIT(A)-1 dt. 14.11.2018.

e) On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that Appeal filed in Form 35 online on 24.11.2018 along with condonation of delay by mentioning facts & circumstances of the case is in conformity with the para 3.6 of the Order passed u/s 250 by the Ld. CIT(A)-1 dt. 26.11.2018.

3. a) *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining Ld. AO's contentions in denying the exemption claimed u/s 10(34) of the I T Act, in respect of Dividend of Rs. 9,49,346/- without perusing the submissions made by the appellant which is bad in law.*

b) *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining Ld. AO's contentions in denying the exemption claimed u/s 10(1) of the IT Act, in respect of Agricultural income of Rs.4,35,247/- without perusing the submissions made by the appellant which is bad in law.*

c) *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining Ld. AO's contentions in rejecting the claim of depreciation, of Rs.1,26,649/- without following the decision of the hon'ble Jurisdictional High Court in CIT vs. Institute of Banking Personnel (264 ITR110) (Bom), without perusing the submissions made by the appellant which is bad in law.*

d) *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining Ld. AO's contentions in restricting the Option exercised u/s 11(1) for Rs. 3,60,00,0000/- to Rs, 3,39,66,563/- in the assessment order for A.Y. 2013 - 14 even) though the same was allowed by the Ld, AO in A.Y. 2012-13 without perusing the^v submissions made by the appellant which is bad in law.*

e) *On the facts and under the circumstances of the case and in law, Ld. CIT(A) erred in sustaining Ld. AO's contentions in denying the exemption claimed in respect of TDS Rs. 22,45,590/- without perusing the submissions made by the appellant which is bad in law.*

The Appellant crave leave to add, to alter or to delete the above ground of appeal if necessary."

3. Brief facts of the case are that the assessee is a charitable trust carrying on charitable activities as per its object. It is registered under section 12A of the Act with effect from 03/12/1062 and also registered with the Charity Commissioner of Mumbai. The assessee filed the return and assessment was completed under section 143(3) of the Act and assessee filed the revised return on dated 21/03/2014 and supported by revised audit report under Form 10B of the

Income-tax Rules, 1962 (in short, 'the rule'). The addition was made related to dividend earned by the assessee amounted to Rs.9,49,364/- & agricultural income Rs.4,35,247/- claimed as exempt under section 10(34) and section 10(1) of the Act respectively and further, the Ld.AO did not allow depreciation claimed by the assessee amount to Rs.1,26,649/-. Finally, the exemption under section 11(1) is restricted to Rs.3,39,66,563/- against the assessee's surplus claimed amount to Rs.3,60,00,000/-. The assessee filed an appeal before the Id. CIT(A) manually. When the Id. CIT(A) issued the showcause notice, the assessee filed an on-line appeal and accordingly the delay was occurred for 960 days related to online submission of appeal. On that basis, the Ld.CIT(A) rejected the assessee's appeal on the ground of limitation without considering the merit of the case. Being aggrieved, assessee filed an appeal before us.

4. The Ld.AR vehemently argued and filed a written submission which is kept in the record. The Ld.AR first mentioned that the assessee filed the appeal dated 04/04/2016 against the assessment order, dated 30/01/2016 in Form No.35 manually. After receiving the order from the Ld.AO, a manual appeal was filed within 30 days which is within the limitation period. When the appeal notice was issued, the assessee came to know about the error for filing the appeal and accordingly filed the on-line appeal on 24/11/2018. The Ld.CIT(A) rejected this appeal on the ground of limitation for delay filing of appeal. The paragraphs 6 & 7 of the appeal order are extracted as below: -

"06. In view of the above-mentioned discussion the delay of 960 days in filing the appeal of the appellant is not admitted for adjudication. Hence, the appeal is dismissed in limine.

07. In the result, the appeal filed by the appellant is dismissed."

The Ld. AR prayed to set aside the matter before the Ld.CIT(A) for hearing afresh on merit.

5. The Ld.DR argued and fully relied on the order of the revenue authorities.

6. We heard the rival submission and considered the documents available in the record. The assessee filed an appeal manually intime after the one month after issuance of the circular by the CBDT for on-line filing of appeal. It was too early that the assessee was not aware about the on-line filing of the appeal. After receiving the notice from Id.CIT(A), the assessee immediately filed the appeal on-line. The Id.CIT(A) rejected the appeal without considering the assessee's condonation of lay for 960 days for delay filing of appeal. The reasonable opportunity is denied for the assessee. In our considered view, we set aside the appellate order to the file of the Id. CIT(A) for hearing a fresh. We direct the learned CIT (A) to condone the delay and accept the petition and directed to pass the appellate order in merit. Needless to say, that Id. CIT (A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defense shall be admitted by the learned CIT (A) and adjudicated on merits in accordance with law. We order accordingly.

7. In the result, the appeal of the assessee in **ITA 2627/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 25TH day of July, 2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 25/07/2024
Pavanan

sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asstt. Registrar), ITAT, Mumbai