

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.2455/Mum/2024
(Assessment Year: 2017-18)

Shree Krishna Foundation 1 st Floor, Bhupati Chambers 13, Mathew Road, Opera House, Mumbai-400 004 PAN: AACTS1576P	vs	1. National Faceless APPEAL Centre, Delhi 2. Income Tax Officer, Exem.Ward 2(3), Mumbai
APPELLANT		RESPONDENT

Assessee by : Ms. Rutuja N. Pawar
Respondent by : ShriP.D. Choughule (All.CIT) SR DR

Date of hearing : 25/07/2024
Date of pronouncement : 29/ 07/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax Addl. JCIT (A)-1, Gurugram [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2017-18, date of order 30.03.2024. The impugned order was emanated from the order of the Learned CPC, Bangaluru (in short, 'the A.O.') passed under section 143(1) r.w.s. 154 of the Act, date of order 26/09/2022.

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

"1) That on the facts and in the circumstances of the case of the appellant and in law Ld. Assessing Officer and NFAC has erred in rejecting the rectification request made by the appellant u/s.154 of the Act.

2) That on the facts and in the circumstances of the case of the appellant and in law Ld. Assessing Officer and NFAC has erred in negating the fact that there is mistake apparent on record.

3) That on the facts and in the circumstances of the case of the appellant and in law Ld. Assessing Officer and NFAC has erred in not considering the fact that the applicant in his application made u/s. 154 of the Act dated 31.05.2022 submitted that the appellant has failed to rectify the error made by him while filing return of income u/s. 139(1) dated 05.10.2017 and the same mistake was apparently made while filing revised return u/s. 143(1) dated 31.10.2018 wherein the amount of Rs. 62,90,473/- has been wrongly included as 'Interest earned in the Schedule of other sources' along with the 'Schedule AI' as required by a Charitable Trust.

4) That on the facts and in the circumstances of the case of the appellant and in law Ld. Assessing Officer and NFAC has erred in not considering that the same amount cannot be reflected in 2 different Schedules, nor did they considered the correct figures mentioned in the Form 10B originally filed on 05.10.2017 and also form filed by the appellant in his written submissions dated 21.10.2022. The assessee submits that the total income earned as per Income and Expenditure Account submitted along with return of income is Rs.1,10,67,167/- Therefore returned income cannot exceed the income as per income and expenditure.

5) That on the facts and in the circumstances of the case of the appellant and in law Ld. NFAC has erred that appellant has delayed the filing of the appeal against intimation order u/s. 143(1) dated 26.09.2022, but the fact is that the appeal was filed against rectification order dated 26.09.2022. Hence, the same was not considered and the appeal was dismissed by considering there being no condonation of delay in filing the appeal was sought.

6) That the impugned order being contrary to law, evidence and facts of the case may kindly be set aside, amended and modified in the light of the grounds of

appeal enumerated above and the appellant be granted such relief as is called for on the facts and in the circumstances of the case of the appellant and in law.

7) That each of the grounds of appeal enumerated above is without prejudice to and independent of one another.

8) That the appellant craves leave to reserve to himself the right to add, to alter or amend any of the grounds of appeal before or at the end of the hearing and to produce such further evidence, documents and papers as may be necessary.”

4. The brief facts of the case are that assessee is a charitable institution registered under section 12A and 80G of the Act and has filed the return of income with the Forms No.10B r.w.s. U/s 139(1) of the Act. In impugned assessment order, the assessee wrongly posted in return Schedule AI amount to Rs.62,90,473/- as income from other sources. The assessee further filed revised return for rectification of the mistake in return of income. But assessee made the same mistake in revised return and declared the income from other sources amounting to Rs.62,90,474/-. The assessee filed a rectification petition under section 154 before the Ld.AO which is rejected as there is no mistake apparent from the record in processing of return U/s 143(1) of the Act. Being aggrieved, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) has rejected the appeal due to some technical error made by the assessee in Form 35. Being aggrieved, the assessee filed an appeal before us.

5. Both the parties argued, and matter was heard.

6. We heard the rival submission, considered the documents available on the record. The moot point is that the assessee has made a mistake during filing of return of income by declaring the amount of Rs.62,90,473/- as “Income from other sources” which is taxable in the hands of the assessee. The same mistake

was repeated in revised return also. The computation was filed, but in computation and Form 10B which are enclosed in **APB page 1** and **APB pages 35 - 36** respectively, where the correct declaration was made by the assessee. The issue was brought before Ld.CIT(A), but the assessee in appeal petition had challenged wrongly the order U/s 143(1) instead of order passed under section 154 read with section 143(1) of the Act. The Ld.CIT(A) has taken a view in appeal order which is reproduced as below: -

*“4. **Decision:** I have considered the submission made by the appellant and also gone through the material available on record. Keeping in view of the same, the grounds of appeal submitted by the appellant are taken together and decided as under:*

4.1 It is pertinent to mention here that in Column no. 2 of Form 35 where the appellant was asked for "Details of the order appealed against", it submitted order u/s 143(1) dated 26.09.2022. It is worthwhile to mention here that return of income of the appellant was processed u/s 143(1) on 16.07.2019. Thereafter, the appellant filed a revised return which was processed by CPC on 30.09.2019 itself and the date of order mentioned in column 2 by the appellant i.e. 26.09.2022 which is the date of rectification order u/s 154. If the appellant wanted to file an appeal against intimation order u/s 143(1), then it had to be done within 30 days of the receipt of the intimation order i.e. probably up to 3rd/10.2019 or so, therefore This is a delayed appeal and the appellant needs to file request for "Condonation of delay but in column no 14 of Form 35 where the appellant is required to furnish "Whether there is delay in filing appeal" it has stated "No". Further, now as the appeal has been filed against rectification order u/s 154, if date of order is to be reckoned with, then there needs to be some mistake apparent from record. Since in this case there is no mistake apparent from record, therefore, the details filed by the appellant in Form 35 during the time of filing of return are factually incorrect and the appeal of the appellant is liable to be dismissed on this count itself. Without prejudice to the above, even otherwise also the appeal of the appellant is not maintainable as no adjustment has been made r.w.s. the grounds of appeal taken in this appeal at the time of processing under section 143(1). In view of these facts and circumstances of the case and legal position, the present appeal is dismissed.”

7. On perusal of the appeal order it is found that the assessee has not got the reasonable opportunity for submission of its claim and no opportunity was given for rectification of the mistake in Form No.35. It is pertinent to mention that the assessee made the several mistakes, but all the mistakes are rectifiable in the eyes of the law. The Id. AR prayed to restore the matter before the Id. AO for further verification. The Id. DR argued and has not made any strong objection against the prayer of the Id. AR. We find that the reasonable opportunity was denied for assessee during the appeal proceeding. In our considered view, we set aside the appeal order. The assessee was denied the opportunity before the Id. CIT(A) during the appeal proceeding which gross violation of natural justice. The appeal of the assessee is remitted to the file of Ld. CIT(A) and it is directed that the Id.CIT(A) should accept the assessee's grievance as per the law and verify the issue as per provisions of the Act. We are not expressing our view on the merit of the case, which will impair the assessment proceedings before the Ld.CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing in set aside appeal proceedings. On the other hand, the assessee is directed to be diligent and co-operative before the Ld. CIT(A) for completion of the set aside proceedings.

8. In the result, an appeal bearing **ITA No. 2455/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 29th day of July, 2024.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 29/07/2024

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.

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