

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2187/MUM/2024
Assessment Year: 2021-22**

Shri Vithalrao Joshi Charities Trust,
Parijat, Near Amar Hind Mandal,
Gokhale Road (North), Dadar (West),
Mumbai-400028.

**PAN NO. AABTS 7103 H
Appellant**

Vs. DCIT, Exem. Circle 2,
Area Code DLC, AO Type CA,
AO Number 2,
Range Code 103,
Mumbai-400020.

Respondent

Assessee by : Ms. Chaitee Londhe
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 08/07/2024
Date of pronouncement : 24/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is preferred against order dated 28.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2021-22, raising following grounds :



1. *The learned Commissioner of Income Tax - Appeals erred in not allowing the claim under section 11(2) to the extent of Rs. 1,48,54,837/-.*
2. *The learned Commissioner of Income Tax - Appeals erred in not appreciating that the completion of assessment was to be made under section 143(3) on the basis of the return of income and not on the basis of the intimation under section 143(1).*
3. *The learned Commissioner of Income Tax - Appeals erred in not considering the submissions made before him and dismissing the appeal merely stating that there was no independent discussion on the issue in the assessment order and hence the same could not be adjudicated in the present appeal.*
4. *The learned Commissioner of Income Tax - Appeals erred in not providing relief stating that an appeal was not preferred against the intimation order, without appreciating that the appellant had complied with the mandate of section 11(2) in entirety and the intimation itself was grossly erroneous.*
5. *The learned Commissioner of Income Tax - Appeals erred in not adjudicating on the third ground of appeal raised before him, namely the erroneous computation of the demand of Rs. 52,26,75,098/- made by the learned AO wherein the figures appearing in the computation sheet do not match with the assessment order.*

2. Briefly stated, facts of the case are that the assessee a charitable institution filed its return of income on 29.01.2022 declaring total income at Rs. Nil, after claiming exemption u/s 11 of the Income-tax Act, 1961 (in short 'the Act'). The return of income filed by the assessee was processed u/s 143(1) of the Act vide intimation order dated 19.10.2022 wherein, the Central Processing Centre (CPC), Bangalore made adjustment of Rs.1,48,54,837/-. Subsequently, the case was selected for scrutiny and statutory notices under the Act were issued and complied with. In the



scrutiny assessment completed u/s 143(3) of the Act the Assessing Officer held that assessee is eligible for exemption u/s 11 of the Act and did not make any addition but while computing the total income, he started computation from the income computed u/s 143(1) of the Act i.e. Rs.1,48,54,837/- and accordingly determined total income of the assessee at Rs.1,48,54,837/-.

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A) but according to the Ld. CIT(A) the Assessing Officer has not made any discussion in the assessment order on the issue of addition of the amount of Rs.1,48,54,837/- and therefore, according to him, the issue was not matter of appeal before him ,hence same could not be adjudicated by him. The Ld. CIT(A) further referred to the decision of the Co-ordinate Bench of the Tribunal in the case of Areca Trust v. CIT (Appeals) in ITA No. 433/Bang/2023 dated 26.07.2023 and held that order u/s 143(3) of the Act and intimation order u/s 143(1) of the Act are two distinct orders and can give rise to separate causes of action. The Ld. CIT(A) advised the assessee to prefer appeal against the intimation u/s 143(1) of the Act for the disallowance made of Rs.1,48,54,837/-.

4. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.



5. We have heard rival submission of the parties and perused the relevant material on record. The assessee in the case is registered a Charitable Trust under the provisions of the Income-tax and said registration is continued. There is no issue in dispute on this aspect and the Assessing Officer has also held that assessee is eligible for exemption u/s 11 of the Act in respect of application of the income. For the year under consideration, the assessee shown gross income amounting to Rs.95,06,66,434/-. As per the provisions of section 11 of the Act, the assessee was required to apply 85% of the above income towards the object of the trust. The assessee computed the said amount of the 85% of the income eligible amount u/s 11 of the Act to Rs.80,80,66,469/-. Against the said amount, the assessee incurred total expenditure of Rs.79,32,11,632/- which resulted in surplus amount of Rs.1,48,54,837/-. Under the provisions of section 11(2) of the Act, where the assessee has not applied 85% of the income to charitable purpose in India, but said income is accumulated or set apart for application to charitable purpose then income so accumulated or set apart shall not be included in the total income of the previous year, subject to furnishing of statement in prescribed form i.e. Form No. 10 to the Assessing Officer stating that said income shall not accumulated for more than five years and the money so accumulated was required to be deposited in the specifies modes.



5.1 Before us, the Ld. counsel for the assessee submitted that in the case of the assessee due date of the filing of the return was extended up to 15.03.2022 and therefore, the assessee had filed return of income on 29.01.2022 along with Form No. 10 and therefore, assessee is eligible for exemption u/s 11(2) of the Act provided the income so accumulated is invested in specified mode under the provisions of section 11(2) of the Act. The Ld. counsel submitted that CPC wrongly noted the due date of the filing of the return to be on 31.12.2021 and since, the Form No. 10 as well as the ITR were filed on 29.01.2022, the CPC presumed that the assessee had not filed both the return and form within the due date allowed, hence treated expenditure of Rs.1,48,54,837/- as claimed wrongly u/s 11(2) of the Act. The Ld. counsel for the assessee further submitted that the Assessing Officer while completing full scrutiny though examined the other aspect of eligibility u/s 11 of the Act, however, did not examine the aspect of adjustment made by the CPC of Rs.1,48,53,837/-. He further submitted that the Ld. CIT(A) has also not adjudicated the issue.

5.2 In view of the above facts and circumstances of the case, we are of the opinion that, **firstly**, the Ld. CPC has not considered the submission of the assessee regarding claim of its eligibility u/s 11(2) of the Act in view of extended date of filing of Form No. 10 along with return of income which resulted under the adjustment of



Rs.1,48,54,837/- . **Secondly**, the case was selected for complete scrutiny u/s 143(3) of the Act, thus it was imperative on the Assessing Officer to examine the submission of the assessee against the adjustment made by the CPC but the Assessing Officer conveniently ignored cause of such adjustment without looking into the eligibility of u/s 11(2) of the Act. Although, the assessee was having recourse or options to prefer rectification application against intimation order or file appeal against said order, but did not exercised its options. Since, the Assessing Officer did not discuss this issue in the impugned assessment order passed u/s 143(3) of the Act, the Ld. CIT(A) is justified in not adjudicating the issue in dispute raised by the assessee. Before us, the Ld. counsel for the assessee has submitted that now the assessee has preferred appeal on 19.10.2022 before the Ld. CIT(A) against the intimation order passed and said appeal is pending before the Ld. CIT(A) for admission and adjudication.

5.3 In the facts and circumstances, we feel it appropriate to restore this issue in dispute back to the file of the Ld. Assessing Officer for considering the submission of the assessee against the eligibility of the claim u/s 11(2) of the Act which has remained to be examined u/s 143(3) of the Act. We however direct that if the assessee gets relief in appeal filed against order u/s 143(1)(a) of the Act, then no further action shall be required at the end of the



Assessing Officer. With the above discussion, the grounds of appeal of the assessee are allowed for statistical purposes.

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

Order pronounced in the open Court on 24/07/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai