

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH : BANGALORE**

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER  
AND  
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No.1674/Bang/2024
Assessment year : 2016-17

Krishik Survodaya Foundation, 15, Golf Course Road, Off Airport Road, Kodihalli, Bangalore – 560 008. <b>PAN : AAATK 0956B</b>	Vs.	The Income Tax Officer, Exemption Ward 1, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharath L., CA
Respondent by	:	Shri Subramanian S., Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.10.2024
Date of Pronouncement	:	23.10.2024

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the order dated 02.07.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2016-17 on the following grounds:-

“1. The order of the LAO and the LAA is bad in law and not in accordance with the provisions of the Act to the extent they are prejudicial to the Appellant.

2. The LAA erred in passing the appeal order under section 250 of the Act ex parte and without providing the Appellant with any opportunity to make its submissions or hearing the Appellant.

3. Without prejudice to the above, the LAA erred in disposing off the appeal without considering the submissions made by the Appellant before LAO as well as the statement of facts and grounds of appeal filed before the LAA.

4. (a) The LAA erred in upholding the LAO's action of brining to tax a sum of Rs. 64,77,853/-without considering the provisions of Section 11 of the Act.

(b) Without prejudice to the above ground, the LAA erred in not considering the Form 10 filed by the Appellant.

5. Without prejudice to the preceding grounds, the LAA erred in not considering that the sum of Rs. 64,77,853/- has been utilized towards its objectives in the very next year accepting that the utilization has taken place.

6. Assuming but not admitting that there is a procedural lapse as pointed out by the LAO and the LAA, the LAA erred in not considering that the same should not disentitle the Appellant when in facts and actuality, the Appellant has complied with the requirements of utilization within the stipulated time.

The Appellant craves leave to add or alter, by deletion, substitution or otherwise, any or all the above grounds of appeal, at any time before or during the hearing of the appeal. Your appellant prays your Honour to consider the facts and circumstances of the case and render justice.”

2. Briefly stated the facts of the case are that the assessee filed return of income for the AY 2016-17 on 23.03.2017 declaring gross total income of Rs.1,48,95,736 within the due date and claimed deduction u/s. 11(1) and under Explanation 2 to section 11(1) of the Act. The case was selected for scrutiny and details were called for by

issuing notice on 14.08.2018 and the assessee submitted detailed. On verification it was noted that the total claim of application of income by the assessee as per computation of income and audit report is actually of Rs.61,83,523. As per audited financial statement actually total application is Rs.82,43,993. Accordingly there is a difference of Rs.20,59,870. In this regard, the assessee submitted that difference is on account of accumulated surplus of earlier years and set off during the years. The remaining surplus is worked out to Rs.66,77,853. The assessee has claimed accumulation of surplus to the subsequent year under Explanation 2 to s. 11(1) of the Act. To claim such exemption, the assessee needs to file Form 9A before the date of filing return of income as per Notification No.SO 127(E) (F.No.142/16/2015-TPL) dated 14.01.2016. Alternatively assessee has filed Form 10, but there is no claim made u/s. 11(2). Hence the claim made by the assessee was denied and show cause notice was also issued to the assessee, but there was no response. Accordingly the AO denied accumulation claim and surplus income was determined at Rs.64,77,850.

3. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA) which was dismissed. On going through the order of the FAA, it is noticed that he has reproduced the order of the AO and there is no independent finding. However we note from Form 35 filed by the assessee under the Statement of Facts, the assessee has raised the issue that the AO did not consider accumulation claim of the appellant u/s. 11(2), whereas Form 10 was filed for accumulation of income. During the proceedings the appellant in its

submission dated 23.11.2018 provided a detailed explanation for filing of belated Form 10 through e-proceedings portal. The AO neither acknowledged nor considered the submissions made by the appellant and completed the assessment by denying exemption claim by the assessee u/s 11(2). The Id. FAA dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the ITAT.

4. The Id. AR of the assessee reiterated the statement of facts and grounds raised before the FAA and submitted that the Id. FAA has not decided the issue on the basis of grounds raised before him and he has just reproduced the order of the AO. Therefore he requested that the matter may be sent back to the CIT(Appeals) for fresh consideration.

5. The Id. DR relied on the order of lower authorities and submitted that the assessee did not comply the provisions of the Act for getting benefit of section 11 which is clear from the order of both the revenue authorities.

6. Considering the rival submissions, we note that the Id. FAA has just reproduced the order of the AO and the objections raised by the assessee has not been considered. In the statement of facts, the assessee has also submitted that the AO has not considered the submissions made by the assessee. Considering the totality of facts and circumstances of the case, we remit this issue back to the Id. CIT(Appeals) for fresh consideration and decision as per law. The assessee is directed to file necessary documents that would be essential and required for substantiating his case and for proper adjudication by

the revenue authorities. Needless to say that reasonable opportunity of being heard be given to the assessee.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 23<sup>rd</sup> day of October, 2024.

Sd/-  
( SOUNДАРARAJAN K.)  
JUDICIAL MEMBER

Sd/-  
(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,  
Dated, the 23<sup>rd</sup> October, 2024.

*/Desai S Murthy/*

Copy to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.