

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 3944/MUM/2023
(A.Y. 2016-17)**

Vishal Mumbai Shikshan Prasarak Mandal, Mumbai Adarsh Vidyalaya, Adarsh Vidyalaya Marg, Siddharth Nagar, Goregoan (E), Mumbai-400104	v/s. बनाम	Exem. Ward 2(4), Mumbai Piramal Chamber, Lal Baug, Parel Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATV0440K		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri. Ayush Chh
Respondent by :	Ms. Usha Gaikwad

Date of Hearing	16.10.2024
Date of Pronouncement	30.10.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-1/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 24.08.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2016-17.

2. The assessee has raised following grounds of appeal:

“1. On the facts and circumstances of the case, the learned CIT(A) erred in not considering the Gross Receipts and expenditure of 5 schools being run by the

appellant trust on same PAN Number, after considering that the appellate had filed online rectification vide transaction id 5634112237 dated 19.07.2018.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in accepting the assessment order passed by Ld. AO which was based on the wrong return filed by the appellant without considering the rectified return in spite of the fact that the mistake was pointed out to the Ld. AO during the course of hearing.

3. On the facts and circumstance of the case, the Ld. CIT(A) erred in accepting Ld. AO Assessment Order which does not grant exemption/ deduction of 15% of gross receipts u/s.11(1) of the Income Tax Act & the said assessment order was issued without show cause notice and also Ld. AO failed to mention any reason in assessment order. The Ld. CIT(A) erred in accepting the Ld. AO assessment order passed without considering of the fact the appellant trust is registered u/s 12A.

4. On the facts and circumstances of the case, the Id. CIT(A) erred in accepting disallowing Rs.28,40,000/- u/s.11(2) of the Income Tax Act for non-filing of Form No.10 before the due date of Return without appreciating that the accumulation of funds was duly informed during the course of assessment to the Ld. AO and therefore the same is allowable.”

3. The brief facts of the case are that the assessee is a charitable trust running five schools and is registered with the Charity Commissioner as well as the Commissioner of Income Tax Exemption, Mumbai. The return was filed belatedly on 27.05.2017 declaring nil taxable income. The AO observed that as per the provisions of section 11(2)(c) Form No. 10 has to be filed on or before the due date for furnishing of return u/s 139(1) of the Act. However, the assessee had filed form No. 10 belatedly on 27.05.2017 and the return of income along with audit was also filed on the same date. Accordingly, the AO denied the benefit of accumulation u/s 11(2) in respect of Rs. 28,40,000/- to the assessee and finalized the assessment at an income of Rs. 35,28,712/- u/s 143(3) of the Act.



4. Aggrieved with the said order, the assessee filed an appeal before the Ld. CIT(A). It was observed that the gross receipts of Rs. 3,92,76,179/- have been shown from running of schools against which expenses claimed have been worked out of Rs. 3,69,13,978/-. Thus, the net surplus of Rs. 23,16,201/- works out to only 6.01% of gross receipt. However, vide order dated 24.08.2012, Ld. CIT(A) dismissed the appeal after observing that since the original return was not filed within the due date, the assessee could not have filed revised return as per the provisions of the Act.

5. Aggrieved with the order, the assessee is in appeal before us. It has been stated by the Ld. AR that the assessment order was passed by the Ld. AO based on the wrong return without considering the rectified return. It was also submitted that the Ld. AO passed the assessment order without giving proper opportunity to the assessee.

6. We have heard the rival submissions and perused the material before us. It is seen that the assessee is a charitable organization and is registered u/s 12A since 1973. Due to dispute between trustees and its office bearers, the accounts were seized by the bankers and therefore, there was delay in getting the accounts audited. Consequently, the return and from No. 10 were filed belatedly. The Ld. AR has placed reliance on several decisions of the Hon'ble Supreme Court as well as various High Courts, in support of his argument that when the substantive compliance has been made with the provisions of the law



and from No. 10 has been filed during the course of assessment proceedings, there can be no disallowance of the claim of the assessee.

7. Considering the totality of the facts and circumstances and various decisions cited by the Ld. AR, we deem it proper to restore the matter to the file of AO for verification of assessee's claim. The AO is directed to give due opportunity to the assessee to present the facts before him and pass the order on merits.

8. In the result, the appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 30.10.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 30.10.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,



ITA No. 3944/Mum/2023
A.Y. 2016-17

Vishal Mumbai Shikshan Prasarak Mandal

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

