

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 460/Chd/2024
निर्धारण वर्ष / Assessment Year : 2016-17

Indian Red Cross Society UT Branch Chandigarh Sector-11, Chandigarh-160011	बनाम	The Asst. CIT, Exemptions Circle-1, Chandigarh
स्थायी लेखा सं. / PAN NO: AAAJ0329N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Yogesh Monga, C.A
राजस्व की ओर से / Revenue by : Shri Vivek Vardhan, JCIT
सुनवाई की तारीख / Date of Hearing : 15/10/2024
उद्घोषणा की तारीख / Date of Pronouncement : 29/11/2024

आदेश / Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee under section 263 of the Income Tax Act, 1961 (hereinafter referred to as Act) for the A.Y. 2016-17. The corresponding previous year period is from 01/04/2015 to 31/03/2016. The assessee is aggrieved by the order bearing number ITBA/APL/S/250/2023-24/1061503188(1) dt. 26/02/2024 of Ld. CIT(A) which is hereinafter referred to as the "**impugned order**". The impugned order is passed under section 250 of the Act.

Factual Matrix

2. The assessee the Indian Red Cross Society is a charitable organization. It is formed for the purpose of providing help to poor, needy and down trodden people by providing free medicine etc. It also provides free ambulance and

funeral van services to the general public and organizes various blood donation camps.

3. The assessee filed its return of income for the A.Y. 2016-17 on 06.11.2017 vide acknowledgment no. 290588881061117 declaring NIL income. The case was selected for complete scrutiny under CASS. Notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter to as "the Act") was issued on 13.08.2018 which was duly served upon the assessee. Subsequently, notices u/s 142(1) of the Act along with questionnaires was issued. In response to the notices issued, the assessee made its submission.

4. The assessee is registered u/s 12AA of the Act, with the Commissioner of Income Tax 1. Chandigarh vide order F.No.CIT-I/CHD/12A/TECH/2011-12/787 dated 25.05.2011. The society has also been granted approval u/s 80G(5)(vi) and 10(23C)(via) of the Act, by the Commissioner of Income Tax-I, Chandigarh on 25.05.2011 vide order no. CIT-I/CHD/TECH/2010-11/788 and by the Chief Commissioner of Income Tax, Chandigarh on 16.11.2011 respectively. The main objects of the assessee are to undertake various welfare activities / projects, providing ambulance and funeral van services, night shelters, donations, nursing and ambulance work, aid to the sick and the wounded, provision of relief for the mitigation of suffering caused calamities and help to weaker sections etc. As informed by the AR of the assessee. Sh. Amil Ranipal, CA, vide order sheet noting dated 16.11.2018, the assessee is claiming exemption u/s 11 of the Act.

5. During the assessment proceedings, it was observed that gross income for the year is Rs. 5,08,19,136/- and expenditure for the year is Rs. 4,01,94,368/- (revenue account) plus Rs. 1,26,313/- (capital account). Therefore, the assessee has applied Rs. 4,03,20,680/- out of Rs. 5,08,19,136/- i.e. 79.3%. As per section 11(1) of the Act, the assessee was required to apply at least 85% of the income.

6. As per ITR, the assessee has claimed benefit u/s 11(2) of the Act amounting to Rs 99,89,673, however, as per form 10B, **no benefit u/s 11(2) of the Act has been claimed. Further, the assessee has not filed form 10 specifying the purpose for which the amount is being accumulated.**

7. Section 11(2) of the Act as amended by the Finance Act, 2015 w.e.f. A.Y. 2016-17 is reproduced hereunder:-

"(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in subsection (5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it

is so accumulated or set apart, due to an order or injunction of any court, shall be excluded. "

8. The manner has been prescribed in Rule 17 of the Income-tax Rules which is reproduced hereunder:-

"Exercise of option etc under section 11.

17. (1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under sub section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

(i) specify the procedure for filing of Forms referred to in sub-rule (3);

(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (3), for purpose of verification of the person furnishing the said Forms; and

(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.

9. Therefore, it is seen that w.e.f. A.Y. 2016-17, the assessee had to file form 10 electronically and by the due date mentioned in section 139 of the Act specifying the purpose for which the amount was being accumulated or set apart and also specifying the period of accumulation which should not exceed 5 years.

10. It is also pertinent to refer to the Memorandum to Finance Bill, 2015 which brought this amendment, the relevant portion of which is reproduced hereunder:

*"In order to remove the ambiguity regarding the period within which the assessee is required to file Form 10, and to ensure due compliance of the above conditions within time, it is proposed to amend the Act to provide that the said Form shall be filed before the due date of filing return of income specified under section 139 of the Act for the fund or institution. In case the Form 10 is not submitted before this date, then the benefit of accumulation would not be available and such income would be taxable at the applicable rate. Further, the benefit of accumulation would also not be available if return of income is not furnished before the due **date of filing** return of income. These amendments will take effect from 1st April, 2016 and will accordingly, apply in relation to the assessment year 2016-17 and subsequent assessment years."*

11. The above makes it absolutely clear that e-filing of form 10 with all the particulars by the due date specified u/s 139 of the Act is a mandatory condition for claiming benefit u/s 11(2) of the Act w.e.f. A.Y. 2016-17. Therefore, the assessee is not entitled to get benefit u/s 11(2) of the Act. The above issue was also discussed with the authorised representative of the assessee, Sh. Amit Rampal, CA as noted in the order sheet entry dated 26.11.2018.

12. Accordingly, the total income of the assessee is computed as under:

Returned income	NIL
Gross income	Rs. 5,08,19,136/-
Less: 15% of income	(Rs. 76,22,871/-)
Less: Expenditure	(Rs. 4,03,20,680/-)
Total Income	Rs. 28,75,585/-

13. That the above assessment order of Ld. AO bears No. ITBA/AST/S/143(3)/2018-19/101438563(1) dt. 18/12/2018.

14. That the Assessee society being aggrieved by the aforesaid order dt. 18/12/2018 prefers first appeal u/s 246A of the Act before Ld.CIT(A) who by the impugned order has dismissed the appeal.

15. That the assessee being aggrieved by the impugned order has preferred second appeal u/s 253 in Form 36 before us and has interalia raised following grounds of appeal;

(1) The Commissioner of Income Tax (Appeals) dismissed the appeal of the appellant without providing proper opportunity of hearing to it.

17. **Record of Hearing**

17.1 The hearing in the matter took place before this Tribunal on 15/10/2024 when both the parties i.e; Ld. AR for and on behalf of the assessee and the Ld. DR for and on behalf of the Revenue appeared and canvassed their respective arguments in support of their cases.

17.2 The Ld. AR at the outset brought to our notice that the impugned order is exparte order and is in violation of the principles of natural justice hence the same should be set aside. **The Ld. AR basis paper book has placed on record Form 10 which could not have been filed earlier in online mode due to some technical snag on IT portal. It was averred that before AO they too tried to file Form 10 but same was not take on record.** Reliance was placed on judgment of Allahabad High Court in case of Maa Bhagwati Shiksha Samiti Vs. CIT reported in

(2023) 157 Taxmann.com 359 (All) and few orders of ITAT too. The Ld. DR however has supported the impugned order but however have left the issue to be decided by this Tribunal as per law.

18. **Observations, Findings & Conclusions**

18.1 We now have to decide the legality, validity and the propriety of the impugned order as per law.

18.2 We observe that the Ld. CIT(A) vide notice(s) dt. 29/12/2020, 26/05/2022, 01/08/2022 ad 12/02/2024 had afforded number of opportunities to the assessee but the same were not availed off by the assessee. No reply nor any adjournment was sought by the assessee. Hence the impugned order was passed.

18.3 In the paper book filed before us they have contended that assessee society accountant who was dealing with this appeal and other income tax **matters never informed assessee society counsel for hearing notice(s) as he was involved in some disciplinary proceedings against him.** They wanted to argue the case before 1st appellate authority but they could not inform their counsel for hearing dates conveyed to them in various notice(s) due to accountant's lapses / omission etc which was unfortunate.

18.4 We are of the considered view that in the circumstances assessee society should be granted one more opportunity as last and final opportunity of hearing in order to meet ends of justice.

19.

Order

19.1 Accordingly, the impugned order is set aside and case is remitted back to the file of CIT(A) to pass a fresh order on merits after giving one last opportunity to assessee society. **Assessee to cooperate with Department and place all material on record.** The Ld. CIT(A) to decide 1st Appeal as expeditiously as possible.

19.2 Impugned order is set aside as and by way of remand.

19.3 Appeal allowed for statistical purposes.

Order pronounced in the open Court on 29/11/2024

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar