

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 1420/Ahd/2024
Assessment Year 2014-15**

Shree Nityanandswami Education Trust, Dharmaj, Tarapur Road Post Nar Petlad, Petlad, Gujarat-388150 PAN: AADTS5891A (Appellant)	Vs	Assistant Commissioner of Income Tax, Ahmedabad (Respondent)
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**Assessee Represented: Shri Piyush Panchal, A.R.
Revenue Represented: Shri Kamlesh Makwana, CIT-DR**

Date of hearing : 30-12-2024
Date of pronouncement : 31-12-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the ex-parte appellate order dated 27.05.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the rectification order passed under section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2014-15.

2. Brief facts of the case is that the assessee is Charitable Trust registered u/s. 12A of the Act. The assessee filed its Return of Income for the Asst. Year 2014-15 belatedly on 28-01-2015 declaring Nil income after claiming exemption u/s. 11 of the Act. The assessee claimed the amount of voluntary contribution and income from charitable activities as Rs.1,57,88,868/- as against application of income of Rs.1,78,09,899/-. The assessee Trust furnished audit report in Form 10B on 24-06-2014 well before the due date of filing of the Return of Income. The return was processed u/s. 143(1) dated 28-02-2016 denying exemption u/s 11 and demanding tax of Rs.53,66,637/- and interest of Rs.16,47,546/-.

3. Aggrieved against the intimation, assessee made frequent application for rectification, but the CPC has not allowed the rectification. Therefore the assessee Trust made rectification application before Jurisdictional Assessing Officer. The JAO rejected the rectification application vide order dated 16-06-2022 and uploaded in the Income Tax portal, but not physically communicated to the assessee. This has resulted with a delay of 90 days in filing the appeal before Ld. CIT(A). The assessee explained the reasons before the Ld. CIT(A), NFAC as follows:

"There was delay in filing appeal 90 days. Assessee every month had seen the TAB Rectification on Income tax portal whether order u/s 154 is issued or not after filing rectification after pass of three months. But no order was found by assessee. When assessee had logged in as usual in start of October 2022, he found a new letter name 'Issue Letter on 16.06.2022 under Proceeding Tab as usual issued for demand. Assessee could not understand about letter and informed its consultant that a letter is issued under proceeding and it speak of rectification application so kindly comply with it. The consultant of assessee on 07.10.2022, opened this letter and where he found that

de-nova rectification application u/s 154 dt. 22.02.2022 has been rejected without demand notice u/s 156. The order U/S 154 was issued in unusual manner in letter form on 16.06.2022. In portal it is named as 'Issue Letter. Assessee had preferred an appeal against such order of rectification u/s 154 within a week on 14.10.2022."

3.1. Ld. CIT(A) without considering the above reasons dismissed the appeal in limine.

4. Aggrieved against the same, assessee is in appeal before us raising the following Grounds of Appeal:

"(1) The NFAC has dismissed the appeal without considering the prayer of the assessee for delay in filing appeal and without providing opportunity to submit clarification by assessee with supporting proof.

(2) The NFAC did not consider the appeal in merit.

(3) The order issued u/s 154 of the Act for rejecting application of section 11 and 12 of the Act on ground of return filed beyond due date is not valid reason because there is no condition to file ITR on or before due date u/s 12A for AY 2014-15 for claiming exemption u/s 11 and 12 of the act. Therefore, the order issued u/s 154 rejecting rectification application u/s 154 on ground of ITR filed beyond due date, is not justifiable and need to be set aside and be directed to allow rectification.

(4) The order issued u/s 154 of the act rejecting rectification application u/s 154 of the act for allowing exemption u/s 11 and 12 of the act r.w.s 12A of the act on ground of there was no delay condoned is factually not correct as there is no provision of the act which provide that for claiming application of section 11 and 12 of the act, assessee required to file return of income compulsory. Therefore, order rejecting application u/s 154 of the Act on this ground is not justifiable in view of provision of section 11 and 12 r.w.s 12A of the Act. So it is requested to issue the order to jurisdictional officer to accept rectification as submitted by assessee and proceed computation of income after allowing the application of section 11 and 12 of the act.

(5) The assessee craves the leave of this court to add, delete or alter any ground of appeal where it is required for just and equitable ground,

Prayer

Assessee pray your honor to set aside the order of NFAC,

Assessee pray before your honor to direct the jurisdiction officer to allow rectification application made by assessee and set aside demand.

To issue any other order as your honor fill necessary in the interest of justice."

5. Heard rival submissions and perused the materials available on record. We are satisfied with the reasons stated by the assessee for the delay of 90 days for filing the appeal before Ld. CIT(A) thereby we condone the delay. However the Ld. CIT(A) has not adjudicated the case on merits, therefore the impugned order is set aside to the file of Ld. CIT(A), NFAC to adjudicate on merits of the case by giving proper opportunity of hearing to the assessee.

6. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 31-12-2024

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

Ahmedabad : Dated 31/12/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद