

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.547/Nag./2024
(Assessment Year : 2020-21)

Deendayal Seva Pratishthan
Shakambhari, 5, Kale Layout
Wadgaon Road, Yavatmal 445 001
PAN – AAATD7507R

..... Appellant

v/s

Income Tax Officer
Ward-4, Exemption, Nagpur

..... Respondent

Assessee by : Shri Kishore B. Phadke
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/03/2025

Date of Order – 21/03/2025

ORDER

PER K.M. ROY, A.M.

The instant appeal by the assessee is emanating from the impugned order dated 30/08/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2020-21.

2. In its appeal, the assessee has raised following grounds:-

"1. The learned CIT(A), NFAC erred in law and on facts in confirming the addition of Rs. 62,17,949) mode by the learned AO to the taxable income of the appellant, instead of declared income of Rs. 12,360/

2. Appellant trust contends that the learned CIT(A) erred in law and on facts in assessing total income of the appellant trust at Rs. 62,30,310/-Instead of Rs. 12,360/- declared in the return of income.

3. Appellant trust contends that Form 9A has been filed along with return of income and before due date u/s 139(4) of the ITA, 1961. And the appellant tried all modes of revision of Form 9A possible for it and in fact during the course of scrutiny assessment. As such, all the compliances were ensured by the appellant trust.
4. Appellant trust contends that non filing / delay in filing Form No. 9A is merely a technical default and is curable as held by various High Courts.
5. Appellant craves leave to add/alter/modify/amend/delete all or any of the grounds of appeal.

2. Facts in Brief:- In this case, the assessee is a Charitable Trust involved in activity of providing educational and other living facilities to Tribal families, and provide sources of livelihood to suicide victim families of farmers, etc. The assessee, in particular, caters to providing facilities to the children of farmers who commit suicides. The assessee receives donations from various institutes, entities, etc., and in turn, carries on noble activity as per the Memorandum of Association. During the year under consideration, the assessee has debited depreciation of ₹ 62,17,949 to the Profit & Loss Account. During the relevant year, the assessee also incurred capital expenditure of ₹ 92,69,109. Both these expenses have been claimed as deduction in its computation of income. While computing taxable income, the said depreciation has remained to be added back, and as such, this leads to double deduction. On 25/11/2020, the assessee filed Form no.9A, intimating carry forward of income. Due to this peculiar double deduction, furnishing of Form no.9A, by the assessee was with a view to carry forward of income amounting to ₹ 14 lakh. After realizing the mistake of non-addition of depreciation, the assessee furnished revised Form no.9A and increased the income carry forward to an amount of ₹ 1 crore, and attempted to file the

same electronically, but without any success. The assessee even tried to submit the same with the Jurisdictional Assessing Officer, but again, without any success.

3. The Assessing Officer made addition of ₹ 62,17,949, in the taxable income of the assessee. Due to non-cognizance of revised Form no.9A, by CPC-system and due to procedural constraints, the Assessing Officer did not grant benefit of additional carry-forward of income from ₹ 14 lakh to ₹ 1 crore.

4. When the assessee filed appeal before first appellate authority, the learned CIT(A) confirmed the addition by stipulating that the assessee ought to have revised the return of income.

"5.4.1 Aggrieved with the above said addition, the appellant trust has filed appeal. In ground-no 2 and 3 of the appeal the appellant trust has contended that Form 9A has been filed along with return of income and before due date u/s 139(4) of the ITA, 1961 and the appellant tried all modes of revision of Form 9A possible for it and also during the course of scrutiny assessment. As such all the compliances were ensured by the appellant trust. The appellant trust has further contended that non filing / delay in filing Form No. 9A is merely a technical default and is curable as held by various High Courts.

1. In support of ground no 2 and 3, the appellant trust has referred to the case laws namely CIT vs Nagpur Hotel Owners' Association [2001] 114 Taxman 255(SC), Institution of Civil Engineers Society v. ACIT (Exemptions) [2021] 130 taxmann.com 506 (Chandigarh - Trib.) and Bombay High Court in the case of CITV. Sakal Relief Fund [2017] 248 tax nan 31 (Bombay HC).

I have taken note of the decisions pronounced in the above referred case laws and take away from the decisions of the Hon'ble courts in these cases is that the assessing authority ought to take into consideration the form 10/form 9A furnished by the assessee before completion of assessment proceedings. The issue adjudicated in the above referred cases is related to late filing of form 10. But in the instant case, the AO has not rejected the form 9A furnished by the appellant but the revision of form 9A, Therefore, the fact situation being different in these case laws, the observations therein cannot be applied to the present facts.

Further, the appellant trust has stated that they tried to revise Form 9A on IT portal, since no such option was available for online revision, they could not revise. This explanation of the appellant is not plausible for the reason that the details furnished in both ITR and form 9A are co-related, if they actually wanted to revise it they needed to revise both the ITR and form 9A. If they were not able to revise form 9A, they could have easily filed revised return revising the details of income as required since the time limit for revised and belated returns was extended up to 31/05/2021 for AY 2020-21 applicable in the instant case. But it is noted that there was no attempt by the appellant trust on filing such revised return. It is also noted that they tried to file the revised Form 9A in paper form with the office of its jurisdictional AO on 25/07/2021 ie after the onset of assessment proceedings on 29/06/2022. Therefore, the chronology of events in this case indicates that it is an after-thought to cover up the false claim of expenditure under the head "Depreciation" by the appellant, as pointed out by the AO. Furthermore, that the depreciation was claimed inadvertently in ITR, as stated by the appellant does not hold good as per law, since the details furnished in ITR are deemed to be correct and complete is in accordance with the provisions of the Income-tax Act, as declared by the competent person verifying the return.

The appellant has also brought reference of CBDT issued circular no. 17 on 11/07/2022 whereby it authorized the Commissioners of Income Tax to admit applications of condonation of delay in filing Form 9A and Form 10 for AY 2018-19 or for any subsequent assessment years where there is the delay up to 365 days and decide on merits.

As said before, the issue is not related to condonation of delay in filing form 9A in the instant case but revision, therefore above referred CBDT circulars bear no relevance to the issue in hand.

After taking all the facts and submission of the appellant into consideration, I find no reason to obviate from the view of the AO, therefore addition made the AO is sustained.

5.4.3 In view of the above discussion, ground no 2 and 3 of the appeal are dismissed.

5.5 Consequent to dismissal of ground no 2 and 3, Ground no 1 also stands dismissed

5.6 Ground no 4 being general in nature needs no separate adjudication.

6. In result, appeal of the appellant is dismissed."

Consequent upon passing of the impugned order by the learned CIT(A),
the assessee filed appeal before the Tribunal.

5. Before us, the learned Authorised Representative for the assessee could not point out any infirmity in the impugned order passed by the learned CIT(A). As regards disallowance of depreciation, the learned A.R. insisted that the authorities below should have examined revised Form no.9A, since it has got a bearing on computation of total income in spite of late submission on 25/07/2021, but prior to completion of assessment. It appears that both the authorities below have not applied their mind to ascertain the correct computation of taxable income, because revision of Form no.9A, was not found to be acceptable by them since they felt that it was beyond the time line. Be it as may, the Form no.9A was filled sufficiently well in advance before completion of assessment on 27/09/2022. We find sufficient force in the submissions of the learned A.R. that if revised Form no.9A is taken into cognizance, there shall be no taxable income to be exigible for levy of tax. In the interest of justice and fair play, the matter is hereby restored to the file of the learned Jurisdictional Assessing Officer by setting aside the impugned order passed by the learned CIT(A) directing him for de novo adjudication for correctly ascertaining the total income after examining revised Form no.9A, and its acceptability based on the facts and underlying circumstances, if any. Thus, all the grounds raised by the assessee are allowed for statistical purposes.

6. In the result, assessee's appeal stands allowed for statistical purposes.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur