

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H (SMC)", MUMBAI
**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**
ITA No. 1903/Mum/2024 (A.Y. 2015-16)

Investors Grievances Forum,

9-, Neelam Nagar,

Mulund, Mumbai.

Maharashtra – 400 081

PAN No.: AAATI0293F

..... Appellant

Vs.

DCIT, CPC

Jurisdiction of AO Exem., Ward 1(3)

ITD, NFAC Delhi

..... Respondent

Appellant by	:	Ms. Kinjal Bhuta, Ld. AR
Respondent by	:	Shri Mehul Jain, Ld. DR
Date of hearing	:	21/08/2024
Date of pronouncement	:	21/10/2024

ORDER

PER GAGAN GOYAL, A.M.:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 29.02.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

- 1. The Ld. Commissioner of Income Tax Appeals NFAC erred in confirming the actions of the DCIT (Central Processing Centre) in rejecting the request for rectification against the*

intimation u/s. 143(1) of the Income Tax Act, 1961, that the rejection of rectification is non-speaking, arbitrary and unjustified.

2. The Ld. Commissioner of Income Tax Appeals NFAC erred in conforming the actions of the DCIT (Central Processing Centre) without appreciating that the adjustments made in section 143(1) without issuance of adjustment notice u/s. 143(1)(a) are beyond jurisdiction and therefore the adjustments ought to be quashed.

3. The Ld. Commissioner of Income Tax (Appeals)-NFAC erred in conforming the actions of the Assessing Officer in not granting benefit of Section 11 & 12 of the Income Tax Act, 1961, and thereby making an addition of Rs. 9,81,641/-

4. The Ld. Commissioner of Income Tax (Appeals)-NFAC erred in making additions, failing to appreciate:

i. that filing of audit report before the specified due date was not mandatory for applying section 11 of the Income Tax Act, 1961.

ii. That condition of filing of return of income u/s. 139(4A) of the Income Tax Act, 1961 was inserted w.e.f. 01.04.2018 and it does not apply to the A.Y.: 2015-16.

5. Without Prejudice to the above, if at all the exemption u/s. 11 was not granted, the Ld. Ld. Commissioner of Income Tax (Appeals)-NFAC ought to have allowed the claim of expenses amounting to Rs.3,69,686/-.

6. All of the above grounds are without prejudice to each other. The appellant craves leave to add, amend, alter, or delete any of the above grounds of appeal.

2. The brief facts of the case are that the assessee is a Trust incorporated on 09.04.1994 and is duly registered with the Charity Commissioner, Mumbai vide Certificate dated 26.05.1998 and u/s. 12A of the Act. The assessee filed its return of income on 15.07.2016 u/s. 139(4) of the Act. Thereafter a notice u/s. 139(9) of the Act was issued to the assessee on 08.05.2017. In response to this notice, the assessee filed a revised return on 13.06.2017 u/s. 139(9) of the Act. Subsequently the return of the assessee was processed u/s. 143(1) of the Act vide dated 23.01.2018 and the gross receipts amounting to Rs. 9,81,641/- were made liable

to tax. Against this, the assessee filed a rectification application u/s. 154 of the Act on 25.01.2018 and the same was rejected vide order dated 29.01.2018. The assessee being aggrieved with this order of the CPC, Bengaluru preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the CPC, Bengaluru. The assessee being further aggrieved with the order of the Ld. CIT (A) preferred the present appeal before us.

3. We have gone through the order of the CPC, Bengaluru, and order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. It is observed that following discrepancies were found by the CPC Bengaluru as under:-

Error description	Probable resolution
1. The income of Assessee exceeds 2.5 lakhs and assessee claimed exemption under section 11 without form 10B or exemption under section 10 without 10BB.	If the total income of the Trust/Institution exceeds the amount not chargeable to tax, accounts of such trust or institution are to be compulsory audited and provides an audit report along with his return of income. Hence, please ensure the same and file the corrected return incorporating the details of such audit, falling which the return filed in ITR 7 will be treated as defective.
2. No Income details i.e. from SL No 1 to 4 have been provided in the return of Income; however, TDS/TCS has been claimed.	In order to claim TDS/TCS, the corresponding receipts/ Income, on which the TDS/TCS has been made, should be reflected in the return of income.

4. We have gone through page no. 7 of the paper book confirming response of the assessee u/s. 139(9) of the Act and the assessee filed audit report in Form No. 10B and computation of income reflecting income received and declared by the assessee against the TDS claim. It is observed that this response of the

assessee was totally ignored by the CPC Bengaluru while processing the return of the assessee. Against that the assessee filed an application u/s. 154 of the Act, which was also rejected and against that the assessee is before us through this appeal. The findings of the Ld. CIT (A) on the matter are as under:-

“7.5 In the present case it is seen that the appellant has filed the return of income in ITR 7 claiming exemption u/s. 11 of the Act for A.Y. 2015-16 on 15.07.2016 when the due date of filing of the return of income was 31.10.2015. Furthermore, it was seen that the audit report in Form 10A and the Form 10B had not been filed for which a defective return notice was issued to the assessee. In response to the above mentioned notice the assessee filed revised return as on 13/06/2017 u/s. 139(9) acknowledgement numbers - 801392590130617. The assessee filed form only on 10B on 26/07/2017. As per the provisions of section 11 and 12, the benefits of exemption are only to be allowed if the assessee files the audit report in Form 10A and Form 10B within the prescribed time limits i.e. before the due date of the filing of the return of income. In this case these documents were not so filed and in fact the Form 10B was filed even after the revised return. Thus in view of these facts there is no infirmity in the order u/s. 143(1) of the Act in not allowing the exemption u/s. 11 and 12 of the Act and hence the order under section 154 of the Act rejecting the claim of the assessee is in order. Furthermore, the contention of the assessee that only the difference between the gross receipts and the expenses should be added and not the entire gross receipts, is a matter which cannot be considered a mistake apparent from record as per the judicial decisions cited above since it is an issue where more than one opinion is possible and hence falls beyond the scope of section 154 of the Act.”

5. We have considered the findings of the Ld. CIT (A) and observed that he totally ignored the fact that the assessee filed audit report and other documents on a specific requisition of the CPC Bengaluru. It is true that to claim exemption u/s. 12A, the assessee is supposed to file the return as per section 139(4A) of the Act i.e. well within the due date prescribed. In this case, the CPC Bengaluru issued a defect notice u/s. 139(9) of the Act read with the findings of the Ld. CIT (A) what

was the need to issue a defect notice u/s. 139(9) of the Act, as the assessee was not entitled to claim benefits of section 11 of the Act.

6. Once the assessee removed the defects as mentioned in the notice u/s. 139(9) of the Act, in our opinion, the benefit he lost because of late filing of the return is restored and the return filed by the assessee will be treated as normal return and CPC Bengaluru is duty bound to process the return considering the response of the assessee made u/s. 139(9) of the Act. By not doing so, the CPC Bengaluru has committed a mistake apparent from record which is curable by filing an application u/s. 154 of the Act. In view of the above discussion, we found the order of the Ld. CIT (A) erroneous and liable to be set aside. Resultantly, we allow the grounds taken by the assessee and order of the Ld. CIT (A) is set aside.

7. **In the result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 21st day of October 2024.

Sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 21/10/2024

Dhananjay, Sr. PS

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai