

आयकर अपीलीय अिधकरण, अहमदाबाद यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)
BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 449/AHD/2019
निधारण वष/Asstt. Year: 2015-16

Vishwa Kalyan Society, Vijay Samudranagar, Atma Vallabh Hospital Parisar, Idar Himatnagar Highway, Sabarkantha-383430. PAN: AAATV1108N	Vs.	D.C.I.T, CPC, Bangalore.
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(Applicant)	(Respondent)
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Assessee by	:	None
Revenue by	:	Shri S.S. Shukla , Sr.D.R

सुनवाईक तारीख/Date of Hearing : 11/01/2022
घोषणा क तारीख /Date of Pronouncement: 28/01/2022

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This appeal is filed by the assessee before us, against the order passed by learned Commissioner of Income Tax (Appeals)-9 on 22/06/2018, under section 154 of the Income Tax Act, 1961, for the assessment year 2015-16.

2. Grounds of Appeal raised by the appellant are as follows:

1. *As per Clause (a) of Section 24, " Income chargeable under the head "Income from house property" " shall be computed after making the following deductions, namely:-(a) a sum equal to thirty per cent of the annual value;" Clear application of provision of income tax of sec. 24(a) is applied in the return, therefore, it is prayed to consider the same and allow the deduction. There is no restriction of status of assessee as per section 24(a). As per Section 22, "The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which, are chargeable to income-tax, shall be chargeable to income-tax under the head Income from house property". There is no restriction with reference to application of provision to any assessee or class of assessee. Any Assessee may take the deduction irrespective of its form or status considering that there is no such restrictive clause given in Act. Appellant also satisfies conditions of section 22 claiming deduction u/s 24(a).*
 2. *Appellant also relies on following decisions:*
 - a. *DDIT(Ex) Vs Kutchi Menon Union(ITA No.878 /Bang/ 2012) (ITAT Bangalore)*
 - b. *'Nandlal Tolani Charitable Trust Vs ACIT(ITA Nos. 6970,199 1111/Mum/2011ITAT Mumbai*
 - c. *Pallonji Shapoorji Charity Trust Vs ITO(Ex) (ITAT Mumbai)*
 3. *As the trust has applied total income for charitable purpose us 11, and complied with all conditions, the exemption should be allowed.*
 4. *Appellant prays to add, amend or drop grounds of appeal during the appeal proceedings.*
3. **Brief facts of the case are, that the assessee is a Charitable Trust, having income under the heads Income from House Property and Income from Other Sources. The assessee has filed its return of income online on 29-09-2012 showing taxable income as NIL with a refund claim of Rs. 1,11,710. The said return was processed by centralized Processing Center of Income Tax Department, Bangalore. An intimation u/s 143(1) of the Act was issued on 03-03-2017 by Deputy Commissioner of Income Tax CPC, Bangalore and a demand of Rs. 1,24,770/- was imposed on account of disallowance of deduction claimed by the assessee u/s 24 for Rs. 12,61,080/- being 30% of the Income from House property of Rs. 42,03,600/-.**
 4. **Aggrieved by the order of CPC, the assessee filed an online rectification application u/s 154 to the CPC on 25-03-2017, which was disposed of by the**

Deputy Commissioner of Income Tax CPC, Bangalore by issuing an order u/s 154 on 15-04-2017 by rejecting the claim of assessee saying that:

“Dear Madam/Sir,

Subject: Rejection of request for Rectification, Under Section 154 of the Income Tax Act, 1961-reg.

Please refer to the rectification request filed by you for the Assessment Year:2015-16 in respect of above mentioned order and received at Centralized Processing Center on 25/03/2017.

“On Verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for Rectification under Sec. 154 is rejected, for the following reasons (if any)”

As seen from the Return of income filed, there is no mistake in the intimation U/S 143(1).

-Computation of income from House Property for purpose of SEC. 11 exemption is as under. The Deduction U/S 24(a)-30% is not allowed on income from House Property, shown in SCH.HP.

-In view of the above, this Rectification application is treated as Rejected.”

5. Aggrieved by the order U/s 154 of the Act by CPC, assessee carried the matter in appeal before the learned CIT(A) who has decided the appeal by confirming the action of the Assessing Officer by observing as under:-

The appellant has filed return of income claiming income from house property at Rs.29,42,520/-. PC Bangalore in the order u/s. 143(1) has computed the income from house property at Rs.42,03,600/- The PC Bangalore has not allowed the deduction us.24A claimed by the appellant. Appellant has contended that deduction u/s.24A from house property is a statutory deduction and has not been allowed. The Hon'ble ITAT Chennai Bench-A, in the case of Anjuman-E-Himayath-E-Islam ITA No. 2271 (MDS) of 2014 for A.Y.2009-10 dated June 2, 2015 has held that in the case of trust Section 22 to 27 of the Act is not applicable. Therefore, CPC has correctly rejected the appellants claim. Appeal is accordingly dismissed.

6. The assessee, dissatisfied with the decision of Ld CIT(A), filed this appeal before us.
7. This appeal was filed with a delay of 192 days with a request in the form of an affidavit to condone the delay, the affidavit submitted contains, as under:

AFFIDAVIT

Before Income Tax Tribunal, Ahmedabad

Affidavit of Mr. Kamlesh Vadilal Mehta, S/o Late Shri Vadilal Keshavji Mehta, Chartered Accountant, having aged about 68 years resident of Idar.

I, the above named deponent solemnly affirm and state as under in the case for the Assessment Year 2015-16, Appeal against the order u/s 154 has been filed late by 181 days and is going through Progressive Supra Nuclear Palsy and due to which was not able to file appeal in time. The order has been received on 22/06/2018 while appeal had to be filed by 22/08/2018 while the Appeal had been filed on 18/01/2019.

I, Kamlesh Vadilal Mehta, the above named deponent is hereby verifying that the contents of this affidavit are true to the best of my knowledge and belief. Nothing material has been concealed.

Mr Kamlesh Vadilal Mehta

8. Ld DR was also confronted regarding allowing condonation of delay upon and he left the issue at the discretion of the Bench. In view of the above and looking to the genuineness of the case, condonation of delay is accorded.
9. Ld Counsel of the assessee has explained the provisions of section 24 and pointed out that these provisions of Act are applicable to assessee and deduction u/s 24 is to be allowed.
10. Ld Counsel relied on the following case laws:
ITAT, Ahmedabad in the case of Bimanagar Co.Op. Society Vs. Income Tax Officer Ward 7(2), Ahmedabad. ITA No. 423/Ahd/2012 Assessment/Year : 2008-09
11. Ld DR relied upon the orders passed by revenue authorities.
12. We have heard the rival contentions, perused the material on record and duly considered facts of the case. We note that the learned CIT (A) had confirmed the order of the AO denying the deduction under section 24 of the Act after placing reliance on the order of Chennai tribunal in case of *Anjuman-E-Himayath-E-Islam ITA No. 2271 (MDS) of 2014 for A.Y.2009-10*. However we find that the order which has been relied upon by the learned CIT (A) has been challenged before the Hon'ble Madras High Court in T.C.A No. 46 of 2021 reported in 127 taxman.com 78, where Hon'ble bench reversed the order of the Tribunal by observing as under:

10.1 As per the Income-tax Act, "income" means "net income", which is taxable. Income from property should be computed as per sections 22 to 27 of the Act and

the income from business have to be computed under sections 28 and 44 of the Act. Such computed income is exempted from tax under sections 11 and 13, if 85% of the same is spent on the charitable objects. Once the income is computed and determined 85% of such computed income should be utilized for charitable objects.

13. In View of the above judgment and following the same we are of the view that, deduction u/s 24(a) is allowable to the assessee. Hence, the ground of appeal of the assessee is allowed.
14. In the result appeal of the assessee is allowed.

Order pronounced in the Court on 28/01/2022 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated
Manish

(True Copy)
28/01/2022