

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 1417/DEL/2021
[Assessment Year: 2018-19]

DSOB Class of 64 Charitable Trust, 303, DDA HIG Flats, Block-1, Rani Jhansi complex, D.B. Road, Paharganj, New Delhi-110055. PAN- AABTD5117E	<u>Vs</u>	DCIT, CPC,
APPELLANT		RESPONDENT
Appellant by	S/Sh. K. Sampath & Kapilesh Manglik, Adv.	
Respondent by	Sh. Om Prakash, Sr. DR	
Date of hearing	12.05.2022	
Date of pronouncement	25.05.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 18.08.2021, pertaining to the assessment year 2018-19. The assessee has raised following grounds of appeal:

“1. The impugned order passed by the learned Commissioner of Income Tax (Appeals) (CITA) National Faceless Centre, Delhi under section 250 of the Income Tax Act, 1961, against the assessee is unjust, arbitrary and has been passed on an incorrect application of the relevant provisions of the Income tax Act, 1961

2. *The impugned order has been passed without providing due and proper opportunity of being heard and is against the principal of natural justice, and accordingly, needs to be set aside.*

3. *The learned CITA has erred on facts and in law in upholding the action of the CPC in:*

(i) *making the addition of Rs. 8,86,695/- being amount of income of the previous year applied to charitable purpose under section 11(1)(a) of the Income Tax Act duly reflected in the Return of Income as such and also in the Audit report in Form 10B furnished under section 12A(b) of the Act*

(ii) *disallowing the statutory deduction of Rs 57,219/- claimed by the assessee under Section 11(1)(a) of the Act, being the amount accumulated or set apart for application to charitable purposes to the extent it does not exceed 15% of income held in trust under section 11(1)(a) of the Income Tax Act duly reflected in the Return of Income as such and also in the Audit report in Form 10B furnished under section 12A(b) of the Act*

merely on the ground that the Audit Report in Form 10B u/s 12A(b) of the Act (filed on 6th Sept., 2018) was not filed alongwith the Return of Income (filed on 31st Aug 2018), although it was filed much before the due date of filing the Income Tax return being 30th Sept. even though the figures of Income of Rs.8,86,695 applied to Charitable Purposes and the Statutory deduction of Rs,57,219 allowable u/s 11(1)(a) are the same in the Return of Income as well as in the Audit Report in Form 10B, and consequently in computing the income of the Appellant at Rs.18,69,914 as against Nil income returned.

4. *The learned CITA has also erred on facts and in law in confirming the action of the CPC, in making an addition of Rs.9,26,000/- being the Voluntary Contributions duly shown as income in the Audited Accounts, which is the amount against which of Rs.8,86,695 has been applied to Charitable Purposes and the balance amount is part of the Statutory deduction allowable u/s 11(1)(a), and thus making a double addition*

Levy of interest under Section 234B and 234C of the Income Tax Act is unjustified.

The order of the Commissioner of Income Tax (Appeals) National Faceless Centre, Delhi to the extent indicated above is contrary to facts, law and principles of natural justice.

The appellant craves leave to add, alter, amend and/or modify any of the aforesaid grounds before or at the time of hearing.”

2. Facts, in brief, are that the assessee is a charitable trust. For assessment year 2018-19 the assessee filed its return of income electronically on 31.8.2018 declaring total income at Rs. NIL. Vide order dated 12.03.2020, passed u/s 143(1) of the Income-tax Act, 1961(“the Act), the CPC Bengaluru, assessed the total income of the assessee at Rs. 18,69,914/- by making following disallowances/ addition:

- (i) Disallowance of expenditure incurred for charitable purpose Rs. 8,86,695/-;
- (ii) Disallowance of exemption claimed u/s 11(1)(a) amounting to Rs. 57,219/-; and
- (iii) Addition on account of voluntary contribution amounting to Rs. 9,26,000/-.

3. Aggrieved against the action of the CPC, Bengaluru, the assessee preferred appeal before the learned CIT(Appeals), who after considering the submissions dismissed the appeal, by confirming the action of the CPC, inter alia, by observing as under:

“The reason given by the CPC for this addition is as given below:

“As per details furnished in the return, appellant is registered u/s 12A and claiming exemption u/s 11. As per section 12A(1)(b) of the Income Tax Act, read with 1st proviso to Rule 12(2) of the income Tax Act Rules, the audit report Form 10B has to be E-filed along with

return of income. Appellant has not E-filed the Audit Report in Form 10B along-with the return of income or before filing the return of income. Hence exemption under section 11 is not allowed."

5.5 *The entire submission of the appellant is on merits of the additions and as to why the disallowances should not have been made. However, from the comments of the CPC it is clear that the underlying issue is technical. CPC noted that as per section 12A(1)(b) of the Income Tax Act, read with 1st Proviso to Rule 12(2) of the Income Tax Act Rules, the audit report Form 10B has to be E-filed along with return of income. The return of income was filed on 31-08-2018. From the copy of Audit Report filed by the appellant, it is seen that the audit report was uploaded on 06-09-2018. Therefore the observation of the CPC is correct.*

5.6 *The appellant has also objected that such disallowances could not be made u/s 143(1)(a) of the Act. In this regard, it is to be noted that appellate proceedings are extension of assessment proceedings. Further, the appellant stated that proper opportunity was not given. In the case of Rallis India Ltd Vs CIT [2015] 374 ITR 462, Hon'ble High Court of Bombay has observed as given below:*

"13. It is undisputed that the power of a CIT(A) is co-terminus with that of the Assessing Officer. In fact, the CIT(A) can do what the Assessing Officer can do and has failed to do as held by the Apex Court in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225."

Accordingly, during the appellate proceedings, proper opportunity was given to the appellant to furnish submissions.

5.7 *In view of the above discussion, Grounds No 1,2 & 3 are DISMISSED.*

GROUND No.4:- In this ground the appellant has argued that the learned A.O. has erred in levying interest under Section 234B and 234C of the Act.

1. *DECISION:- In this case, the appellant has contended that CPC has erred in the charging interest u/s 234B and 234C. However, charging of interest u/s 234B and 234C, is consequential in nature as charging of interest under sections 234A/234B/234C/234D of the I.T. Act is mandatory and not*

discretionary as held by the Hon'ble Supreme Court in the case of Anjuman H Ghaswala reported in 252 ITR 1 and also the decision of the Apex Court in the case of CIT vs. Hindustan Bulk Carriers reported in 259 ITR 449. Accordingly, this ground of appeal stands DISMISSED."

4. Aggrieved against the order of the learned CIT(Appeals), now the assessee is in before this Tribunal.

5. Learned counsel for the assessee vehemently argued that the authorities below were not correct in sustaining the addition. Learned counsel submitted that the addition was made on account of non-furnishing of the audit report in form 10B through electronic mode. Learned counsel submitted that the learned CIT(Appeals) has noted the fact that return of income was filed on 31.08.2018 and the audit report was uploaded on 06.09.2018. Learned counsel submitted that no opportunity was given before making adjustment, which was sine qua non as per Section 143(1) of the Act. It was stated that disallowance of a sum of Rs. 8,86,695/-could not have been adjusted u/s 143(1) of the Act. It was stated that the authorities below have made double addition. Therefore, it was stated that the addition needs to be deleted. Further it was stated that disallowance of donation received(voluntary contribution), considering the same as income from other sources, was not justified. In fact the said receipts were voluntary contribution other than separate receipts and have been shown on income side and out of which

Rs. 8,86,695/- has been applied charitable purpose under section 11 of the Act. It tantamount to double addition and, therefore, unjustified.

6. On the contrary, learned DR opposed the submissions and supported the orders of the authorities below.

7. I have heard rival submissions, perused the material available on record and the orders of the authorities below. The learned CIT(Appeals) confirmed the addition by observing as under:

"5.5 The entire submission of the appellant is on merits of the additions and as to why the disallowances should not have been made. However, from the comments of the CPC it is clear that the underlying issue is technical. CPC noted that as per section 12A(1)(b) of the Income Tax Act, read with 1st Proviso to Rule 12(2) of the Income Tax Act Rules, the audit report Form 10B has to be E-filed along with return of income. The return of income was filed on 31-08-2018. From the copy of Audit Report filed by the appellant, it is seen that the audit report was uploaded on 06-09-2018. Therefore the observation of the CPC is correct.

5.6 The appellant has also objected that such disallowances could not be made u/s 143(1)(a) of the Act. In this regard, it is to be noted that appellate proceedings are extension of assessment proceedings. Further, the appellant stated that proper opportunity was not given. In the case of Rallis India Ltd Vs CIT [2015] 374 ITR 462, Hon'ble High Court of Bombay has observed as given below:

"13. It is undisputed that the power of a CIT(A) is co-terminus with that of the Assessing Officer. In fact, the CIT(A) can do what the Assessing Officer can do and has failed to do as held by the Apex Court in CIT v. Kanpur Coal Syndicate [1964] 53 ITR 225."

Accordingly, during the appellate proceedings, proper opportunity was given to the appellant to furnish submissions.

5.7 In view of the above discussion, Grounds No 1,2 & 3 are DISMISSED.”

8. From the above finding of learned CIT(Appeals) it is clear that learned CIT(Appeals) has not adverted to the submissions of the assessee. The appeal was dismissed merely on the ground that the assessee failed to furnish audit report electronically. It is seen that there was delay of six days in uploading the audit report. The Audit Report was available even before the impugned order u/s 143(1) of the Act was passed. Therefore, in my considered view the adjustment made by the Assessing was not justified without giving proper opportunity of hearing. I order accordingly. Grounds raised by the assessee are allowed. The Assessing Officer is directed to delete the addition.

9. Appeal of the assessee is allowed in terms stated above.

Order pronounced in open court on 25th May 2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI