

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH "B-SMC" KOLKATA**

Before Shri Rajpal Yadav, Vice President (KZ) and
 Shri Manish Borad, Accountant Member

ITA No.283/Kol/2021
Assessment Year: 2016-17

Ramgopal Thirani Family Trust C/o Pradip Lakhotia, 2 nd Fl., Metro Plaza, SF Road, Siliguri-734005.	V/s.	D.CIT, CPC, Bangalore- 560500, Karnataka
PAN: AAATR2585H		
Appellant	..	यथ /Respondent
By Appellant/Assessee	None	
By Respondent/Department	Shri Anindya Kumar Bandopadhyay, Addl. CIT/Ld.DR	
Date of Hearing	19-07-2022	
Date of Pronouncement	1-08 -2022	

ORDER

PER MANISH BORAD, AM.

This appeal of the assessee for the assessment years 2016-17 is directed against the order dt. 01-08-2021 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter, referred to as 'the Act'] by the Id. Commissioner of Income-tax, Appeals [in short, hereafter referred to

as 'the 'ld. CIT(A), National Faceless Appeal Centre(NFAC), Delhi, which are arisen from the order/intimation dt. 07-06-2019 passed u/s. 154 r.w.s 143(1) of the Income-tax Act by the Assessing Officer (AO), D.C.I.T.(CPC).

2. The assessee has raised the following common grounds of appeal for the AY 2016-17:-

1. BECAUSE THE LD AO ERRED IN LAW AS WELL AS ON FACTS TO HAVE DISALLOWED THE CLAIM OF THE ASSESSEE I.E. THE ASSESSEE BEING A PRIVATE BENEFICIARY TRUST WITH A DETERMINATE PERCENTAGE OF SHARE IS LIABLE TO BE TAXED IN THE MANNER OF AN INDIVIDUAL
2. BECAUSE THE LD CIT(A), NFAC ALSO ERRED IN LAW AS WELL AS ON FACTS TO HAVE DISALLOWED THE CLAIM OF THE ASSESSEE I.E. THE ASSESSEE BEING A PRIVATE BENEFICIARY TRUST WITH A DETERMINATE PERCENTAGE OF SHARE IS LIABLE TO BE TAXED IN THE MANNER OF AN INDIVIDUAL
3. THAT THE APPELLANT PRAYS FOR RELIEF AGAINST ACTIONS OF THE LOWER AUTHORITY IN DENYING INCOME TAX EXEMPTION AS APPLICABLE FOR THE ASSESSEE.
4. THAT THE APPELLANT CRA YES LEA YE TO ADD, AMEND, ALTER, VARY A DIOR WITHDRAW A Y OR ALL THE ABOVE GROUNDS OF APPEAL.

3. At the time of hearing none appeared on behalf of the assessee. A perusal of records shows that since 21-12-2021 several opportunities have been provided to the assessee. The assessee did not appear on 02-02-2022, 14-03-2022, 28-04-2022 and 19-07-2022. Notice was sent for hearing on 19-07-2022 through RPAD (Registered Post with A.D), but the same was returned unserved. Under these circumstances, we have no option except to proceed for adjudication of the issues raised in this appeal *ex parte qua* the assessee.

4. Brief facts of the case are that the assessee filed its return of income for the AY 2016-17 on ITR-7 declaring income at Rs.1,57,340/-. The said return was processed by Centralized Processing Center (CPC) assessing the income at Rs.1,57,340/-, but charging tax thereon by treating the assessee as charitable trust.

5. Aggrieved, the assessee preferred an appeal before the Id. CIT(A), but failed to succeed.

6. Now, the assessee is in appeal before this Tribunal.

7. The Ld. Departmental Representative supported the order of the Id. CIT(A).

8. We have heard the Ld. DR and perused the record placed before us. We observe that the claim of assessee is that it is a Private Beneficiary Trust and thus, it was required to file its return of income on ITR-5, but inadvertently it filed ITR-7, which is meant for charitable trust claiming exemption(s). Before Id. CIT(A), it was submitted by the assessee that it tried to file revised return, but failed to do it and the rectification application filed thereafter could not bring any relief claimed. It was also submitted before Id. CIT(A) that the assessee is a Private Beneficiary Trust with the determinate percentage of share and thus, liable to be taxed in the manner of an individual and since the income of the assessee trust is less than the prescribed limit of income, not chargeable to tax, in case of an individual no tax was payable.

9. We further observe that the assessee could not file any evidence to establish that it is a private beneficiary trust with a determinate percentage of share. For lack of this evidence, the Id. CIT(A) dismissed the assessee's appeal. We, therefore, in the interest of justice and being fair to both the parties deem it fit and proper to restore the issues raised in this instant appeal to the Id. CIT(A) for fresh adjudication with a liberty to the assessee to file the necessary evidence(s) to prove that it is a private beneficiary trust with the determinate income percentage of share and is liable to tax in the manner of an individual. Needless to mention that the assessee be provided reasonable opportunity of being heard. The assessee is also directed to remain compliant and not to take adjournment unless otherwise required for reasonable cause. In case the assessee is not able to file necessary evidence, then Id. CIT(A) can proceed as per law.

10. In the result, the appeal of the assessee is allowed for statistical purpose.

The order pronounced in the open Court on 1.08.2022

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT(KZ)

Dated :1-08-2022

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

****PP/SPS**

Copy of Order Forwarded to:-

- 1.Appellant/Assessee: Ramgopal Thirani Family Trust C/o Pradip Lakhota, 2nd Fl.,Metro Plaza, SF Road, Siliguri-734005.
2. Respondent/Department: D.CIT, CPC, Bangalore-560500, Karnataka
3. Concerned CIT
4. CIT (A)
5. DR, ITAT,Kolkata
6. Guardfile.

By order

/True Copy/

Assistant Registrar
ITAT, Kolkata