

आयकर अपीलीय अधिकरण, 'ए' न्याय पीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.320/Chny/2021 & S.P.No.33/Chny/2021

(In ITA No.320/Chny/2021)

(निर्धारणवर्ष / Assessment Year: 2015-16)

The Ceylon Pentecostal Mission 222/66, College Road, Nagercoil-629 001. Kanyakumari Dist.	Vs	The Assistant Commissioner of Income Tax (CPC), Bangalore.
PAN: AABTT 5113E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. Y.Sridhar, C.A.
प्रत्यर्थी की ओरसे/Respondent by	:	Mr.AR.V.Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of hearing	:	05.10.2021
घोषणा की तारीख /Date of Pronouncement	:	08.10.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A), National Faceless Appeal Centre, (NFAC), Delhi, u/s.250 of the Income Tax Act, 1961, dated 02.08.2021 and pertains to assessment year 2015-16.

2. The assessee has also filed present stay application seeking stay of outstanding demand of ₹ 8,36,039/- for the assessment year 2015-16. Since, appeal itself is taken up for disposal, stay application filed by the assessee becomes infructuous and accordingly, same is dismissed.

3. The assessee has raised following grounds of appeal:-

"1. The order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, digitally signed by Kunal Singh on 02.08.2021 (Encl:4, Page:10 to 12) is without considering the written submission properly and also against law, facts and natural justice.

2. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre failed to consider the issue on Capital Gain on sale of property as per law & facts. (Ref: Statements of Facts - I, 3rd & 4th Para)

3. He ought not to have confirmed the order of Assistant Commissioner (CPC) adding Rs.21,48,579/- as Capital Gain.

II

1. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre went wrong in confirming the disallowance the amount of account u/s 11(2) Rs.6,39878/- for non-filing the Form 10 with Assistant Commissioner within the stipulated time, (Ref: Statements of Facts- II, to 8 Para)

2. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ought to have considered the Written Submission. (Encl:7, Page:24 to 40)

Ref: i). Notice / Communication reference Id: 100000027308243 is filled on 01.07.2019 and Acknowledgement No: 26061911352754

ii) Notice / Communication reference Id: 100000029607112 is filled on 15.07.2019 and Acknowledgement No: 11071911386398

iii) Notice / Communication reference Id: 100000032372990 is filled on 11.11.2019 and Acknowledgement No: 24101911919147

iv) Notice/Communication reference Id: 1000000397802295 is filled on 20.12.2019 and Acknowledgement No: 20121912832431

3. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre failed to note that Assistant Commissioner has not followed the section 143(1) and the proviso properly. (Ref: Statements of Facts- III 1st to 4th Para)

III

1. The Commissioner of Income Tax (Appeals), National Faceless Appeal Centre failed to follow the decision in various case laws and circular of CBDT (Ref: Statements of Facts-III, 4th & 5th Para)"

4. Brief facts of the case are that the assessee is a society registered u/s.12AA of the Income Tax Act, 1961, as charitable trust. The assessee has filed its return of income for assessment year 2015-16 on 25.08.2015 and subsequently, revised return on 16.06.2016. The Assessing Officer processed return of income filed by the assessee u/s.143(1) of the Income Tax Act, 1961 on 11.10.2016 and determined total income at Rs.27,88,457/-, after making additions towards capital gain income of Rs.21,48,579/- derived from sale of property and further denied accumulation of income u/s.11(2) of the Income Tax Act, 1961 for Rs.6,39,878/-. The assessee has filed rectification application u/s.154 of the Income Tax Act, 1961, but application filed by the assessee has been rejected by the Assessing Officer. Thereafter, the assessee preferred an appeal before the CIT(A) and challenged additions made by the Assessing Officer towards capital gain and rejection of accumulation of income claimed u/s.11(2) of the Income Tax Act, 1961, on the ground that adjustment made by the

Assessing Officer, while issuing intimation u/s.143(1) of the Act is bad, because while processing return of income u/s.143(1), the Assessing Officer cannot make any addition except as provided therein under Explanation to section 143(1) of the Act. The assessee had also challenged rejection of accumulation of income u/s.11(2) of the Act on the ground that although the assessee has accumulated income by passing resolution before end of the relevant financial year and further, invested said sum in specified investments, but Form No.10 could not be uploaded along with return of income due to technical glitches in web portal at the time of filing return of income.

5. The learned CIT(A), after considering relevant submissions of the assessee has rejected arguments taken by the assessee on the ground that there is no error in adjustment made by the Assessing Officer to total income computed by the assessee while processing return u/s.143(1) of the Act, because unless the assessee attach Form No.10 along with return, the Assessing Officer cannot give benefit of accumulation of income u/s.11(2) of the Income Tax Act, 1961. The learned CIT(A) has also distinguished case laws relied

upon by the assessee in the case of CIT VS. Sakal Relief Fund (2017) 248 taxmann 31/81 by holding that in the said case Form No.10 was filed during the reassessment proceedings and hence, the Court has directed the Assessing Officer to accept Form No.10, whereas in the present case no such assessment proceedings and hence, while processing return u/s.143(1), the Assessing Officer has to consider material on record, as per which Form No.10 was not attached with return of income filed by the assessee and hence, there is no error in computation of income made by the Assessing Officer, while issuing intimation u/s.143(1) of the Act and thus, rejected arguments of the assessee and confirmed additions made by the Assessing Officer. Aggrieved by the order passed by learned CIT(A), NFAC, the assessee is in appeal before us.

6. The learned A.R for the assessee submitted that the learned CIT(A),NFAC has erred in not considering issue in right perspective of law, even though the assessee has filed various evidences to prove that Form No.10 was available with the assessee, but same could not be uploaded along with return of income due to technical glitches in web portal. The learned AR

further submitted that the Id.CIT(A), NFAC failed to consider issue on capital gain on sale of property as per law, even though the assessee has claimed exemption u/s.11(1A) of the Act, by investing sale consideration for acquiring another capital asset. The learned AR further referring to Form No.10 along with Board resolution submitted that the assessee has accumulated Rs.6,39,878/- for specified purpose for which necessary formalities have been completed including investing said sum in specified investment and thus, the Assessing Officer ought to have allowed claim of the assessee for accumulation of income as per provisions of section 11(2) of the Income Tax Act, 1961.

7. The learned DR, on the other hand, strongly supporting order of the CIT(A) submitted that at the time of processing return u/s.143(1), Form No.10 was not available with the return of income filed by the assessee and thus, the Assessing Officer cannot allow benefit of accumulation of income u/s.11(2) of the Income Tax Act, 1961. In this regard, he relied upon decision of the Hon'ble Supreme Court in the case of CIT Vs. Nagpur Hotels Owners' Association (2001) 247 ITR 201 (SC).

Therefore, he submitted that there is no merit in the arguments taken by learned AR for the assessee and hence, order of the CIT(A), NFAC should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that 143(1) intimation is not an assessment. Time and again, various Courts have categorically held that 143(1) intimation cannot be considered as a regular assessment. Therefore, once there is no regular assessment, then question that needs to be considered is whether the Assessing Officer can make adjustments towards capital gains and accumulation of income u/s.11(2) of the Income Tax Act, 1961, while processing return u/s.143(1) of the Act. The provisions of section 143(1) deals with summary adjustment, as per which, where a return has been filed u/s.139, such return shall be processed in the following manner. As per said section, except as provided under Explanation, no adjustment can be made towards total income reported by the assessee. Further, adjustments provided under Explanation to section 143(1) are that only prima-facie adjustments which can be

made on the basis of return filed by the assessee, without going into examine any other evidences. The proviso further specifies that no such adjustment shall be made unless an intimation is given to the assessee of such adjustments either in writing or electronic mode. In this case, admittedly no such intimation was given to the assessee before making adjustment towards capital gain and accumulation of income u/s.11(2) of the Income Tax Act, 1961. Therefore, on this count itself adjustment made by the Assessing Officer towards capital gain and accumulation of income u/s.11(2) of the Income Tax Act, 1961 deserves to be deleted.

9. Be that as it may, but fact remains that the assessee has admitted Nil capital gain income from transfer of property by claiming exemption u/s.11(1A) of the Act for reinvestment of sale consideration for acquiring another capital asset to be so held for charitable purposes. Once the assessee has reinvested sale consideration for acquiring another capital asset, then whole capital gain is exempt u/s.11(1A) of the Act. The Assessing Officer without examining those details has simply made adjustment towards capital gain while processing

return u/s.143(1) of the Income Tax Act, 1961. Therefore, we are of the considered view that the Assessing Officer as well as learned CIT(A) has erred in not considering detailed reasons given by the assessee for claiming exemption from capital gain. Hence, we direct the Assessing Officer to allow exemption claimed u/s.11(1A) of the Act in respect of reinvestment of sale consideration for acquiring another capital asset.

10. As regards accumulation of income u/s.11(2) of the Income Tax Act, 1961, it was claim of the assessee before the learned CIT(A) that although, the assessee has accumulated income and complied with provisions of section 11(2) by passing Board resolution, but Form No.10 could not be uploaded along with return of income due to technical glitches in web portal. Although, the assessee has explained reasons for not filing Form No.10 along with return, the CIT(A) has rejected explanation filed by the assessee and confirmed additions made towards rejection of accumulation of income u/s.11(2) of the Act only for the reason that the assessee has not attached Form No.10 along with return of income. No doubt, if an assessee wants to claim benefit of accumulation of

income u/s.11(2), then the assessee should make available requisite Form No.10 to the Assessing Officer before completion of assessment proceedings. Unless the assessee files necessary Form No.10 along with other evidences, the Assessing Officer cannot give benefit of accumulation of income u/s.11(2) of the Income Tax Act, 1961.

11. There is no dispute on this legal aspect, but what is to be considered is whether intimation issued u/s.143(1) is an assessment and the Assessing Officer can make adjustment towards rejection of accumulation of income u/s.11(2) of the Income Tax Act, 1961 or not has to be seen. It is well settled position of law by the decision of various courts that 143(1) intimation is not a regular assessment. Therefore, once an intimation issued by the Assessing Officer u/s.143(1) is not an assessment, then next question that needs to be considered is whether the Assessing Officer can make adjustments to total income for non-submission of Form No.10 along with return of income. In our considered view, except as provided under Explanation to section 143(1), no adjustments can be made to total income. In this case, the Assessing Officer has made

adjustment to total income by rejecting accumulation of income u/s.11(2) and said adjustment is not in accordance with law. It is also an admitted fact that an appeal being continuation of original proceedings, appellate authority has co-terminus and co-extensive powers that of the Assessing Officer. Therefore, when the assessee has filed Form No.10 before the CIT(A),NFAC, he ought to have admitted Form No.10 filed by the assessee to consider accumulation of income u/s.11(2) of the Income Tax Act, 1961. This view is supported by decision of the Hon'ble Calcutta High Court in the case of CIT Vs. Hardeodas Agarwalla Trust reported in 198 ITR 511, where it was held that appeal being continuation of original proceedings, appellate authority has power to accept Form No.10 and direct the Assessing Officer to redo assessment. We further noted that accumulation of income u/s.11(2) of the Income Tax Act, 1961 is a beneficial provision allowed to an assessee to application of income for charitable purposes in subsequent years, in case trust or institution is not able to apply its income in full during the relevant financial year. Therefore, while considering such beneficial provision, the CIT(A) should have considered issue without going into technicalities or

procedural lapses. In this case, the assessee has made available Form No.10 before the CIT(A), but he rejected Form No.10 filed by the assessee. The Hon'ble Jurisdictional High Court of Madras in the case of Chandraprabhuji Maharaj Jain Vs. DCIT in TCA No.517 of 2019 dated 26.07.2019 had considered a similar issue of belated filing of Form No. 10 for accumulation of income u/s.11(2) of the Act and held that when the assessee was entitled to statutory benefit it was incumbent upon concerned authority to examine admissibility of benefit than to foreclose assessee on technicalities.

12. In this case, the assessee claims that requisite Form No.10 was ready while filing return of income, but same could not be uploaded along with return of income due to technical glitches in web portal provided for filing return of income . The assessee has also filed copies of Form No.10 along with copy of resolution before us, as per which income has been accumulated for specified purposes vide Board resolution and further said sum was also invested in specified investments referred to u/s.11(5) of the Act. Therefore, we are of the

considered view that the assessee is entitled for accumulation of income u/s.11(2) of the Income Tax Act, 1961.

13. As regards case law cited by the learned DR in the case of CIT Vs.Nagpur Hotel Owners' Association (supra), we find that the Hon'ble Supreme Court made it very clear that intimation required u/s.11(2) read with rule 17 of the I.T. Rules, 1962, has to be furnished before assessing authority completes concerned assessment, because such requirement is mandatory. There is no doubt, it is the duty of the assessee to made available required intimation u/s.11(2) before completion of assessment. But, in this case since there was no regular assessment proceedings u/s.143(3), the assessee does not have had an occasion to file necessary Form 10 before the Assessing Officer. Therefore, we are of the considered view that the Revenue cannot take strength on the decision of Hon'ble Supreme Court in the case of Nagpur Hotel Owners' Association (supra).

14. In this view of the matter and considering facts and circumstances of this case, we are of the considered view that the learned CIT(A) has erred in not considering claim of the

assessee for accumulation of income u/s.11(2) of the Income Tax Act, 1961, even though the assessee made available such Form No.10 before the CIT(A) at the time of appellate proceedings. Hence, we set aside order passed by CIT(A) and restore the issue to the file of the Assessing Officer and direct the AO to allow benefit of accumulation of income u/s.11(2) of the Income Tax Act, 1961 by considering Form No.10 filed by the assessee along with other evidences.

15. In the result, appeal filed by the assessee is allowed and that of stay petition is dismissed as infructuous.

Order pronounced in the open court on 8th October, 2021

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 8th October, 2021
DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

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|--------------------|-------------------------|------------------------------|
| 1. Appellant | 2. Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |