

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.641/M/2020
Assessment Year: 2015-16**

M/s. Sanskruti Vistarak Sangh, 3 rd Floor, Nirmal Niketan, 2, Dr. Bhajekar Street Khetwadi, Mumbai – 400 004 PAN: AACTS1554M	Vs.	Deputy Commissioner of Income Tax, CPC Post Bag No.2, Electronic City Post Office, Bangalore- 560 500
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rajesh P. Shah, A.R.
Revenue by : Shri Amol Kirtane, D.R.

Date of Hearing : 03.03.2022
Date of Pronouncement : 25.03.2022

O R D E R

Per Kuldip Singh, Judicial Member:

The appellant, M/s. Sanskruti Vistarak Sangh (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 28.11.2019 passed by Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2015-16 on the grounds inter alia that :-

“1. On the facts and under the circumstances of the case and in law, the learned CIT (A) erred in erred in confirming the action of Assessing Officer, of not granting the exemption u/s 11(2) of Rs.13,20,72,198/-, although all the conditions laid down in section 11(2) were satisfied by the Appellant.

2. On the facts and under the circumstances of the case and in law, the learned CIT (A) erred in erred in confirming the action of Assessing Officer, of concluding that the , the appellant has not exercised the option u/s 11(2) without appreciating the fact that the option u/s 11(2) was exercised by the Appellant within the prescribed time as per the provisions of the I. T. Act. and the same was submitted to the AO vide letter dated 28.09.2015.

3. On the facts and under the circumstances of the case and in law, the learned CIT (A) erred in dismissing the appeal without appreciating the fact that the appellant is eligible to claim the exemption u/s 11(2) and not granting the same has caused genuine hardship to the appellant.

4. The appellant craves for leave to add to alter and/or withdraw the above ground of appeal, if necessary.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee being a trust registered under section 12A of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) filed its return of income on 19.09.2015 declaring total income at Nil for the year under consideration which was supported with audit report in form No.10B, income & expenditure account and balance sheet. However, the Assessing Officer (AO) has not allowed the deduction claimed by the assessee under section 11(2) in the intimation given to the assessee under section 143(1) of the Act despite the fact that notice under section 11(2) of the Act was

physically filed with the AO on 28.09.2001. Then assessee filed an appeal under section 154 of the Act which was dismissed by the AO.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal against the order passed by the AO under section 154 of the Act who has upheld the order passed by the AO by dismissing the appeal filed by the assessee. Feeling aggrieved from the impugned order passed by the Ld. CIT(A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, the assessee has filed its return of income being a trust registered under section 12A of the Act by claiming deductions under section 11(2) of the Act by complying with the necessary conditions. It is also not in dispute that the assessee has submitted form No.10 for accumulation of Rs.13,20,72,198/- physically, but the same was not allowed by the AO. It is also not in dispute that the return of income filed by the assessee was

processed under section 143(1) of the Act by denying the benefit of accumulation under section 11(2) of the Act as claimed by the assessee.

6. In the backdrop of the aforesaid undisputed facts and circumstances of the case the sole question arises for determination in this case is:

“As to whether the AO/Ld. CIT(A) have erred in not granting the exemption under section 11(2) of the Act despite satisfying the conditions by the assessee as laid down under section 11(2) of the Act while processing the return of the income under section 143(1) of the Act.?”

7. Bare perusal of the order passed by the Ld. CIT(A), particularly para 6.3 of the impugned order it is apparent on record that the deduction claimed by the assessee under section 11(2) of the Act was denied merely on the ground that the assessee has not filed form No.10 online along with return. When it is undisputed fact on record that the assessee has filed form No.10 physically before the AO, available at page 23 & 24 of the paper book, which has been duly acknowledged by the AO as is evident from letter dated September 22nd, 2015 available at page 22 of the paper book, there is no ground to deny the deductions otherwise available to the assessee under the Act while processing the return of income under section 143(1) of the Act.

8. It is brought to our notice by the Ld. A.R. for the assessee that for the year under assessment form No.10 was only required to

be filed manually not online and drew our attention to Rule 17 of Income Tax Rules (the Rules), which lays down that statement as required under section 11(2) of the Act in form No.10 shall be furnished before the expiry of time allowed under section 1 of section 39, for furnishing the return of income which rule is to be effective from 1.04.2016, hence the same is not applicable to the year under assessment. Operative part of Rule 17 is extracted for ready perusal as under:

“17. (1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under sub-section (2) of section 11 or under the said provision as applicable under clause (21) of section 10 shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No.10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

- (i) specify the procedure for filing of Forms referred to in sub-rule (3);*
- (ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule(3), for purpose of verification of the person furnishing the said*

*Forms; and
(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.]”*

9. When the assessee has submitted form No.10 within time in compliance to Rule 17, the AO has erred in denying the benefits claimed by the assessee under section 11(2) of the Act. At the same time, the Ld. CIT(A) has also erred in dismissing the appeal filed by the assessee challenging the order under section 154 of the Act passed by the AO. It is also brought to the notice of the Bench by the assessee that for the earlier years AO allowed such rectification application vide order dated 25.02.2020 available at page 41 to 42 of the paper book. In these circumstances, Revenue Authorities were required to follow the “rule of consistency” instead of generating unnecessary litigation.

10. So in these circumstances, we are of the considered view that rectification application filed by the assessee before the AO and the appeal filed before the Ld. CIT(A) were liable to be allowed. Hence appeal filed by the assessee is accepted and AO is directed to rectify the order by allowing the claim admissible to the assessee under section 11(2) of the Act after due verification of the facts claimed by the assessee.

11. Resultantly, appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.03.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 25.03.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.