

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

BEFORE SHRI KUL BHARAT: JUDICIAL MEMBER

ITA No. 663/DEL/2023
[Assessment Year: 2020-21]

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| Shrimati Saraswati Manuja Education And Well Living Society, 61, Pocket C-II, Mausam Apartments West Enclave, Pitampura, New Delhi PIN: 1100 34 PAN: AACAS9677A | <u>Vs</u> | ITO, Ward exemption 2(2), New Delhi. |
| APPELLANT | | RESPONDENT |
| Assessee represented by | Shri V. Rajakumar, Adv. | |
| Department represented by | Shri Om Prakash, Sr. DR | |
| Date of hearing | 22.05.2023 | |
| Date of pronouncement | 31.05.2023 | |

ORDER

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 06.03.2023, pertaining to the assessment year 2020-21. The assessee has raised following grounds of appeal:

“On the facts and in the circumstances of the case and in law, the

NFAC, Delhi erred in confirming the action of the Centralized Processing Centre (CPC), Bengaluru in:-

- I. determining the taxable income of Rs.8,86,857/- in terms computation as made by the CPE:*
- II. adding Rs.8,86,857/- by wrongly invoking section 11(3) of the Act;*
- III. charging tax and also levying interest u/s. 234B and 234C of the Act.*

The above action being arbitrary, misconceived, erroneous and unjust and so must be quashed with directions for appropriate relief.”

2. The facts giving rise to the present appeal are that assessee is a trust and has filed its return of income on 23.11.2020 for the assessment year 2020-21. Vide order dated 08.10.2021, ADIT, Centralized Processing Centre (CPC) processed the return of income under Section 143(1) of the Income-Tax Act, 1961 as the assessee claimed capital gain of Rs.8.86 lacs and the duly reflected in the return of income at Column No.4(vi) as a part of accumulation set apart for the year under consideration out of income earned on account of capital gain during the

year, hence, the return was chargeable under Section 11(3) of the Act. Therefore, appellant claimed that the income was not chargeable under the said section and the same is set apart under Section 11(2) of the Act as admitted at in Column No.4(vi) of the order under Section 143(1) of the Act. Accordingly, ADIT, CPC, Bangaluru treated it as reflected mistake at Column No.5(ii) as an addition under Section 11(3) of the Act.

3. Being aggrieved with the action taken by the learned ADIT, CPC, Bangaluru, assessee went in appeal before the learned Commissioner of Income-Tax(Appeals), who dismissed the appeal. Before the learned Commissioner of Income-Tax(Appeals), following statement of facts and grounds of appeal were raised:

(a) Statement of Facts:

“The appellant is an educational society duly registered under Section 12A(a) of the Income-Tax Act, 1961. During the year under consideration it earned long term capital gain on the sale of a plot. The gain so earned was accumulated u/s. 11(2) of the Act which was allowed by the A.O. However, while submitting the return, the income so earned inadvertently appeared in the additions u/s. 11(3) of the Act through wrong punching. The CPC thus wrongly repeated this disallowance although the appellant

had submitted audit report in form 10B which correctly depicted the true position.

(b) Ground of appeal:

“on the facts and in the circumstances of the case and in law, the computation as made by the (CPC) is erroneous in so far as it has – i. Determined the taxable income at Rs.8,86,857; ii. Added Rs.8,86,857 by wrongly invoking section 11(3) of the Act; iii. Charged tax and also levied interest u/s.234B and 234C of the Act; Above actions are arbitrary misconceived, erroneous and unjust and so must be quashed with directions for relief.”

4. During assessment proceedings before the learned Commissioner of Income-Tax(Appeals), various notices of hearing under Section 250 of the Income-Tax Act, 1961 were issued to the appellant from time to time including notices dated 15.09.2022, 15.11.2022 (system generated) and latest hearing notice on 22.02.2022. In response to these notices, assessee relied vide submissions dated 15.11.2022 and same has been reiterated in the latest submission filed on 23.03.2023. On perusal of all these submissions, it was observed that assessee has himself accepted that mistake was committed while filing statutory return of income by admitting that the same capital gain as income under Section 11(3) of

the Act, when the same is indeed set apart for a specified purpose “Setting up free coaching cum Study Centre for BPL Card Holders and Other admitted in Form 10B, thereby, the amount set apart is not to be treated as income, though, the same was mistakenly admitted as income of the appellant’s trust under Section 11(3) of the Act in the return of income. After overall careful consideration of the facts of the case, ADIT, CPC, Bangaluru rejected the plea of the assessee.

5. Further, learned ADIT in his order, pointed out that assessee has admitted during the year a sale transaction of trust property for a total consideration of Rs.14.95 lacs, resulting in a gain of Rs.8.86 lacs which was supported to be set apart intended for specified purposes as mentioned in the Form 10. It is relevant to point out here that an Audit Report in Form 10B was filed digitally signed on 26.10.2020 reflecting the claim as eligible u/s/ 11(2) of the Act. Considering the due date of filing of the return of income being as available up to 15.02.2021 for the very same assessment year i.e. 2020-21, nothing would have been prevented the assessee from filing a revised return to this extent as

deemed fit as claimed by the assessee. Considering these valuable facts involving assessee's non-revising of the return of income having sufficient time, the claim of the assessee as made before the ADIT, CPC, Bangaluru, the application under Section 154 of the Income-Tax Act, 1961 as well as the grounds raised in this appeal against order u/s. 143(1) of the Act are neither justified nor acceptable to exclude the appellant's claim u/s. 11(3) of the Act as not taxable income because the gain first goes to the set apart u/s. 11(2) of the Act and after that flows to specified investment u/s. 11(5) of the Act and failing which again it falls back as taxable income u/s. 11(3) of the Act.

6. In view of these facts, situations and circumstances, taxability of such specified amounts in due course of its receipts anytime up to five years, the same would be the legal responsibility of the assessee to make such an apt and proper claim with the fulfillment of relevant provisions of the Income-Tax Act, 1961 as enshrined in section 11(2) read with provisions u/s. 11(5) and 11(3) of the Act. Keeping in view all these aspects, learned Commissioner of Income-Tax(Appeals) dismissed the

appeal of the assessee as not maintainable.

7. Aggrieved against the order of learned Commissioner (Appeals), assessee is in appeal before me. At the time of hearing, learned counsel for the assessee attended the hearing and submitted that it was a bona fide mistake on the part of the assessee. He further submitted that thereafter, Form No. 10B was uploaded mentioning the relevant details that the books of accounts have to be kept by the head of office and the branches of the abovementioned trust.

8. On the other hand, learned Departmental Representative opposed the arguments advanced by the learned counsel appearing for the assessee and support the orders of the authorities below.

9. I have heard the rival contentions and perused the material available on record. In the present case, where the impugned addition was made on the basis that the assessee failed to file requisite report as required in Form No.10B.

10. Keeping in view the aforesaid facts and circumstances, I am of the considered view that the learned authorities below ought to have

considered and verify the facts as well as the bona fide mistakes. I, therefore, set aside the orders of the authorities below and restore the issue to the file of the Assessing Officer to verify the grievance of the assessee. If, it is found correct, the issue may be decided in accordance with law.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court 31 .05.2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

**Dated: 31st May, 2023
Mohan Lal**

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**