

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER,
And
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 109/Rjt/2020
निर्धारण वर्ष/Asstt. Years: 2014-2015

Swa Shri Haridas Narbheram Aashar Smarak Trust, Shrinathji Complex, Paragon Traders, 34, Prahlad Plot, Canal Road, Rajkot. PAN: AABTS3583P	Vs.	The A.C.I.T, CPC, Bangluru, ITO(Exemptions), Ward-1, Rajkot.
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Assessee by :	Shri Bakul Ganatra, A.R
Revenue by :	Shri B.D. Gupta, CIT. D.R

सुनवाई की तारीख / **Date of Hearing** : **19/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **14/12/2022**

आदेश / ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), Rajkot-3, Rajkot, dated 31/01/2020 arising in the matter of assessment order passed under s. 154 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The assessee has raised the following grounds of appeal:

1. *The learned CIT(appeals) has erred in facts as well as in law in continuing the disallowance of Rs.1,98,368/- in contravention of section 11,12A and 13R.W.S sections 292B.*

2. *The learned CIT(appeals) has erred in facts in rejecting then 15% of the income finally set part under section 11 amounting to Rs.58,900 even-though the trust is registered under section 12A.*

3. *The learned CIT(appeals) has erred levying the tax at MMR of 30% even if the trust registered under section 12A.*

4. *the learned CIT(appeals) has erred in facts as well as in law of non-applying the provision section 292B beneficial to the assessee trust.*

5. *the assessee may please be allowed to edit, amend, change or withdraw any or all of the above grounds and add further new grounds of this appeal during the course of hearing at any time.*

3. The interconnected issues raised by the assessee is that the Ld. CIT(A) erred in confirming the order of the AO by sustaining the claim made in the return of income and further calculated tax at Maximum Marginal Rate.

4. The facts in brief are that the assessee in the present case is a Trust and filed its return of income dated 10/12/2014, declaring income at Nil. The assessee in the return of income has shown income under head from the other sources by way of interest for Rs. 3,92,669/- against which it claimed to have applied the amount of Rs. 1,91,366/- for charitable purposes in India. The assessee also claim the deduction against gross income for Rs.58,900/- being 15% of Rs.3,92,669/- accumulated under the provision of section 11(1) of the Act. Thus, the assessee for the balance amount of Rs.1,42,401/- claimed that the same is below the exemption limit. However, the CPC in the intimation generated u/s 143(1) of the Act, did not give any benefit of the amount applied for charitable purposes and accumulated u/s 11(1) of the Act for Rs. 1,91,368/- and Rs. 58,900/- respectively. As such, the CPC has treated the entire gross amount shown by the assessee for Rs. 3,92,669/- and charged to tax at Maximum Marginal Rate i.e. 30% by raising a demand of Rs. 1,44,976/- along with the interest.

5. The assessee against the intimation preferred a rectification application u/s 154 of the Act which was dismissed vide letter dated 12/04/2016 by observing as under:

Subject: Rejection of request for Rectification Under Section 154 of the Income Tax Act, 1961-reg.

Please refer to the rectification request filled by you for the Assessment Year 2014-15 in respect of above mentioned order and received a Centralized Processign Centre on 04/03/2016.

"On Verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for Rectification under Sec. 154 is rejected, for the following reason (if any)"

Your rectification request could not be considered at cpc for technical reasons. The rectification rights, in your case are being transferred to your Assessing Officer. Kindly contact your assessing office for the same. The details of the jurisdictional assessing officer are available on the website <http://www.incometaxindiaefiling.gov.in> under "services" know your jurisdictional A.O.

6. Aggrieved assessee preferred an appeal to the Ld. CIT(A), who confirmed the order of the AO by observing as under:

In the grounds of appeal the assessee has challenged the rejection of request of rectification by the CPC. During appellate proceedings the Assessee did not furnish the copy of rectification application. It is not shown what rectification was sought. The assessee has filed the copy of his response to notice u/s.139)1) wherein two defects have been pointed out by the CPC and with respect to both the defects the assessee agreed that defects were there. The first defect was that the assessee furnished

ITR 2007 claiming deduction u/s 11(2) without providing details of investment or deposits made u/s 11(5) in schedule 3 J. To the query do you agree with the defects, the assessee responded yes. The other defect pointed out by the CPC was that the assessee had selected the flag yes in response to defect that assessee had not obtained registration u/s 12A/12AA.

From the above it can be seen that as such there was no error on part of the CPC in rejecting the claim of assessee. The intimation of the CPC is based on responses of assessee himself to the defects pointed out by the CPC.

In view of the above facts and circumstances of the case I find no cause to interfere with the impugned order of CPC. The grounds of appeal are rejected.

7. Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us.

8. The Ld. AR before us contended that the assessee has not been given benefit for the application of income and amount accumulated u/s 11(1) of the Act for Rs. 191,368/- and Rs. 58,900/- respectively for which it was entitled. The Ld. AR further contended that the assessee is registered u/s 12A of the Act and therefore the income cannot be made subject to tax at the Maximum Marginal Rate. The Ld. AR also contended that the assessee has made investments in the Scheduled/Nationalized Bank as per the provision of section 11(5) of the Act.

9. On the other hand the Ld. DR contended that the assessee in the return of income has neither specified mode of investment nor has furnished the details for the registration u/s 12A of the Act. Thus, in the absence of such information the Ld. CIT(A), rightly upheld the findings of the AO.

10. We have heard the rival contentions of both the parties and perused the materials available on record. From the proceedings discussion, we note that the benefit of deduction u/s 11 of the Act has been denied by the authorities below primarily on the reasoning that the trust was not registered under the provision of section 12A of the Act. However, on perusal the submission filed by the assessee we note that the trust was registered u/s 12A of the Act bearing No. CIT-R/65-7-H/84-85. Thus, we find there is a contrary finding between the finding of authorities below vis-à-vis the submissions made by the assessee. On confrontation to the Ld. AR and the DR about the mismatch in the facts as discussed above, both of them prayed to restore the issue to the file of the AO for fresh adjudication as per the provision of law.

11. Without prejudice to the above, we also note that the even the assessee inadvertently has not furnished the details about the registration u/s 12A of the Act, the assessee cannot be deprived of the benefit granted under the provisions of section 11 of the Act. With this observation, we are inclined to set aside the issue to the file of the AO for fresh adjudication as per the provision of law and in the

light of the discussion stated above. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

12. In the result, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in the Court on 14/12/2022 at Ahmedabad.

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 14/12/2022
Manish