IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'G' NEW DELHI]

BEFORE SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 4000/DEL/2019 (A.Y. 2016-17)

Shambhu Dayal Harish Chand Charitable Trust, G-43, Masjid Moth, Greater Kailash-II, New Delhi – 110 048. **PAN No. AAFTS4741P** **(APPELLANT)**	Vs.	DCIT, CPC, Bangalore. **(RESPONDENT)**

Assessee by : **Ms. Rano Jain, Adv.; &**
Ms. Mansi Jain, Advocate.

Department by : **Shri Narpat Singh,**
Sr. D. R.;

Date of Hearing	**28.02.2023**
Date of Pronouncement	**13.03.2023**

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee against the order dated 08.03.2019 of the ld. Commissioner of Income Tax (Appeals)-40 [(hereinafter referred to CIT (Appeals)] New Delhi, for assessment year 2016-17.

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

"1. On the facts and circumstances of the case, the order passed by the Learned CIT(A) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of CPC in not allowing assessee the benefit of accumulation u/s 11(2) of the Income Tax Act amounting to Rs. 34,73,760/-.

3. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of CPC in upholding that the benefit of accumulation is not available to the assessee as it has not exercised its option before the due date of filing of return u/s 139(1) of the Act.

(ii) That the assessee has in fact exercised the option before the extended due date of filing of return.

4. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in not allowing assessee the benefit of accumulation u/s 11(2) of the Act, misinterpreting the facts of the case.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the revised return and Form 10B filed by the assessee."

3. Brief facts of the case are that, the assessee is a charitable trust filed return of income. Since the income of the assessee trust has not been fully utilized during the Assessment Year a sum of Rs. 34,73,758/- was accumulated or set apart for carrying out the purpose of the trust in the succeeding Assessment Years and Form No. 10 was filed on 14/10/2016. The return was processed by the CPC and the intimation u/s 143(1) of the Act dated 27/04/2007 was issued, application of Rs. 34,73,758/- was denied and demand of Rs. 10,42,290/- raised. The assessee filed an application u/s 154 of the Act before the CPC to delete the said demand, the CPC while rejecting the application filed u/s 154 held as under:-

> *"Please refer to the rectification request filed by you for the Assessment Year: 2016-17 in respect of above mentioned order and received at Centralized Processing Center on 05/05/2017.*
>
> *"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 reasons (if any)"*
>
> *As seen from the Return of income filed, It is seen from the S.L. No 12(iv) of SCH. TI that Assessee has not exercised this option in writing before due date to the Assessing Officer for "Amount deemed to have been applied to charitable or religious purposes in India during the previous year as per clause (2) of Explanation to section 11(1)". Hence, Assessee is not eligible for this claim."*

4. As against the order of the CPC, filed an appeal before the CIT(A) and the CIT(A) has dismissed the appeal filed by the assessee vide order dated 08/03/2019 in following manners:

> *"5.1.4. Section 154~provides or mistake apparent from record. In the case under[1] consideration as noted above, there is nothing on record i.e., in the income tax return or even the audit report in Form No. 10B to suggest that amount had been set apart/accumulated in terms of section 11(2) for which Form No. 10 was filed and hence there is no infirmity in the action of the CPC in rejecting the rectification application under section 154. It is noted that the appellant has subsequently furnished a revised audit report in Form No. 10B but as noted above, but the same cannot be taken into consideration. In view of the discussion above, grounds of appeal nos. 1 and 2 are* ***dismissed.***

5. Aggrieved by the order of the CIT (A) dated 08/03/2019, the assessee has preferred the present appeal.

6. The Ld. Counsel for the assessee vehemently submitted that the CIT(A) has committed an error not allowing the assessee the benefit of accumulation u/s 11(2) of the Act amounting to Rs. 34,73,760/-, the Lower Authorities have denied the legal and eligible benefit as per law to the assessee. Therefore submitted that the order of the CIT (A) is bad in law. On the other hand, the Ld. DR justifying the order of the CIT(A), submitted that the assessee cannot

correct his mistake by invoking Section 154 of the Act and the said provision is meant for correcting the mistake apparent on record. Therefore sought for dismissal of the appeal.

7. We have heard the parties and perused the material available on record and gave our thoughtful consideration. It is not in dispute that the assessee had filed Form No. 10 and who is eligible for the deduction. It is the case of the assessee is that the assessee should have filed u/s 11(2) of the Act but due to punching mistake the assessee had claimed the deduction u/s 11(1) of the Act. it is not the case of the Revenue that the assessee is not eligible for the benefit for the deduction u/s 11 Sub Clause 2 of the Act. The only reason for rejecting the application filed by the assessee is that there is no error apparent from the record of the order passed by the CPC.

8. The Hon'ble Delhi High Court in the case of Pawan Kumar Agarwal Vs. CIT in ITA No. 199/2014 has held as under:-

> *"6. Section 154 to the extent it is relevant is extracted below: -*
>
> *"Rectification of mistake.*
>
> *154. [(1) With a view to rectifying any mistake apparent from the record an income-tax authority referred to in section 116 may, -*
>
> *(a) amend any order passed by it under the provisions of this Act ; [(b) amend any intimation or deemed intimation under sub- section (1) of section 143.]] [(1A) Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to an order referred to in sub-section (1), the authority passing such*

order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.] (2) Subject to the other provisions of this section, the authority concerned--

(a) may make an amendment under sub-section (1) of its own motion, and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the [***] [Commissioner (Appeals)], by the [Assessing] Officer also."

It is apparent from the bare reading of the above provision that the power of rectification extends to amendment of an intimation or deemed intimation under Section 143. This power ensures even after the matter has been considered and decided in any proceeding by way of appeal or revision. Necessarily, this power extends even at the stage of the appeal and the further appeal to the ITAT. Even after such decision, it is open to the AO to amend the intimation under Section 143 (1) if the circumstances so warrant. We are wholly in ITA 199/2014 Page 4 agreement with the decision in Sam Global's matter (supra) that the technicalities in the given circumstances of the case ought not to obscure the justice. The justice demands, in the peculiar facts of the case, that there is no impediment to relief. That appears to have been overlooked in entirety by the lower authorities and the Tribunal had failed to notice that the controlling expression in Section 154 is not "an error" which is somewhat coloured by the exercise of power by the authorities. Instead, the controlling expression is "any mistake"

which has wider connotation and includes mistakes committed by the parties also.

7. In view of the above discussion, the question of law framed has to be answered in favour of the assessee and against the Revenue. The appeal is consequently allowed but without any order as to costs."

9. In our considered opinion, the Revenue Authorities have to tax the right person in right manner and shall not disallow the eligible deductions on mere technicalities. The Revenue Authorities ought to have followed the ratio laid down by the Hon'ble Delhi High Court in the case of Pawan Kumar Agarwal (Supra) and should have been allowed the benefit of accumulation u/s 11 Sub Section 2 of the Act amounting to Rs. 34,73,760/- to the assessee.

10. In view of the above discussion, we allow the assessee's Grounds of appeal and direct the authorities to allow the benefit of accumulation u/s 11 sub Clause 2 of the Act amounting to Rs.34,73,760/- to the assessee. Ordered accordingly.

11. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on : **13/03/2023.**

Sd/-	**Sd/-**
(B.R.R. KUMAR)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 13/03/2023

MEHTA/R.N Sr. PS

Copy forwarded to:-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI