IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI

BEFORE,
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No.1371/Del/2023, A.Y. 2017-18

Asha Modern Educational Society, Court Road, Behind Petrol Pump, Saharanpur Saharanpur, Uttar Pradesh-247001 PAN : AABTA3071A	Vs.	ITO Exemption Ghaziabad
(Appellant)		**(Respondent)**

Appellant by	Sh. Pratiyush Jain, CA
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	20/12/2023
Date of Pronouncement	22/02/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 13/05/2022 for Assessment Year 2017-18.

2. Grounds taken in this appeal are as under:

> *"1. The Ld. CIT(Appeals) has grossly erred in confirming the addition of Rs. 3,34,32,351/- to the total income of the appellant Trust by the CPC without considering the factum of non adherence to the conditions of section 143(1).*

2. The Ld. CIT (appeals) has grossly erred in not considering that the appellant Trust had already complied with the filing of audit report in form I0B in terms of the Circular No. 10/2019 (F. No.197/55/2018-ITA-I), dt. 22-5-2019 modified with the Circular No. 7/2021 (F.No. 197/49/2021 -ITA-1), dt. 26-3-2021 and the time limit for passing the order of condonation in filing of audit report by the PCIT(E) had already expired.

3. The Ld. ClT(Appeals) has grossly erred in his faliure to consider the case of M/s Shrimati Gitadevi Kondoi Seva Nidhi Vs. ITO (Exemption), I.T.A. No. 2498/Kol/2018, Dated- January 22nd ,2020 by the coordinate Bench of the Honourable 1TAT while framing the appellate order.

4. The appellant prays for leave to add, modify and amend any of the grounds of appeal and to take any sub grounds of appeal within the aforesaid grounds of appeal."

3. Brief facts of the case are that the assessee is an Educational Trust registered u/s 12AA of the Income Tax Act, 1961 ('Act' for short). The Assessee had filed its Income Tax Return mentioning its 12AA registration and claiming charitable status by claiming application of income for charitable purposes u/s 11 and 12 of the Act. The ITR has been processed/s 143(1) of the Act by the CPC without verification of registration u/s 12AA of the Act resulting in non-allowance of application of income for charitable purpose. After receiving intimation u/s 143(1) of the Act, assessee filed rectification application u/s 154 of the Act for reprocessing of Income Tax Return for considering deductions for application of income for charitable purposes under relevant Section 11 and 12 of the Act. Order u/s 154 of the Act was passed on 07/06/2019 by denying of application of income for charitable purpose and demand the tax considering the gross receipt of the trust as its income.

4. Aggrieved by the order passed u/s 154 of the Act, the assessee preferred an appeal before the ld. CIT(A). The Ld. CIT(A) vide order dated 13/05/2022 dismissed the appeal filed by the assessee. As against the order dated 13/05/2022, the Assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the assessee submitted that the Ld. CIT(A) has grossly erred in confirming the order made by the CPC without considering the factum of non-adherence to the conditions of Section 143 (1) of the Act. Ld. Counsel stated that the appellant's trust has already complied with the filing of Audit Report in Form No. 10B in terms of Circular No. 10/2019 dated 22.05.2019 modified with the Circular No. 7/2021 dated 26.03.2021 and the time limit for the passing of order of condonation in filing of the Audit Report by the PCIT (Exemption) had already expired. The Ld. Counsel submitted that the Ld. CIT(A) has failed to consider the case of M/s. Shrimati Gitadevi Kondoi Seva Nidhi Vs. ITO (Exemption), ITA No. 2498/Kol/2018 dated 22nd January, 2020. Thus, contended that the order of the Ld. CIT(A) deserves to be set aside by the Tribunal.

6. Per contra, Ld. DR submitted that the order of the Ld. CIT(A) requires no interference as the delay in filing Form 10B has not been condoned by the competent authority, therefore by relying on the order of the CIT(A), sought for dismissal of the Appeal filed by the Assessee.

7. We have heard the parties perused the material available on record. It is the case of the Assessee that the Assessee had uploaded in its Audit Report dated 29/09/2017 in Form No. 10B through its auditor, due to some technical mistake in the software the Audit Report uploaded was neither accepted by the system nor was it rejected immediately and no intimation either through e-mail or any post from the Department has given to the Assessee on this regard. It is seen from the record that the Form No. 10B was ready as on 29/09/2017 i.e. before filing Return of Income u/s 139 of the Act i.e. 26/10/2017. After coming to know about the said mistake of not uploading the Audit Report, the same has been uploaded on 06/09/2019. The Assessee contended that the return for the relevant year has been uploaded within time showing the very same Audit Report as 29/09/2017. After coming to know about not uploading the Audit Report, the Assessee filed a letter for condonation of delay uploading the Form 10B along with certificate from auditors explaining the reason for delay and hard copy of Form No. 10B was sent through registered post to the Jurisdictional Commissioner of Income Tax (Exemptions). Thus, it can be safely construed that the Revenue has rejected the plea of the Assessee based on mere technicalities and it is not the case of the Revenue that the Audit Report was not ready as on the date of filing of the return or Assessee is not eligible for any other reason for claiming charitable status by claiming application of income for charitable purpose u/s 11 & 12 of the Act.

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

> *"8. 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 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. It is well settled law that 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 have not followed the above ratio laid down by the Ho'ble High Court of Delhi in the case of Pawan Kumar Agarwal (supra), therefore, in our considered opinion the Revenue Authorities should have allowed the benefit of exemption to the Assessee. In view of the above discussion, we allow the Grounds of appeal of the Assessee by deleting the addition of Rs. 3,34,32,351/- made by the A.O, which has been confirmed by the CIT(A).

10. In the result, the Appeal filed by the Assessee is allowed.

Order pronounced in open Court on 22nd February, 2024

Sd/-	Sd/-
(M.BALAGANESH)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 22/02/2024
B.R./R.N Sr. Ps.

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI