

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

ITA No.5082/Del/2025, A.Y. 2018-19

New Surya Public School B-110/B, Sangam Vihar, New Delhi-110062 PAN: AAAAN5855H (Appellant)	Vs.	Deputy/Assistant Commissioner of Income Tax, Ward 31(4), Delhi (Respondent)
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Appellant by	Sh. Rahul Satiya, Advocate
Respondent by	Ms. Ankush Kalra, Sr. DR

Date of Hearing	10/12/2025
Date of Pronouncement	24/12/2025

ORDER

PER RAJ KUMAR CHAUHAN, J.M. :

1. This appeal is filed by the assessee /appellant against the order of Learned Commissioner of Income Tax (Appeals), Addl./JCIT(A)-1, Chennai [hereinafter referred to as the "*CIT(A)*"], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] dated 27.06.2025 for the A.Y. 2018-19.

- 2.** The facts in brief as culled out from the order of the authorities below are that the appellant/assessee is a registered society having registered under Societies Registration Act, 1860 and is running an educational institution in the name of 'New Surya Public School'. The assessee society filed its e-return under section 139(1) of the Act for A.Y. 2018-19 on 23.08.2019 declaring income at Rs. 1,53,933/-. While processing the return under section 143(1) of the Act, the Ld. CPC, Bangaluru has disallowed the expenditure of Rs. 62,71,074. It is alleged that the Ld. CPC has passed the order without considering the facts and circumstances of the case.
- 3.** Aggrieved by the disallowance as stated above, the assessee filed appeal before the Ld. CIT(A) who has dismissed the same on the ground that the appellant has filed the Income Tax Return ('ITR') in Form ITR-7 instead of Form ITR-5, hence the order of the CPC, Bengaluru under section 143(1) of the Act was upheld and the appeal was dismissed.
- 4.** Aggrieved by the impugned order of the Ld. CIT(A), the assessee has filed appeal before us raising following grounds of appeal:

"1. That the order dated 27.06.2025 passed by the Ld. CIT(A) is bad in law and on facts.

2. *That in the fact and circumstances of the case and in law, the Ld. CIT(A) has erred in dismissing the appeal merely on the ground that the return was filed in ITR-7 instead of ITR-5, without appreciating that the assessee had disclosed all relevant particulars and had not claimed any exemption under Section 11 or 12 of the Act.*

3. *That in the fact and circumstances of the case and in law, the entire expenditure of Rs. 62,71,074/- incurred towards running the school was genuine, lawful, and wholly and exclusively for the purpose of business, and therefore, could not have been disallowed merely on account of the wrong selection of ITR form.*

4. *That in the fact and circumstances of the case and in law, the filing of a wrong return form is a procedural defect and should not defeat a substantive claim of the assessee, especially when no prejudice is caused to the revenue.*

5. *That in the fact and circumstances of the case and in law, the Ld. CIT(A) has failed to consider that substance prevails over form, and procedural technicalities should not override substantive rights.*

6. *That the Appellant craves leave to add, withdraw or alter any or all the above grounds of appeal in the course of hearing."*

5. The only question for determination before us is whether the filing of the ITR in Form -7 instead of Form-5 would automatically result into disallowance of the expenditure lawfully incurred by the assessee?

6. It has been stated in the written arguments on behalf of the assessee that selecting Form ITR-7 instead of ITR-5 is a procedural/technical lapse which cannot defeat the substantive right of assessment under

the correct charging provisions, especially when all the particulars of income, receipts and expenditure are correctly disclosed and there is no claim of exemption under sections 11 and 12 of the Act having been made by the assessee. The Ld. AR has relied upon the cases of Kolkata Bench of the Co-ordinate bench in ITA No. 613 and 614/Kol./2015 order dated 1st May, 2023 where in an identical situation an AOP inadvertently filed ITR-7 instead of ITR-5, leading CPC to tax it at maximum marginal rates without allowing expenses. The Ld. Co-ordinate bench has held that the Income Tax Authorities are 'not supposed to punish assesseees for their bona fide mistake' and set aside the orders of the lower authorities, and restored the matter to the AO to tax the assessee at the correct rate considering the revised return in Form ITR-5. Ld. AR has further relied on cases of Ld. Co-ordinate Delhi Bench in Care Foundation Village vs. ITO (Exemption), Delhi ITA No. 3746.Del.2023 dated 05.07.2024. Lastly it is argued that the Ld. CIT(A) has dismissed the appeal without hearing the assessee and the impugned order is passed ex parte and in the given facts and circumstances, liable to be set aside and the matter needs to be restored to the AO for deciding afresh.

7. We have noticed that the order in ITA No. 3746.Del.2023 (supra) was delivered by Ld. AM who is part of this bench and while allowing the appeal, it was observed that *“the assessee has wrongly filed ITR-7 instead of ITR-5, therefore, I direct the Assessing Officer to consider the case of the assessee and re-assess the income of the assessee as per ITR-5. Further, I direct the assessee to file a financial statements and submit the data as per ITR-5 before the Jurisdictional Assessing Officer. I direct the Assessing Officer to re-do the assessment after giving proper opportunity of being heard to the assessee on various grounds raised by the assessee, complete the assessment de novo as per law”*.

8. We have considered the rival submission and examined the record. It is settled law that technicalities are handmade of the justice and the procedural defects cannot be allowed to defeat the substantive rights and denying the right to justice to the assessee. Admittedly, only lawful tax can be recovered and assessee is entitled to the allowance of the expenditure lawfully incurred and duly explained in the ITR. Therefore, we agree with the contention raised on behalf of the assessee that mere filing of the return in Form ITR-7 instead of Form ITR-5 cannot defeat the substantial right of the

assessee to the allowance of the expenditure which has been lawfully incurred while running the school by the assessee society which is not even required to be registered for the purpose of claiming exemption under section 11 and 12 of the Act as the assessee does not fulfil the requirement for mandatory registration under section 11 and 12 of the Act. For these reasons, the impugned order is set aside.

9. In our considered view as per the facts available on record that the assessee has wrongly filed ITR-7 instead of ITR-5, therefore respectfully following the co-ordinate bench decision in ITA No. 3746.Del.2023 (supra), we direct the Assessing Officer to consider the case of the assessee and reassess the income of the assessee as per ITR-5. Further, we direct the assessee to file the financial statements and submit the data as per ITr-5 before the Jurisdictional Assessing Officer. We direct the Assessing Officer to re-do the assessment after giving proper opportunities of being heard to the assessee on various grounds raised by the assessee, complete the assessment de novo as per law. Accordingly, all the grounds raised by the assessee are remitted back to the Assessing officer and we direct the Assessing Officer to complete the assessment as per above direction.

9. In the result, the appeal of the assessee is accordingly allowed in above terms for statistical purposes.

Order pronounced in open Court on 24th December, 2025.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 24/12/2025
Binita, Sr. PS

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

