आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / **ITA No.257/PUN/2022**
निर्धारण वर्ष / **Assessment Year : 2011-12**

Lions nab Community Eyecare Centre Miraj, Plot No.P-39, M.I.D.C, Miraj Sangli, Maharashtra – 416410. PAN: AABFL 4373 L	Vs	The DCIT, CPC, Bangalore.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shri M.G.Jasnani – DR
Date of hearing	19/12/2022
Date of pronouncement	06/01/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of ld.Commissioner of Income Tax(Appeals)[NFAC], Delhi dated 10.12.2021 emanating from assessment order of DCIT, CPC dated 27.01.2012 under section 143(1) of the I.T.Act, 1961 for the A.Y.2011-12. The Assessee has raised the following grounds of appeal:

> *"On the facts and circumstances of the case and in Law the Ld. CIT(A) erred in not condoning the Delay in filing the appeal though there was reasonable cause for the delay.*
>
> *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in denying the benefit of section 11 of the Income Tax Act, 1961 on incorrect appreciation of facts.*

The appellant craves leave to add to, amend, alter, modify or delete all or any of the grounds of appeal or add altogether a new ground of appeal before or at the time of hearing."

2. First of all, at the outset of hearing, no one appeared on behalf of the assessee, we heard ld.Departmental Representative(ld.DR) for the Revenue.

3. We have heard ld.DR for the Revenue and perused the records. We find that even before this Tribunal also there was a delay of around 73 days.

4. The ld.Departmental Representative(ld.DR) for the Revenue relied on the order of the ld.CIT(A) and Assessing Officer(AO).

5. Delay in filing appeal before this Tribunal of 73 days is condoned, as it was Covid Pandemic Period.

6. The DCIT(CPC) has passed an order under section 143(1) of the Act for A.Y. 2011-12 in the case of the assessee. Assessee had filed appeal before the ld.CIT(A) against the said order. There was a delay in filing appeal before the ld.CIT(A) of 7 ½ years. The assessee submitted before the ld.CIT(A) that the staff of the assessee who received the order under section 143(1) had not brought it to the notice of the office bearers of the assessee and hence there was delay in filing of appeal. The ld.CIT(A) in para 5.7 has decided not to

condone the delay and dismissed the appeal. However, in para 7 of his order, the ld.CIT(A) has without prejudice discussed the merits of the case and decided the appeals on merit also. Once the ld.CIT(A) has decided the case on merits, it means the ld.CIT(A) has condoned the delay, though in para 5.7 ld.CIT(A) mentioned that delay not condoned. However, the subsequent act of ld.CIT(A) deciding the case on merits upheld the order of the Assessing Officer. Aggrieved by the order of the ld.CIT(A), the assessee has filed appeal before this Tribunal.

7. As mentioned in earlier para, no one has appeared on behalf of the assessee. On perusal of the record, it is observed that DCIT(CPC) has not made any disallowance or not added any income but has merely calculated the tax liability based on the return of income. The relevant part of the order under section 143(1) is reproduced here as under:

Reporting Heads	**As Provided by Tax payer**	**As computed Under Section 143(1)**
INCOME FROM BUSINESS OR PROFESSION	54,93,373	54,93,373
LOSS OF PREVIOUS YEARS ADJUSTED	2,57,057	2,57,057
GROSS TOTAL INCOME	52,36,316	52,36,316
TOTAL INCOME AFTER DEDUCTIONS	52,36,316	52,36,320
AGGREGATE INCOME	52,36,316	52,36,320

TAX ON INCOME AT NORMAL RATES	0	15,70,896
NET TAX PAYABLE	0	15,70,896
EDU CESS+SECONDARY & HIGHER EDU CESS	0	47,127
GROSS TAX LIABILITY BEFORE TAX RELIEF	0	16,18,023
NET TAX LIABILITY	0	16,18,023
234BINTEREST	0	1,61,800
234C INTEREST	0	59,866
TOTAL INTEREST LIABILITY	0	2,21,666
AGGREGATE INCOME TAX LIABILITY	0	18,39,689
NET AMOUNT PAYABLE	**0**	**18,39,689**

Thus, there was no wrong caused to the assessee. The Aggregate Income as per Tax Payer & as per order u/s.143(1) is same i.e. Rs.52,36,320/-.

8. It is apparent from the order under section 143(1) that assessee had not claimed any exemption under section 11 of the Act in the return of income. Since assessee had not claimed any exemption under section 11 of the Act, in the return of income, the DCIT(CPC) while passing the order under section 143(1) has not granted any exemption. In this scenario, we do not find any fault with the order of the DCIT(CPC) as the order of the DCIT(CPC) is based on return filed by the assessee. In the statement of facts filed before this

Tribunal, the assessee has claimed that it has ironically filed return of income in Form No.5 whereas the form applicable for trust was Form No.7. If this is the fact assessee should have filed a revised return. However, assessee had not taken any action almost for seven and half years. Therefore, in these facts, we uphold the order of the DCIT(CPC) as the order is based on the return of income filed by the assessee.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 6th January, 2023.

Sd/-	**Sd/-**
(S.S.GODARA)	**(DR. DIPAK P. RIPOTE)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 6th Jan, 2023/ *SGR**

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.