



भारत सरकार / GOVERNMENT OF INDIA  
वित्त मंत्रालय / MINISTRY OF FINANCE  
आयकर विभाग / INCOME TAX DEPARTMENT  
राष्ट्रीय पहचानविहीन अपील केन्द्र / NATIONAL FACELESS APPEAL CENTRE (NFAC)  
दिल्ली / DELHI

To, SERVICE HOUSING COOPERATIVE SOCIETY LTD ASHOK NAGAR , RANCHI 834002 ,Jharkhand India	
--	--

PAN: AAAAS7534E	AY: 2016-17	Dated: 11/06/2024	DIN & Order No : ITBA/NFAC/S/250/2024-25/1065545522(1)
--------------------	----------------	----------------------	---

**Order u/s 250 of Income Tax Act,1961**

Instituted on 24/12/2018 from the order of **EXEMPTION WARD, RANCHI** dated 26/11/2018

<b>Appeal No</b>	CIT (A), Ranchi/10106/2018-19
<b>Status/Deductor Category</b>	
<b>Residential Status</b>	Resident
<b>Nature of Business</b>	N.A.
<b>Section under which the order appealed against was passed</b>	144
<b>Date of Order under which the order appealed against was passed</b>	26/11/2018
<b>Income/Loss Assessed (in Rs .)</b>	34251410
<b>Tax/Penalty/Fine/Interest Demanded (in Rs.)</b>	0
<b>Present for the appellant</b>	Not Applicable
<b>Present for the Department</b>	Not Applicable

1. The appeal has been filed on 24.12.2018 against the order u/s 144 of the Income Tax Act, 1961 (herein after referred to as the Act), passed by Exemption Ward, Ranchi (hereafter referred to as "the AO"), dated 26.11.2018.

**2. The Grounds of Appeal raised by the appellant are as under:**

1. *Whether the Assessing officer was justified in passing the order under 144 when none of the conditions of section 144 was hit*

Note:- The website address of the e-filing portal has been changed from [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) to [www.incometax.gov.in](http://www.incometax.gov.in).

2. *Whether the Assessing Officer was justified in issuing notices physically without taking into consideration the reply filed electronically on the portal when the Assessee has opted for E-proceedings and compliance was also made electronically*
3. *Whether the Assessing Officer was justified in passing the order under 144 in a hasty way on 26/11/2018, when the time barring date was 3 1/12/2018 (after 36days from date of order) without giving reasonable opportunity of being heard to the Assessee.*
4. *Whether the Assessing Officer was justified in denying the benefit of Section 11 and 12 without pointing out any specific incidence of applicability of Section 13(1)(c)(ii)*
5. *Whether the Assessing Officer was justified in passing an adhoc order under the disguise of be st judgement without applying his best judgement on the information or material gathered (Precondition of Section 144)*
6. *Whether the Assessing Officer was justified in passing the order without bringing forth any incidence of use of any part of such Income or an y property or the trust or institution directly or indirectly for the benefit of any person referred to in Section 13(3) of the Act*
7. *Whether the Assessing Officer was justified in ignoring the basis of selection of the case of the Assessee under CASS ie. Non-filing/delay filing of Form 10B and Large Gross Income despite registration.*
8. *Whether AO was justified in levying interest u s 234A,B and C in view of the decision of Honorable Jharkhand High Court in the case of Ajay Prakash Verma vs ITO*
9. *Whether the assessee be penalised for the professional negligence on the part of AR as all relevant documents and information were provided by the assessee to then AR who did not make proper compliance.*
10. *That the assessee craves the leave to add, modify, susbstitute,*

*alter any other ground or grounds of appeal at the time of hearing.*

**3. Facts of the case raised by the appellant are as under:**

1. *SERVICE HOUSING COOPERATIVE SOCIETY LTD. is a registered Society.*
2. *That the society has been regularly filing its Return of Income every year claiming exemption Under Section 11 and 12 of the IT Act.*
3. *That the Assessee has e-filed return of Income for AY 2016-17 on 25-01-2017 declaring Total Income of Rs. 7,16,040 vide Acknowledgement No. 601919000250117.*
4. *That the return was processed under Section 143(1).*
5. *That the case of the Assessee was selected for scrutiny under CASS on the following 2 grounds - a. Form 10 B not filed or filed after due date. b. Registration under 12A,12AA of the Act and large gross Income.*
6. *That the Notice under 143(2) was issued by the Preceding AO on 18-09-2017 which was duly served on the assessee. The assessee complied to the above notice and submitted the reply on e-portal with 4 annexures including BS, Computation, Form 10B and ITR AD copy.*
7. *E-Notices u.s 142(1) of the Act was issued on 10-07-2018 (Available) and 07-08-2018 (Not available on E-portal).*
8. *That Sri. J. Jaipuria, FCA and Authorised Representative appeared and sought time petition on the due date.*
9. *That as per Para 4 of the assessment order, the AO claimed to have issued Notice u.s 142(1) on 07-08-2018 but, the same is not available on the portal.*
10. *That last notice was issued on 24-10-2018 asking the Assessee to make the compliance or the order under 144 of the IT Act shall be passed on the basis of material available on record.*
11. *That final Show cause was issued on 09-11-2018 to make the compliance which is also not available on the Portal. Compliance*

*was to be made on 19-11-2018 and finally the order was passed on 26-11-2018 (without giving reasonable opportunity as the case to be time barred on 31-12-2018).*

- 12. That the Ld. AO has passed his order us 144 of the Act and has quote d 2 sections in his order, i.e. Section 144 and 13(1).*
- 13. That in the en tire assessment order the Ld. AO has not pointed out a single incidence which will entitle him to cancel the benefits of Registration under 11 and 12A of the Act. In Income Tax Act, taxation of Charitable and religious trusts is contained in a self regulatory code from Section 11 to 13B and being a special self contained code, the strict adherence to the provisions contained therein is expected from the Ld. AO.*
- 14. That the heading of the Section 13 contains Section 11 not to apply in certain cases meaning thereby that Section 13 contains entire list of the circumstances under which benefit of exemption us 11 can be denied to the Assessee.*
- 15. That since the Ld. AO has completely failed in pointing out any circumstances by which the connection of the case of t he Assessee and any of the circumstances could be established and therefore, the action on the part of the Ld. AO is beyond the legal boundaries and does not hold the power of the Law.*
- 16. That so far as passing of the order us 144 is concerned, it is most respectfully submitted for your kind consideration and perusal that the case of the Assessee does not fall in any of the circumstances mentioned in 144 as the Assessee has timely made compliance and submitted required documents on the portal.*
- 17. That the Assessee has opted for E-proceedings on t he Income Tax portal (Screenshot attached in support therto) and has replied to the notice twice electronically. (E-receipt of reply and documents attached).*
- 18. That on the basis of above submission, it is clear that the case of the Assessee is neither covered by any condition as e numerated by section 144, nor is hit by the provisions of Section 13, and*

*therefore, the order passed under 144 denying the benefit of 11 should be cancelled and the treating the Gross receipts of Rupees 3,35,35,371 as Total Income may kindly be deleted and Returned Income of Rupees 7,16,040 may kindly be accepted.*

#### **4. Appeal Proceedings:**

*The appeal has been received in the National Faceless Appeal Centre (NFAC), and notices of hearing was issued calling for written submission to substantiate its grounds of appeal. Further a notice has been issued providing an opportunity under Faceless Appeal Scheme, 2021 notified on 28.12.2021 vide S.O. 5429(E) to make additional submissions, if any.*

**Written Submission:** *The appellant has submitted his submission on 05.06.2024, is as under:-*

*In addition to the Statement of Facts and Grounds of Appeal filed earlier in which we have presented our case in detail before you, we would like to mention that we have all the documents and books of accounts which are required to be maintained. We are delivering charitable activities to our members which are evident from our Audited accounts also. We are audited by Govt auditors (cooperative auditors) as well as CA audit is being done as per provisions of Income Tax Act. All the office bearers of our society are retired, Govt employees and they are rendering honorary services for charitable activities for members of society. Since we had given Power of Attorney to our Authorised Representative CA J. Jaipurkar, Partner of M/s S.Jaykishan, Chartered Accountants, in good faith we believed that he is representing our case before the Ld Assessing Officer properly and we never enquired from him regarding progress of this case. We mentioned this fact in the Stay Petition filed with Ld Assessing Officer. We are enclosing herewith following documents in this respect:*

*1. Copy of letter no. NIL dated 07.08.2018 from M/s S.Jaykishan*

*seeking documents to be produced before Ld. Assessing Officer.*

*2 Copy of our letter no. 384 dated 11.08.2018 along with List of 25 nos. of documents to be produced before Ld. Assessing Officer. Copy of our letter also contains-Receiving- by CA Firm of all the documents in two sets.*

*3. Copy of Power of Attorney given by us in favour of CA J. Jaipuria of M/s S. Jaikishan, Chartered Accountants.*

*4. Copy of our Stay Petition on tax demand vide letter no. 589 dated 14.12.2018.*

*The above documents clearly shows that we have maintained all the documents properly and within two to three days of letter from CA Firm, we provided all the Requisite Documents for producing before Ld Assessing Officer. This is negligence on part of Chartered Accountant and we should not be penalized for that. Further, this is not a fit case for passing Order under Sec 144 because we have maintained all the required and necessary Books of Accounts meticulously which has been audited twice, once by CA and again by Govt auditors and they have mentioned in their Audit Report that proper books of accounts have been maintained. Copy of Audit Report was furnished to the Assessing Officer in reply to notice dated 18.09.2017 on E-portal along with Balance Sheet, Computation and ITR AD Copy. In spite of having copy of Audit Report issued by CA on the basis of Books of Accounts maintained by us, the Ld Assessing Officer chose to pass Assessment Order u/sec 144 which is totally illogical and against the basic principles of Natural Justice. The Ld Assessing Officer passed the Order u/sec 144 by invoking provisions of Sec 13(1)(c)(ii) presuming that part of income or any property of the Society has been used for the persons mentioned in Sec 13(3). However, in support of his presumption, he has not given any instance or evidence of such misuse. Therefore, it is apparent that*

*he has passed the Order based on his Presumptions and conjectures without applying his mind.*

*That on the basis of Statement of Facts and Grounds of Appeal filed earlier and above submission, it is clear that the case of the Assessee is neither covered by any condition as enumerated by section 144, nor is hit by the provisions of Section 13, and therefore, the order passed under 144 denying the benefit of 11 should be cancelled and treating the Gross receipts of Rupees 3,35,35,371 as Total Income may kindly be deleted and Returned Income of Rupees 7,16,040 may kindly be accepted.*

**6. Decision:**

**6.1** Brief facts of the case are that the appellant had filed its return of income for A.Y. 2016-17 in ITR-7 and had claimed exemption u/s 11 and 12 of the Income Tax Act with total income at RS. 7,16,040/-. The case of the appellant was selected for scrutiny under CASS with the following reasons:

1. Form 10 B not filed or filed after due date.
2. Registration u/s 12A/12AA and large gross income.

**6.1.1** During the course of the assessment proceedings the AO vide notice u/s 10.7.2018 asked the appellant to furnish documentary evidences of application of fund of the society during the F.Y. 2015-16. The appellant submitted some documents in response to the said notice but no document like memorandum of the society, article of the society, activities report, copy of the bank statement were produced by the appellant society. The AO issued notice u/s 142(1) on 7.8.2018 but again there was no compliance on the part of the appellant to the same. Thereafter the AO gave another opportunity to the appellant by issuing notice u/s 142(1) and also informed the appellant that it was the last opportunity to make compliance to the notice. As no compliance was made by the appellant the AO issued a letter dated 24.10.2018 informing it that in case of non-compliance ex-parte assessment order without giving the benefit of section 11 and 12 would be passed u/s 144 of the Income Tax Act. As again there was no compliance on the part of the appellant the AO issued show cause notice dated 9.11.2018 stating that why the assessment order should not be passed u/s 144 of the Income Tax Act and in case of non-

production of supporting documents of application of funds as claimed in the return of income no benefit of exemption u/s 11 and 12 shall be allowed. As the appellant did not respond to the said show cause notice the AO proceeded with completing the assessment proceedings u/s 144 of the Income Tax Act and assessed the total income of the appellant at Rs. 3,35,35,371/- after denying the exemption claimed u/s 11 and 12 of the Income Tax Act.

- 6.1.2** The appellant has filed the present appeal against the said order of the AO. During the course of the assessment proceedings the appellant was asked to submit legal and factual information in support of its grounds of appeal. The appellant submitted SOF and the grounds of appeal vide its reply. The appellant was again requested vide this office notice dated 3.5.2024 to submit any legal and factual information (in addition to the information provided by appellant vide its reply dated 18.2.2021) in support of its contention. As no reply was received again a notice u/s 250 was issued asking the appellant to submit as under:

*“The submission furnished by you on ITBA on 18.10.2023 has been taken on record. Vide this notice you are afforded 1 more opportunity to furnish any information/documents as you may deem fit. Your reply should be uploaded on ITBA within 7 days i.e. 20.5.2024 of the receipt of this email/letter after which the appeal would be decided judiciously based on material/information available on record.”*

As there was no reply on the part of the appellant another opportunity was provided to the appellant vide this office notice dated 30.5.2024. In response to the same the appellant has submitted a letter in which he has reiterated the facts mentioned in the SoF and the grounds of appeal. The appellant has submitted nothing that can reflect the activities being undertaken by it, it's Memorandum, any evidence supporting its claim u/s 11 and 12, bank account details etc. The appellant is time and again just mentioning the facts and submitting the same. In the absence of any such detail it is difficult to form an opinion whether the society has abided with the provisions of section 11 and 12. The various grounds of appeal taken by the appellant are adjudicated as under.

- 6.2** The appellant in its ground of appeal 1 has assailed the AO for passing the order u/s 144 of the Income Tax Act.
- 6.2.1** After the perusal of the assessment order it is seen that the AO passed the order u/s 144 as a last resort when the appellant did not comply with any of the notices sent by him. The appellant has stated that the notices issued by the AO

were not available on e-portal. The appellant has not submitted any evidence in support of its contention. Moreover the appellant's AR had appeared before the AO and partial reply was also submitted in response to the notice dated 10.7.2018. It is surprising that neither the appellant nor its AR enquired about the pending assessment proceedings from the AO either by e-mail or by going physically to the office. It is not the case that the appellant was totally unaware about the assessment proceedings and all the proceedings were conducted at its back. In view of the same the ground raised by the appellant lacks merit.

**The ground of appeal 1 is dismissed.**

**6.3** The appellant in its grounds of appeal 2 and 3 has assailed the AO for passing the order u/s 144 while issuing notices physically when the appellant had opted for e proceedings and not considering the replies filed by the appellant electronically. The appellant has also assailed the AO for not providing reasonable opportunity to the appellant as AO passed the order on 26.11.2018 when the time barring date was 31.12.2018. Both the grounds of appeal are being adjudicated together for the sake of convenience and to avoid repetition.

**6.3.1** After the perusal of the assessment order it is seen that the AO had provided ample opportunities to the appellant to represent itself which were not availed by the appellant. The appellant has not submitted any evidence to prove that it had filed the replies electronically which were not considered by the AO( the appellant has stated in its reply that it is submitting the e-receipt of the reply and the documents but there was no such e-receipt with the reply). Also the AO issued the final show cause notice on 9.11.2018 for which the compliance date was 19.11.2018 (as per the appellant) and the final order was passed on 26.11.2018 i.e. 7 days after the date of compliance. The appellant has stated that the AO ought to have waited till 31.12.2018 for passing the final order. The appellant has not explained as to why the AO should have waited till the very last day when the appellant had not requested for any such time. In view of the above the grounds raised by the appellant are without any basis and lack merit. **The grounds of appeal 2 and 3 are dismissed.**

**6.4** The appellant in its ground of appeal 4 and 6 has assailed the AO for denying the exemption u/s 11 and 12 without pointing out any incidence of applicability of section 13(1)(c)(ii) or section 13(3). Both the grounds of appeal are being adjudicated together for the sake of convenience and to avoid repetition.

**6.4.1** After the perusal of the assessment order it is clear that the appellant had not submitted any detail in regard to exemption u/s 11 and 12 such as the sources of income, details of expenditure etc. from which the AO could have verified the genuineness of the appellants claim u/s 11 and 12. In the absence of the

same the AO was completely justified in denying the exemption u/s 11 and 12.  
**The grounds of appeal 4 and 6 are dismissed.**

**6.5** The appellant in its ground of appeal 5 has assailed the AO for passing the order u/s 144 without applying his best judgment on the information or material gathered.

**6.5.1** As discussed in para 6.3.1 above the appellant had not submitted any relevant information as asked for by the AO and in the absence of the same the AO used his best judgment on the material available with him and hence there is no fault in his assessment order. **The ground of appeal 5 is dismissed.**

**6.6** The appellant in its ground of appeal 7 has assailed the AO for ignoring the basis of selection of case under CASS.

**6.6.1** The case of the appellant was selected for verifying two points. Non-filing/delay in filing of Form 10B and Registration u/s 12A/12 AA and large gross income. The second reason very well means to examine the genuineness of claim of deduction u/s 11 and 12 in the light of the fact that the appellant has large gross income. In view of the same the AO was justified in his actions. **The ground of appeal 7 is dismissed.**

**6.7** The appellant in its ground of appeal 8 has assailed the AO for charging interest u/s 234 A, 234B and 234C. As the same is consequential so it is not being commented upon.

**6.8** The appellant in its ground of appeal 9 has pleaded that it should not be penalised for the professional negligence on the part of AR as appellant had provided all the documents and information to the AR who did not make proper compliance.

**6.8.1** This ground of appeal is totally in contradiction to the grounds of appeal taken earlier as in all those grounds the appellant has assailed the actions of the AO and even submitted that appellant had submitted all the information electronically which was not considered by the AO. The ground taken by the appellant is devoid of merit as the AR was working on behalf of the appellant only and now stating that AR was at fault is like trying to escape the law by giving a lame excuse. **The ground of appeal 9 is dismissed.**

**6.9** The ground of appeal 10 is general in nature hence is not being commented upon.

**7. The appeal is dismissed.**

**Commissioner of Income-tax (Appeals)**  
**Income Tax Department**

