

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.427/CTK/2015
(निर्धारण वर्ष / Assessment Year :2011-2012)

M/s Ezma Foundation, At: Room No.308, Block-A, Forest Park, Nirmala Plaza, Forest Park, Bhubaneswar Odisha-751009	Vs.	ACIT(Exemption Circle), Aayakar Bhawan, Annex, Vanivihar, Bhubaneswar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCE 3820 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri A.P.Mishra, AR
राजस्व की ओर से /Revenue by : Shri A.K.Mohapatra, CITDR
सुनवाई की तारीख / Date of Hearing : **25/07/2017**
घोषणा की तारीख/Date of Pronouncement **03/08/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed an appeal against the order of CIT(A), Cuttack, passed in ITAppeal No.038/2014-15, dated 03.08.2015, u/s.143(3) of the Income Tax Act.

2. The assessee has raised the substantive grounds of appeal against the order of the CIT(A), who was erred in confirming the action of AO as the AO has rejected the Form No.10 in respect of accumulation of unutilized funds filed in the course of assessment proceedings.

3. Brief facts of the case are that the assessee is a company registered under Section 25 of the Indian Companies Act, 1956 and filed the return of income on 22.9.2011 claiming exemption u/s.11 of the Act. Further, the assessee trust is registered u/s.12A of the I.T.Act and also obtained approval u/s.80G of the Act. The main object of the assessee to carry out programmes as per the objectives and has undertaken the

projects relating to water supply in the said financial year. The AO on perusal of the Income Tax records, found that the assessee has receipts of Rs.10,03,76,953/- and observed that only 19.96% of total receipts were spent during the year and as per the rule 17 of I.T.Rules the Form No.10 has to be filed before the expiry of time limit allowed u/s.139(1) of the Act for filing return of income. The Id. AO dealt on the disputed issue at page 2 of the order and observed that the assessee has not complied the conditions of setting apart required u/s.11 of the Act within the specified time and there is a delay in filing the Form No.10 and further the AO has dealt on the amendments of Rule 17 and distinguished the judicial decisions and finally the AO has denied the benefit of exemption u/s.11 as the Form No.10 was not filed within the prescribed time limit u/s.139(1) of the Act.

4. Aggrieved by the order of the AO, the assessee has filed an appeal before the CIT(A). The Id. CIT(A) having considered the grounds raised by the assessee and the submissions made in the course of appellate proceedings had made observation at para 3 and found that the Form No.10 was filed beyond the time limit prescribed and, therefore, the assessee is not entitled for exemption u/s.11 of the Act and dismissed the appeal of the assessee.

5. Being aggrieved with the order of CIT(A), the assessee is in further appeal before the Tribunal. Assessee has filed an application for adjournment, however, we reject the same and appeal is heard on merit and Id. DR relied on the order of CIT(A).

6. We heard the submissions and perused the material on record. *Prima facie*, the assessee was granted registration u/s.12A of the Act on 26.10.2010 and approval u/s.80G of the Act. In the financial year 2010-2011, the assessee having obtained receipts has to comply the conditions of application of funds to the extent of 85% of the receipts towards the objectives as per the byelaws and satisfy the provision of section 11(2) of the Act, whereas Form No.10 has to be filed as per the provisions under rule 17 of the I.T.Rules. We on perusal, found that the assessee has filed the Form No.10 before the AO on 11.11.2013 in the assessment proceedings, wherein it was dated 1.10.2011 and the Id. AO also considered the audit report and the resolution passed by the management, further the CIT(A) has observed that the assessee has failed in complying the responsibilities of application of funds received during the year and there is a delay in submitting the Form No.10. We are of the opinion, based on material record filed before us that the assessee has filed the Form No.10 before completion of assessment proceedings, which is not disputed and we support our view relying on judicial decisions:-

i) CIT Vs. Simla Chandigarh Diocese Society [2009] 318 ITR 96 (P & H):

Section 11 of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under trust accumulation of Income - Assessment year 2003-04 - Form 10 may be furnished before assessing authority completes concerned assessment [In favour of assessee]

As held by the Supreme Court in CIT v. Nagpur Hotel Owner's Association [2001] 247 ITR 201, Form 10 may be furnished before the assessing authority completes the concerned

assessment. There is no specific bar prohibiting the assessee from modifying the figure of accumulation.

ii) Association of Corporation & Apex Societies of Handlooms Vs. ADIT, [2013] ITR 287 (Delhi) :

Section 11 of the Income-tax Act, 1961, read with Rule 17 of the Income-Tax Rules, 1962 - Charitable or religious trust - Exemption of income from property held under - Accumulation of income - Assessment years 1998-99 to 2000-01 - Whether Form No. 10 could be furnished by assessee-trust for purposes of section 11(2), i.e., for accumulation of income, during reassessment proceedings - Held, yes [Para 6] [In favour of assessee]

iii) CIT Vs. Sakal Relief Fund, [2017] 248 Taxman 31 (Bombay) :

Held:

An order was passed to enable the revenue to respond to the same. In that order it was stated that the respondent is a charitable trust. The issue arising in these two appeals, prima facie, appears to be covered in favour of the respondent assessee and against the revenue by the decisions of the High Court and Supreme Court. The Apex Court's decision is to the effect that Form 10 required to be filed under rule 17 of the Rule, could be filed at any time till the completion of assessment and not after the completion of assessment. The Delhi High Court's decision on the issue that assessment proceedings would include re-assessment proceedings for the purpose of filing Form 10 in terms of rule 17 of the Rules. The decision of this Court on the issue that a return filed under sub-section (4) of section 139 will be dealt with as a return filed under section 139(1) which extends the time as permitted under section 139(1). In the present case, a return of income filed consequent to a re-opening notice under section 148 is to be treated as a return required to be filed under section 139. [Para 11]

The revenue accepts that even if the Form 10 is filed during the re-assessment proceedings, the benefit of accumulation under section 11(2) is available. So also, the time allowed in rule 17 of the rules for furnishing the form before the expiry of time to file the return of income under section 139(1) get extended to include the time within which a return of income could be filed under section 139(4) of the Act. Therefore, filing of Form 10 during re-assessment proceedings is filing of the same is within the time allowed for furnishing the return of income under section 139(4). Therefore, the revenue has not been able to point out any reasons why the aforesaid two decisions should

not be applied in the facts of the present case to reject the appeal. [Para 12]

The Apex Court in CIT v. Nagpur Hotel Owners' Association [\[2001\] 247 ITR 201/114 Taxman 255](#) has observed that for the purposes of excluding an income of the trust from the net of taxation, the intimation in Form 10 has to be filed with the Assessing Officer before he completes the assessment. In fact, it is the context of the above finding of the Apex Court, that it observed that Form 10 has to be filed before completion of assessment proceedings. [Para 13]

Therefore, the proposed question as framed, for the above reasons, do not give rise to any substantial question of law. [Para 15]

Further, the Hon'ble High Court of Bombay in the case of Sakal Relief Fund (supra) has also relied on the judgment of Hon'ble Supreme Court in the case of Nagpur Hotel Owners' Association [2001] 247 ITR 201. From the above judicial precedents, it is clear that Form No.10 can be filed before completion of the assessment proceedings for claiming benefit u/s.11(2) of the Act. We respectfully follow the judicial decisions, and the fact that there is no dispute on the genuineness except delay in filing the Form No.10 and the assessee should not be penalized for the delay, which affects the crucial objectives of the trust. Accordingly, we direct the AO to accept the Form No.10 filed by the assessee and grant the benefit of Section 11(2) of the Act to the assessee. We order accordingly.

7. Thus, appeal of the assessee is allowed.

Order pronounced in the open court on this 03/08/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 03/08/2017

प्र. कु. मि/ PKM, Senior Private Secretary

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s Ezma Foundation,
At: Room No.308, Block-A,
Forest Park, Nirmala Plaza,
Forest Park, Bhubaneswar
Odisha-751009
2. प्रत्यर्थी / The Respondent-
ACIT(Exemption Circle),
Aayakar Bhawan, Annex,
Vanivihar, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack