



IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.766/Mum./2019
(Assessment Year : 2015-16)

Parle Hindu Devalaya Mandal
1, Shree Parleshwar Mandir
Mahatma Gandhi Road
Vile Parle (E), Mumbai 400 057
PAN – AAATP0047J

..... Appellant

v/s

Dy. Commissioner of Income Tax
CPC, Bengaluru

..... Respondent

Revenue by : Shri Saurabh Deshpande
Assessee by : Ms. Rachna Gurnani

Date of Hearing – 04.02.2020

Date of Order – 04.03.2020

ORDER

PER SAKTIJIT DEY. J.M.

The captioned appeal has been filed by the assessee challenging the order dated 18th December 2018, passed by the learned Commissioner of Income Tax (Appeals)-1, Mumbai, pertaining to the assessment year 2015-16.

2. The dispute in the present appeal is confined to denial of assessee's claim of exemption under section 11(2) of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee is a charitable trust and has been granted registration under section 12AA of the Act. For the assessment year under dispute, the assessee had filed its return of income on 28th September 2015, electronically declaring nil income after claiming exemption under section 11(2) of the Act for an amount of ₹ 22,27,410. While processing the return of income filed by the assessee, the Central Processing Centre (CPC) denied assessee's claim of exemption under section 11(2) of the Act since the declaration in Form no.10, was not filed electronically along with the return of income. Against the intimation issued under section 143(1) of the Act by the CPC, the assessee moved an application under section 154 of the Act seeking rectification of mistake on the ground that as per existing provisions applicable to assessment year 2015-16, there was no requirement of filing Form no.10 electronically. It was submitted by the assessee, since Form no.10, was furnished manually before the Assessing Officer on the due date of return of income i.e., 28th September 2015, the claim of exemption under section 11(2) of the Act has to be allowed. The application filed under section 154 of the Act was rejected on the ground that there is no mistake apparent on the face of record requiring rectification. Against the order passed under section 154 of the Act, the assessee preferred appeal before the first appellate authority.

4. Before the learned Commissioner (Appeals) also, it was submitted by the assessee that filing of Form no.10, electronically was made mandatory by virtue of amendment made to rule 17, vide CBDT notification dated 14th January 2016, and was made effective from 1st April 2016. Therefore, prior to the amendment made to rule 17, there was no requirement for filing of Form no.10 electronically. The learned Commissioner (Appeals), however, did not accept the contention of the assessee and dismissed the appeal.

5. Reiterating the stand taken before learned Commissioner (Appeals), the learned Authorised Representative submitted, mandatory filing of Form no.10 electronically become operative from 1st April 2016. She submitted, prior to the amendment made to rule 17, by CBDT Notification dated 14th January 2016, there was no requirement of filing Form no.10, electronically. She submitted, since the assessee has filed Form no.10, manually before the Assessing Officer within the due date of filing of return of income for the impugned assessment year, assessee's claim of exemption under section 11(2) of the Act cannot be rejected.

6. The learned Departmental Representative relied upon the observations of learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. Undisputedly, assessee's claim of exemption under section 11(2) of the Act has been rejected only due to non-filing of declaration in Form no.10 in electronic mode. However, the facts on record clearly reveal that the assessee has filed Form no.10, manually before the Assessing Officer on 28th September 2015, the very same date the return of income for the assessment year 2015-16, was filed by the assessee. On a perusal of rule-17, as it existed prior to its amendment/substitution by Income Tax (1st Amendment) Rule, 2016, w.e.f. 1st April 2016, the provision only required filing of Form no.10, before the expiry of the time allowed under sub-section (1) of section 139 of the Act for furnishing return of income. Only w.e.f. 1st April 2016, amended rule 17 provided for filing Form no.10 electronically before the due date of return of income under section 139(1) of the Act. That being the case, assessee's claim of exemption under section 11(2) of the Act cannot be rejected only for the reason that Form no.10, was not filed electronically. In view of the aforesaid, we restore the issue to the Assessing Officer with a direction to verify Form no.10, filed by the assessee manually, as stated by the learned Counsel for the assessee and allow assessee's claim of exemption under section 11(2) of the Act. Grounds are allowed for statistical purpose.

8. In the result, appeal is allowed for statistical purposes.
Order pronounced in the open Court on 04.03.2020

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 04.03.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai