



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"H" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI N.K. PRADHAN, ACCOUNTANT MEMBER**

ITA no.3663/Mum./2019  
(Assessment Year : 2016-17)

Kasturi Foundation  
195/7, Dharmashi Niwas  
Gujarat Society, Sion (West)  
Mumbai 400 022 PAN – AABTK5235C

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-9(3)(1), Mumbai

..... Respondent

Assessee by : Shri Bhupendra Shah  
Revenue by : Shri Sunil Deshpande

Date of Hearing – 05.11.2020

Date of Order – 11.11.2020

**ORDER**

**PER SAKTIJIT DEY, J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 30<sup>th</sup> April 2019, passed by the learned Commissioner of Income Tax (Appeals)-1, Mumbai, for the assessment year 2016-17.

2. Brief facts are, the assessee is a charitable trust and has been granted registration as such by the Charity Commissioner as well as under section 12A of the Income Tax Act, 1961 (for short "*the Act*").

For the assessment year under dispute, the assessee filed its return of income on 12<sup>th</sup> September 2016, declaring nil income after claiming exemption under section 11 of the Act. While processing the return of income under section 143(1) of the Act, the Assessing Officer / Central Processing Centre (AO/CPC) disallowed an amount of ₹ 20,01,732, and treated it as income of the assessee. Against the intimation issued under section 143(1) of the Act, the assessee made an application for rectification under section 154 of the Act stating that since 85% out of the income received has been applied for the objects of the trust, exemption under section 11 of the Act is available. The aforesaid application under section 154 of the Act was dismissed by the AO/CPC.

3. The learned Authorised Representative drawing our attention to the paper book submitted, though, the assessee had filed its return of income on 12<sup>th</sup> September 2016, however, the audit report was electronically filed on 21<sup>st</sup> September 2016 i.e., before the due date of filing of return of income under section 139(1) of the Act. He submitted, the approval of the audit report by the trustees was on 18<sup>th</sup> May 2017. Thus, he submitted, though, there may be a delay in approval of the audit report, however, the audit report was filed with the Department much before the due date of return of income. Therefore, no disallowance of exemption under section 11 of the Act can be made on the ground of delayed filing of audit report. Further,

he submitted, the CBDT in its Circular no.10/2019, has clarified that where the audit report in Form no.10B has been obtained before the filing of the return of income, but was furnished subsequent to the filing of return of income but before the due date of filing of return of income under section 139(1) of the Act, the delay has to be condoned. He further submitted, even otherwise also, the assessee had filed application seeking condonation of delay. Therefore, he submitted, the disallowance of exemption under section 11 of the Act should be deleted.

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

3. We have considered rival submissions and perused the material on record. Undisputed facts are, though, the assessee had filed the return of income for the assessment year under dispute on 12<sup>th</sup> September 2016, however, he has filed the audit report electronically on 21<sup>st</sup> September 2016. Of course, the audit report was approved by the trustees on 18<sup>th</sup> May 2017. But, fact remains that the assessee had filed the audit report much prior to the due date of filing of return of income under section 139(1) of the Act. The claim of the assessee that it has applied 85% of its receipts towards the objects of the trust has not been disputed by the Departmental Authorities at any stage. The

denial of exemption under section 11 of the Act is only for the reason that audit report in Form no.10B of the Act was filed belatedly. Pertinently, in Circular no.10./2019, the CBDT has clarified that for the assessment year 2016-17 and 2017-18, in all cases where the audit report for the year under consideration has been obtained before filing of the return of income and has been furnished subsequent to filing of return of income, but before the date specified under section 139 of the Act, such delayed filing should be condoned. In the facts of the present case, the claim of the assessee that it has obtained the audit report prior to the date of filing of return of income and has filed audit report before the due date of return of income under section 139(1) of the Act has not been controverted by the learned Departmental Representative. The learned Commissioner (Appeals) has also upheld the disallowance of exemption by simply stating that it is not a rectifiable mistake under section 154 of the Act. In our view, when the assessee has complied with the statutory provisions in terms of the CBDT Circular, the delay if any, in filing the audit report should have been condoned. In view of the aforesaid, we delete the disallowance made and allow assessee's claim of exemption under section 11 of the Act. Grounds raised by the assessee are allowed.

4. In the result, appeal is allowed.

Order pronounced in the open court on 11.11.2020

**Sd/-**  
**N.K. PRADHAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 11.11.2020**

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