

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 1760/Mum/2022
(A.Y: 2016-17)

KSB Care Charitable Trust C/o KSB Ltd MumbaiPune Road, Pimpri, Pune-411018.	Vs.	ITO (Exm)- 1(4) Piramal Chambers, Lalbaug, Parel, Mumbai-400012.
PAN/GIR No. : AABTK4311M		
Appellant	..	Respondent

Appellant by :	Shri Biren Gabhawala.AR
Respondent by :	Shri Vivek Anand Ojha.DR

Date of Hearing	30.08.2022
Date of Pronouncement	05.09.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the CIT(A)- National Faceless Appeal Centre (NFAC) Delhi passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in*

denying the assessee claim for accumulation of Rs.1,13,51,040/- without appreciating the fact that it was only technical fault of filing wrong form, namely Form 9A filed within the time prescribed i.e. due date of filing the Income Tax Return u/s 139(1), instead of Form 10.

1.1 On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in failing to appreciate that error was not deliberate but was due to oversight and software changes, the genuineness of the Trust is not in doubt and the trustees or the settlor have not benefitted by such failure directly or indirectly, the funds were deposited in the manner as laid down by the Act and the accumulation or setting apart of income was necessary for carrying out the objects of the trust.

1.2 On the facts and in the circumstances of the case, the learned Commissioner of Income Tax (Appeals) erred in failing to appreciate the taxation principle that the correct income of the assessee should be assessed and taxed and as the intention of the assessee was accumulation, it would cause undue hardship upon the charitable Trust, doing charitable work for public good, to deny such accumulation. The intention of the assessee has also been acknowledged by the Assessing Officer by stating the following, in his Assessment Order, at Para 4.2 "This clearly indicates that the intention of the assessee is to accumulate or set apart an amount of Rs. 1,13,51,040/- under section 11(2), as it seems from the Return of Income.". Also the books of accounts have been audited and the auditors have filed Form 10B, before the due date of filing the Income Tax Return,

mentioning the amount of accumulation of Rs. 1,13,51,040/-.

1.3 On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in ignoring the ratio of various judicial decisions relied upon by your appellant to the effect that the inadvertent error in filing the wrong form is not reason to make addition or deny accumulation.

2 Your appellant prays that the levy of penalty u/s 271(1)(c) of the Income Tax Act on your appellant for an inadvertent error being unwarranted, unjustified and unlawful may kindly be deleted.

3. Your appellant craves leave to add, alter or amend any of the above grounds of appeal or take a fresh ground(s) of appeal on or before the date of hearing.

2. The brief facts of the case are that the assessee is a charitable trust and engaged in various charitable and religious activities and the trust is registered with the Director of Income Tax (Exemption), Mumbai u/s 12A of the Act. The assessee has filed the return of income for the A.Y2016-17 on 15.10.2016 disclosing a total income of Rs. Nil. Subsequently, the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with the questionnaire are issued. In compliance to the notice, the assessee has filed on line with ITBA from 10B,

computation of income, income and expenditure A/c and balance sheet etc. During the assessment proceedings the AO found that the assessee has claimed Rs.1,13,51,040/- towards the accumulation / set apart u/s 11(2) of the Act, whereas the assessee was supposed to file prescribed form before the due date u/s 139(1) of the Act and the notice was issued in failure to file Form No 10 before the due date and there was no compliance. The A.O. find that the assessee has filed Form.No 9A before due date as a token of exercising option under clause 2 of explanation to section 11(1) of the Act and the assessee has not claimed the same in the return of income. The AO observed that the assessee has violated the provisions of Sec. 11(2)(C) r.w.s 13(9) of the Act on the claim of accumulation of income set apart for utilization over a period of five years and denied the claim of exemption and assessed the total income of Rs.1,13,51,040/- and passed the order u/s 143(3) of the Act dated 15.12.2018.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and

the findings of the scrutiny assessment and was not convinced with the explanations and observed that the assessee has not filed the prescribed form.no.10 whereas form No.9A was filed. The Ld.AR substantiated that the assessee is entitled for the benefits as per the CBDT circular but the CIT(A) is of the view that the assessee has not filed the proper form and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) erred in confirming the denial of the exemption u/s 11(2) of the Act and also the assessee has not filed form.no.10 for accumulation, which are set apart and to be utilized in the subsequent assessment years. Whereas the assessee by mistake has filed Form.no. 9A and the assessee is ready to file form 10 and placed reliance on the CBDT circular to condone the delay and accept the form.no 10.The Ld.AR substantiated the submissions with the judicial decisions and the paper book. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. Prima-facie the sole disputed issue is with respect to CIT(A) rejecting the contentions of the assessee that the assessee has not filed the form 10 and were as Form.No.9A was filed by mistake. The CIT(A) considered various aspects and provisions and came to a conclusion that the assessee is not entitled for benefit. The Ld. AR submitted that for the first time in A.Y.2016-17 the form 10 has to be filed electronically and there were some technical glitches and the assessee had filed form.no. 9A by mistake and requested for relief. The Ld.AR referred to the CBDT circular dated 3-01-2020 placed at page 44 of the paper book in respect of condonation of delay u/s 119(2)(b) of the Act in filing the form 10 and form 9A. The Ld. AR has demonstrated Para 5 of the CBDT circular which is read as under:

5. Accordingly, in suppression of earlier Circulars / Instructions issued in this regard, with a view to expedite the disposal of application filed by the trust or institution for condoning the delay and in exercise of the powers conferred u/s 119(2)(b) of the Act, the Central Board of Direct Taxes has already authorized the Commissioners of Income-tax to admit belated applications in Form No. 9A and Form No 10 in respect of Assessment Years 2016-17 and Assessment Year 2017-18 where such Form No.9A and

Form No. 10 are filed after the expiry of the time allowed under the relevant provisions of the Act vide Circular No. 7/2018 dated 20.12.2018 and Circular No. 30/2019 dated 17.12.2019 both issued vide F.No. 197/55/2018-ITA-L

6. We find the merits in the submissions of the Ld. AR and the assessee is a charitable trust and the benefit under the provisions of the Income Tax Act should not be denied benefit because of delay in filling the Form no 10. Accordingly, we restore the entire disputed issue to the file of the CIT(A) to adjudicate on merits considering the form. No 10 and the assessee is required to file a condonation petition in delay in filling the form explaining the reasonable cause. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information for early disposal of appeal and allow the grounds of appeal of the assessee for statistical purposes.

Order pronounced in the open court on 05.09.2022.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 05.09.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

1.

आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai