

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 1637/Mum/2022 (A.Y. 2015-16)

The Dadabhai Kavasji Tata School Trust 1, The D.K. Tata High School, Tata School Road Near Petrol Pump, Viraval Navsari, Gujarat-396445 PAN : AAATTO422F (Appellant)	Vs.	ITO-Exemption Ward 2(4) Piramal Chamber Lal Baug Parel Mumbai-400 012. (Respondent)
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Assessee by	Shri Neville Deboo
Department by	Shri R.P. Veena
Date of Hearing	23.08.2022
Date of Pronouncement	06 .09.2022

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 13.5.2022 passed by learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2015-16. The assessee is aggrieved by the decision of learned CIT(A) in confirming the rejection of deduction claimed under section 11(1)(a) of the I.T. Act.

2. The Facts relating to the above said issue are stated in brief. The assessee is a charitable trust registered both with Charity Commissioner and also under Income Tax Act. For the year under consideration, the assessee filed its return of income belatedly on 30.3.2017. The assessee also filed audit report in Form 10B on 30.3.2017 itself, i.e. alongwith the return of income. Since the audit report was filed belatedly beyond the due date prescribed u/s 139(1) of the Act, the Assessing Officer rejected the claim for

deduction under section 11 of the Act, being the amount of Rs.7,74,590/- that could be accumulated under section 11(1)(a) of the Act.

3. Before learned CIT(A), the assessee submitted that the deduction claimed under section 11(1)(a) of the Act is a general deduction allowed under the provisions of Act. It was submitted that the Act does not prescribe any time limit for filing audit report in Form 10B during the year under consideration. The assessee further submitted that the mandatory time limit with regard to filing of Form No. 10, which relates to accumulation of income under section 11(2) of the Act, was inserted only w.e.f. 1.4.2016. The said provision is not applicable for the deduction claimed u/s 11(1)(a) of the Act. The Learned CIT(A) was not convinced with the contentions of the assessee. He held that the provisions of Rule 17B and Rule 12(2) of the IT Rules require filing of audit report in form No. 10B electronically along with return of income. The Learned CIT(A) also referred to Circular No.10/2019 dated 22.5.2019 issued by CBDT, wherein CBDT has prescribed the procedure for condoning the delay in filing Form No. 10B of the Act for the years prior to AY 2018-19. Accordingly, the learned CIT(A) expressed the view that the assessee should seek condonation in filing Form 10B before learned CIT(Exemption) and accordingly held that the remedy does not lie before him. Accordingly, he dismissed the appeal of the assessee.

4. Aggrieved, the assessee has filed this appeal before the Tribunal.

5. One of the trustees of the assessee trust appeared before us. He submitted that the provisions of section 12A(1)(b) of the Act requiring filing of audit report has been amended w.e.f. 1.4.2020. By the said amendment only, it has been made mandatory that the audit report should be filed before the due date specified in section 44AB of the Act. Prior to that the requirement is that the audit report is required to be filed alongwith return of income. He further submitted that the assessee, in the instant year, has filed

the audit report in Form 10B alongwith the return of income. Accordingly, he submitted that both the Assessing Officer and learned CIT(A) were not justified in rejecting the claim for exemption under section 11(1)(a) of the Act.

6. The Learned DR, on the contrary, supported the order passed by learned CIT(A).

7. We have heard the rival contentions and perused the record. From the assessment order, we noticed that the assessee has filed audit report in Form 10B electronically alongwith the return of income on 30.3.2017. The assessment year under consideration is A.Y. 2015-16 and the due date prescribed for filing return belatedly under section 139(4) is on 31.3.2017. The assessee has filed return on 30.3.2017. The AO has passed the assessment order on the above said belated return filed by the assessee. We noticed earlier that the AO has rejected the claim for exemption u/s 11(1)(a) of the Act on the reasoning that the assessee has filed audit report in Form 10B belatedly.

8. The assessee brought to our notice that provisions of section 12A(1)(b) of the Act, which deals with the filing of audit report in Form 10B, have been amended w.e.f. 1.4.2020. The assessee has furnished copy of pre-amended and post-amended provisions of section 12A which are extracted below :-

(A) EXTRACT OF THE PROVISIONS OF SECTION 12A(1)(B) OF THE INCOME TAX ACT, 1961, AS THEY STOOD APPLICABLE FOR ASSESSMENT YEAR 2015-16:

12A. (1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:

(a)

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any

previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and **the person in receipt of the income furnishes along with the return of income for the relevant assessment year the report of such audit in the prescribed form**" duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

(B) EXTRACT OF THE PROVISIONS OF SECTION 12A(1)(B) OF THE INCOME TAX ACT, 1961, AS THEY STAND APPLICABLE FOR ASSESSMENT YEAR 2020-21 & ONWARDS:

12A.(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:

(a)

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 **before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;"**

A careful perusal of the above said provisions would show that the provisions of section 12A(1)(b) requiring the assessee to furnish audit report has been amended w.e.f. 1.4.2020. Prior to the amendment, the audit report has to be filed alongwith the return of income. Requirement of furnishing audit report before the due date prescribed in section 44AB has been made mandatory w.e.f. 1.4.2020 only.

9. In the instant case, we noticed earlier that the assessee has filed audit report in Form No. 10B alongwith the return of income filed on 30.3.2017. We noticed that the requirement of filing audit report before the date prescribed in sec.44AB has been brought into the statute only w.e.f 1.4.2020, i.e., from AY 2020-21. Accordingly, in the assessment year under consideration, viz., AY 2015-16, the requirement under the Act was to file audit report along with the return of income. Accordingly, in our view, the

assessee has complied with the conditions prescribed in sec. 12(1)(b) by furnishing audit report along with the return of income.

10. In view of the above said discussions, in our view, both the Assessing Officer and Ld CIT(A) were not justified in rejecting the claim for deduction under section 11(1)(a) of the Act. Accordingly, we set aside the order passed by learned CIT(A) and direct the Assessing Officer to allow deduction under section 11(1)(a) of the Act.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 06 .09.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 06/09/2022

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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