

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.609 & 611/PUN/2020
निर्धारण वर्ष / Assessment Years : 2015-16 & 2017-18

Ruikar Trust,
512/513, Station Road,
Dabholkar Corner, Near CBS,
Kolhapur – 416001

PAN : AAATR1328J

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT (CPC),
Bangalore

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 22-09-2022
घोषणा की तारीख / Date of Pronouncement : 27-09-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

Both the appeals by the assessee against the common order dated 09-09-2020 passed by the Commissioner of Income Tax (Appeals)-2, Kolhapur [‘CIT(A)'] for assessment years 2015-16 and 2017-18.

2. I find that both the appeals were filed with a delay of 04 days. Upon hearing both the parties, I find that the delay of 04 days is saved by the

decision of Hon'ble Supreme Court passed during National Lockdown imposed on account of pandemic Covid-19. Therefore, the delay of 04 days is condoned in both the appeals.

3. First, I shall take up the appeal in ITA No. 609/PUN/2020 for A.Y. 2015-16.

4. The only issue is to be decided is as to whether the CIT(A) justified in confirming the denial of exemption u/s. 11 of the Act by the CPC Bangalore on account of non-filing of Form 10 within time in the facts and circumstances of the case.

5. Brief facts relating to the case are that the assessee is a charitable trust. The assessee claimed exemption u/s. 11 of the Act in the return of income. The CPC, Bangalore denied the said exemption for non-filing of Form 10 within time. Having aggrieved, the assessee challenged the same before the CIT(A). I note that the CIT(A) tabulated chart at para 5 of the impugned order. On perusal of the said chart, I note that the assessee filed on-line Form 10 on 28-04-2017 as it required to be filed before due date of furnishing Income Tax Return u/s. 139(1) of the Act. It is noted from the said chart that the assessee filed return of income on 31-10-2015. The ld. AR submits that the CIT(A) confirmed the order of CPC for violating the conditions laid down in Rule 17 of the Income Tax Rules. He drew my attention to Rule 17 and argued that the said Rule substituted by the Income Tax First Amendment Rule 2016 w.e.f. 01-04-2016. He is on the

contention that the said Rule is applicable for A.Y. 2016-17 but not to the year under consideration i.e. A.Y. 2015-16. I find force in the arguments of ld. AR that since, the Rule 17 came into force for A.Y. 2016-17 and it is not applicable to the year under consideration. There is no dispute with regard to availability of Resolution on Form 10 with the assessee manually on 22-08-2015 which is noted by the CIT(A) in para 5 of the impugned order. Admittedly, the availability of Form 10 manually with the assessee is before due date of filing of return of income u/s. 139(1) of the Act as the assessee filed return of income on 31-10-2015. The availability of manual Form 10 with the assessee on 22-08-2015/20-09-2015 was not disputed by the ld. DR. Therefore, the assessee filed Form 10 manually with the return of income and it is very much within time. Therefore, the order of CIT(A) is not justified in confirming the order of CPC in denying the exemption u/s. 11 of the Act for non-filing of Form 10 on on-line and it is set aside. Thus, the ground raised by the assessee is allowed.

6. In the result, the appeal of assessee is allowed.

Now, I shall take up the appeal in ITA No. 611/PUN/2020 for A.Y. 2017-18.

7. I note that, as discussed above while adjudicating the appeal for A.Y. 2015-16, the Rule 17 came into force from 01-04-2016. Since, the assessment year under consideration is 2017-18, the said Rule is applicable to the year under consideration. Admittedly, the assessee filed

return of income on 07-11-2017 and Form 10 is available manually with the assessee by 26-08-2017/25-09-2017 which clearly establishes before filing of return of income, the Form 10 is available manually with the assessee. The ld. AR submits that the intimation u/s. 143(1)(a) of the Act was passed on 12-02-2020 and the assessee filed Form 10 on-line on 26-03-2019. He argued before passing of intimation u/s. 143(1)(a), the Form 10 was very much available with the CPC, Bangalore, but however, fairly conceded that Rule 17 is applicable to the facts on hand and the assessee is necessarily to file application for condonation of delay in filing Form 10 on-line before the CIT vide Circular No. 7/2018 dated 20-12-2018 and Circular No. 30/2019 dated 17-12-2019. He submits that no such application was filed by the assessee before the CIT(A) in terms of the said Circulars, but, however placed on record a decision of Hon'ble High Court of Bombay in the case of Little Angels Education Society Vs. Union of India reported in 127 taxmann.com 473 (Bombay) and argued that the Hon'ble High Court was pleased to grant opportunity to the petitioner to file an application by making prayer for condoning the delay in filing Form 10 for the relevant assessment year. I find, admittedly no application was filed with the CIT(A) to condone the delay in filing Form 10 on-line by the assessee which is required to file before due date of filing of return of income. I note that the Hon'ble High Court of Bombay was pleased to grant opportunity to the assessee under writ proceedings having exercising special original extraordinary jurisdiction u/s. 226 of the constitution. I am conclusion of the fact no such direction or whatsoever could be granted by this Tribunal. It is open to the assessee to seek remedy available under

law to its benefit. Thus, I do not find any infirmity in the order of CIT(A) and it is justified. Thus, the ground raised by the assessee fails and it is dismissed.

8. In the result, the appeal of assessee is dismissed.

9. To sum up, appeal of assessee in ITA No. 609/PUN/2020 is allowed and the appeal of assessee in ITA No. 611/PUN/2020 is dismissed.

Order pronounced in the open court on 27th September, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th September, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur
4. The Pr. CIT, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune