

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.926/M/2022
Assessment Year: 2017-18**

M/s. Shri Sambhavnath Swetamber Jain Derasar Trust, Ground Floor, K.K. Shah Compound, Manor Road, Opp. Govt. Rest House, Palghar, Maharashtra-401 404 PAN: AADTS6261N	Vs.	CIT(A), Road Number 16Z, Nehru Nagar, Wagle Industrial Estate, Thane West, Thane – 400 604
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Zenith Jain, A.R.
Revenue by : Shri Azhar Zain Vayal Parambath, D.R.

Date of Hearing : 12 . 09 . 2022

Date of Pronouncement : 29 . 09 . 2022

ORDER

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Shri Sambhavnath Swetamber Jain Derasar Trust (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 10.03.2022 passed by National Faceless Appeal Centre (NFAC) [Commissioner of Income Tax (Appeals)] [hereinafter referred to as the CIT(A)] qua the assessment year 2017-18 on the grounds inter alia that :-

“1. Disallowance of Application of Income for Charitable or Religious Purpose revenue accounts Rs 2, 90,674. Cases where Form No. 10B was obtained before filing of return of income and furnished before the due date u/s.139 were to be condoned automatically. In all other cases of delay in furnishing Form No. 1 OB, the assesses have to file an application for condonation of delay u/s. 119(2)(b) of the Act to the Commissioner which may be condoned if the assessee was prevented by reasonable cause from filing such application within the stipulated time. 2. The Ld. CIT (A) Thane-3, failed to appreciate that form no IOB was obtained on 31/08/2017. The Return for the same was filed on 05/10/2017. In the return details of audit report including auditors name & date of audit report is also mentioned. This proves beyond doubt that audit report in form IOB was obtained before filing of return of income and therefore they were to be condoned automatically. And therefore, disallowance of application”

2. Disallowance of application of income for charitable or religious purpose capital account Rs 14,386. Cases where Form No. 1 OB was obtained before filing of return of income and furnished before the due date u/s.139 were to be condoned automatically. In all other cases of delay in furnishing Form No. 1 OB, the assesses have to file an application for condonation of delay u/s. 119(2)(b) of the Act to the Commissioner which may be condoned if the assessee was prevented by reasonable cause from filing such application within the stipulated time. 2. The Ld. CIT (A) Thane-3, failed to appreciate that form no IOB was obtained on 31/08/2017. The Return for the same was filed on 05/10/2017. In the return details of audit report including auditors name & date of audit report is also mentioned. This proves beyond doubt that audit report in form IOB was obtained before filing of return of income and therefore they were to be condoned automatically. And therefore, disallowance of application.

3. Amount accumulated to be applied later to the extent of 15 % Rs. 70,734, The amount is accumulated and used for the purpose of the trust within time. Without prejudice to the above, the Ld. CIT (A) Thane-3 further failed to appreciate the fact that actual application of income is made as per balance sheet furnished and therefore should be allowed on the facts and as per books of accounts. 4. Without prejudice to the above it should be appreciated that the appellants is very small religious trust and even if there is any technical error the application of income is there and therefore on the facts of the case the application should not have been disallowed.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee being a religious trust is registered under section 12A of the Income Tax Act, 1961 (for

short 'the Act'), has filed the return of income in time declaring total income of Rs.95,764/- after claiming deduction of Rs.2,90,674/- as applicable to the charitable or religious purpose revenue account, Rs.14,386/- for charitable or religious purpose capital account and Rs.70,734/- as amount accumulated. The Assessing Officer (AO) disallowed total deduction to the tune of Rs.3,75,794/-. Assessee trust moved an application for rectification under section 154 of the Act which was dismissed.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal against the order passed by the AO under section 154 of the Act who has dismissed the same. Feeling aggrieved assessee trust has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly, the assessee trust has filed return of income for the year under consideration on 05.10.2017, which was processed under section 143(1) of the Act by the Dy. Commissioner of Income Tax, CPC, Bangalore on 09.03.2019. It is also not in dispute that the assessee has failed to file form 10B along with return of income but was filed subsequently on 01.04.2019 after its return was processed on 09.03.2019 under section 143(1) of the Act.

6. In the backdrop of the aforesaid facts and circumstances of the case the Ld. CIT(A) reached the conclusion that when the assessee trust has failed to furnish the audit report in form No.10B nor he has moved an application for condonation of delay before the ITO concerned, rectification application was not maintainable, thus has been rightly dismissed by the AO.

7. However, before the Tribunal assessee trust has filed an application for condonation of delay supported with an affidavit stating therein that assessee is a very small trust having no proper professional guidance regarding filing of application for condonation of delay but they have filed physical copy of the audit report form No.10B before the due date. It is also pleaded by the assessee trust that the year under consideration being a first year of filing form 10B electronically they were unaware about the procedure.

8. Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that reasons given in the application for condonation of delay are very generic and as such contended to uphold the order passed by the Ld. CIT(A).

9. Keeping in view the fact that the year under consideration was the first year of filing audit report in form 10B electronically and assessee trust being not aware of the procedural technicalities due to lack of regular professional guidance, which is a sufficient reason to condone the delay. Hence, delay is condoned.

10. Undisputedly no notice has been given to the assessee by the CPC before disallowing the expenditure claimed by the assessee as

a trust that too without considering audit report filed in form No.10B.

11. This issue has already been decided by the Hon'ble High Court of Madhya Pradesh, Hon'ble High Court Calcutta & Hon'ble Gujarat High Court in case of CIT vs. Devradhan Madhavlal Genda Trust (1998) 230 ITR 714 (MP), CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 65 Taxman 273 (Cal) & CIT vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325 respectively wherein it is held that filing of audit report in form 10B during the course of assessment proceedings is sufficient compliance of section 12A(b) which has to be considered. So the exemption otherwise available to the assessee trust under section 11 cannot be denied merely on account of delay in furnishing of audit report in form 10B as required under section 12A(b) of the Act. So in the present case audit report having been filed by the assessee trust well prior to the last date of filing of return is a sufficient compliance of section 12A(b) of the Act.

12. Moreover, the proviso to section 143(1)(a) of the Act specifically provides that no adjustment shall be made unless (as specified in clause (a) to section 143(1) of the Act) intimation is given to the assessee trust of such adjustment either in writing or in electronic mode and in case response is not received within 30 days the adjustment can be made. So in this case no notice whatsoever has been given to the assessee.

13. In view of what has been discussed above, I am of the considered view that the order passed by the Ld. CIT(A) is not sustainable in the eyes of law, hence set aside. The AO is directed

to grant the deduction claimed by the assessee trust under section 11 of the Act, by considering audit report in form 10B after due verification. Resultantly, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29.09.2022.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.