

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

BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.1528/M/2022
Assessment Year: 2017-18**

M/s. Gangji Shamji Chedda (Princewala) Charitable Trust, 601, K.N. Bldg., 360, Bhandarkar Road, Matunga (Central), Mumbai – 400 019 PAN: AAGTS1151E	Vs.	Dy. Commissioner of Income Tax, Exem. Ward 2(3), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Ms. Mrugakshi Joshi, A.R.
Revenue by : Shri Anil Gupta, D.R.

Date of Hearing : 26 . 09 . 2022

Date of Pronouncement : 31 . 10 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Gangji Shamji Chedda (Princewala) Charitable Trust (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 11.05.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] qua the assessment year 2017-18 on the grounds inter alia that :-

“1. The learned CIT(A) erred in confirming the action of the Central Processing Centre (CPC) of denying the exemption u/s, 11, in the Intimation u/s. 143(1), on the ground that the Audit Report u/s, 10B has not been e-filed before or along with the Return of Income.

2. The learned CIT(A) failed to take into consideration the CBDT Circular no. 10/2019, which states that for A.Y. 2016-17 and A.Y. 2017-18, delay (if any) in filing the Form No. 10B before filing of Return of income, shall be condoned and no exemption shall be denied.

3. The Circular No. 10/2019 issued by the CBDT has said that, Accordingly, in supersession of earlier Circular/ Instruction issued in this regard, and with a view to expediting the disposal of applications filed by such trusts or institutions for condoning the delay in filing Form no. 10B and in the exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:

The delay in filing of Form no. 10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and, has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.”

2. Briefly stated facts necessary for adjudication of the issues at hand are: assessee, being a charitable trust 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 at Rs.2,628/- under the head other sources and Rs.Nil under other heads. The assessee trust has claimed exemption of Rs.34,00,000/- under section 11 and 12 of the Act on the ground that the correct income derived during the year has been fully applied to the charitable or religious purpose. However, assessee has not annexed form 10B which was to be filed electronically. So the Assessing Officer (AO)/CPC has disallowed the total deduction claimed by the assessee and thereby raised the demand.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has upheld the order passed by the AO by dismissing the appeal filed by the assessee. Feeling aggrieved assessee 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 07.11.2017 well within time, which was processed under section 143(1) of the Act dated 26.03.2019 by Dy. Commissioner of Income Tax (DCIT), Central Processing Centre (CPC), Bengaluru. It is also not in dispute that the assessee has failed to file form 10B along with return of income. No doubt in order to claim the deduction under section 11 & 12 of the Act conditions laid down in the provisions contained under section 12A(B) of the Act need to be complied with by the assessee trust but at the same time when audit report in form 10B has not been filed along with return of income due to some technical reasons DCIT, CPC was not empowered to make any adjustment/raise a demand without issuing a notice to the assessee.

6. 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.

7. 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.

8. 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.

9. 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 31.10.2022.

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

Mumbai, Dated: 31.10.2022.

* 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.