

**IN THE INCOME TAX APPELLATE TRIBUNAL GUWAHATI BENCH,
(VIRTUAL HEARING AT KOLKATA)**

**[BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, JUDICIAL MEMBER]**

I.T.A. No. 91/GTY/2020

Assessment Year: 2016-17

Guru Teg Bahadur Academic Society Borguri, Tinsukia, Assam-786125. (PAN: AACAG 0238 M)	Vs.	ITO, Ward-2(4), Exemption, Shillong
Appellant		Respondent

Date of Hearing	19.10.2022
Date of Pronouncement	30.11.2022
For the Appellant	Shri Sanjay Mody, FCA
For the Respondent	Shri N.T. Sherpa, JCIT

ORDER

PER SONJOY SARMA, JM:

This is an appeal preferred by the assessee against the Id. CIT(Exemptions), Kolkata dated 02.03.2020 for the A.Y. 2016-17 passed u/s 263 of the I.T. Act, 1961 (hereinafter referred to as the 'Act'). The assessee has raised the following grounds of appeal:

"1. For that the revisionary order passed by the learned Commissioner of Income Tax (Exemptions) [CIT] is bad in law, facts and procedure.

2. For that the show cause notice dated 18.02.2019 purportedly issued under section 263 of the Act by the learned CIT being on an incorrect assumption of facts and the order passed by the learned AO was considered by the learned CIT both, as erroneous and also as prejudicial to the interest of the revenue on that incorrect assumption of fact and therefore, the impugned order having been passed in pursuance thereto is bad in law and ab initio void.

3. For that in the learned CIT has erred in arbitrarily holding that 'the AO did not examine the correctness of the claim under section 11(2) but also failed to take cognizance of the fact that the Form-10 was filed belatedly' which is contrary to the findings recorded by the Id. AO in para no. 5 of the relevant order of assessment as well as own finding of the learned CIT that Form-10 was manually filed on 21.06.2016 which was within the due time.

4. For that on the facts and circumstances of the case, the Id. CIT even after admitting that substantial compliance of section 11(2) of the Act was made, was not justified in

holding that the claim of exemption under section 11(2) of the Act cannot be allowed and therefore, in directing the Id. AO to re-compute the income of the assessee without allowing accumulation under section 11 (2) of the Act.

5. For that the Id. CIT was not justified both in law and on facts in arbitrarily branding the order of assessment passed by the Id. AO as erroneous which was passed after due application of mind by the Id. AO.

6. For that the impugned order having been passed in gross violation of principles of natural justice, the same is bad in law.

7. For that your appellant craves leave of your honours to take additional ground or grounds and/or to modify any ground(s) of appeal at or before the time of hearing.”

2. The brief facts of the case are that the return of income for assessment year 2016-17 was filed by the assessee on 23.03.2017 showing total income at Nil. The case of the assessee was selected for scrutiny and notices u/s 143(2) and 142(1) were issued upon the assessee. During the assessment proceeding, the AO examined the books of accounts of assessee and she observed that activity of the society were mainly educational and it was granted registration u/s 12A of the Act and verification of return, the AO notices that the assessee has setting aside income u/s 11(2) of the Act and doing so, the assessee has to furnished the statement of such amount in Form No. 10 under Rule 17(2) of the Income Tax Rules, 1962 substituted by the Income Tax (1st Amendment), Rules 2016, a trust is required to furnish the statement in Form No. 10 electronically w.e.f. 01.04.2016. However, in the instant case of assessee had manually submitted it before the AO on 21.06.2016 which was before the due date of filing return and subsequently the assessee had filed online during the course of assessment proceedings and doing so the assessing officer viewed that since Form No. 10 was submitted before due date of filing return and later it was filed online also, therefore, the claim of the assessee was allowed by the AO. Later on the Id. CIT(Exemption) on perusal of record noticed that claim of assessee u/s 11(2) was allowed by the AO even though Form No. 10 was not filed on time as per condition laid down u/s 13(9) of the Act as claimed by the assessee for accumulation of fund, although it was necessary to file Form No. 10 before due date of filing of return of income but in the case of assessee it was filed online only on 21.03.2017 for assessment year in question which was beyond the due date as prescribed under the provisions of law. The Id. CIT(Exemption) observed that the assessment order was erroneous and prejudicial to the interest of revenue

and accumulation of funds 11(2) to the extent of Rs. 45 lakhs was allowed by the A.O. without examination and in contravention of the provisions of the Act. He, therefore, issued a show cause notice u/s 263 of the Act dated 18.02.2019 to the assessee but no response was made by the assessee in compliance to such notice and Id. CIT(Exemption) directed the AO to recompute the income of the assessee without allowing the accumulation u/s 11(2) of the Act.

3. We have heard both the parties and after the perusal on record, we noticed that the assessee has filed its return of income for A.Y. 2016-17 claim of the assessee u/s 11(2) was allowed by the AO even though Form No. 10 was not filed on time as per the condition laid down u/s 13(9) of the Act. However, the assessee has filed Form No. 10 online on 21.03.2017 and admittedly it was filed beyond the due date as prescribed under the provisions of law. While framing the revisionary order by the Id. CIT(Exemption), he viewed that relief allowed by the Id. AO without examining the contravention of the provisions of Act, therefore, the order passed by the Id. AO was erroneous and prejudicial to the interest of revenue. Moreover, the Id. CIT(Exemption) express in his order that the prayer of the assessee for condonation of delay in filing of Form No. 10 vide letter dated 04.12.2018 before him was also rejected vide order dated 03.01.2020.

3. We after perusal of the record and submission made by the A.R. of the assessee it has come to our notice that assessee has made fresh prayer for condonation of delay in filing form no. 10 in the light of the CBDT Circular No. 6/2020 dated 19.02.2022 and on 12.04.2021 a separate speaking order has been passed by the Id. CIT(Exemption) u/s 119(2)(b) of the Act whereby prayer of the assessee for condoning the delay in filing Form No. 10 has been allowed vide order dated 05.05.2021. We from the above facts find that since the claim of the assessee whereby delay in filing Form No. 10 has already been condoned by the Id. CIT(E) vide his order dated 05.05.2021 and the alleged defect noticed by the Id. CIT(E) in his revisionary order dated 02.03.2020 has already been cured by its own order by which he allowing the prayer of the assessee in filing Form No. 10 beyond the date as prescribed under the law. Thus we find no error in the assessment order passed by the Id. AO so as to justify the initiation of revisionary proceeding u/s 263 by the CIT(E).

Therefore, the order dated 02.03.2020 passed by the Id. CIT(E) is quashed and grounds of appeal raised by the assessee are allowed.

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

Order is pronounced in the open court on 30.11.2022

Sd/-

(Manish Borad)
Accountant Member

Sd/-

(Sonjoy Sarma)
Judicial Member

Dated: 30.11.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant– Guru Teg Bahadur Academic Society.
2. Respondent – ITO, Ward-2(4), Exemption, Shillong
3. CIT(A),
4. CIT ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata