

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.96/Asr/2022
Assessment Year: 2017-18**

ITO, (Exemptions), Ward Amritsar. (Appellant)	Vs.	M/s Radha Raman Charitable Trust, 164B-7, Hanuman Chowk Berian Mohalla, Gurdaspur Punjab. [PAN: AABTR1707N] (Respondent)
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Appellant by	Sh. P.N. Arora, Adv.
Respondent by	Smt. Ratinder Kaur, Sr. DR

Date of Hearing	08.12.2022
Date of Pronouncement	20.12.2022

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals),NFAC, Delhi, [in brevity the 'CIT (A)'] bearing appeal DIN & Order No. ITBA/NFAC/S/250/2021-22/1040952567(1), date of order 17.03.2022, order passed u/s 250of the Income Tax Act 1961, [in

brevity the Act] for A.Y. 2017-18. The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, CPC, (in brevity the AO) order passed u/s 143(1) of the Act date of order 27.03.2019. The revenue took the following grounds which read as under:

“1. Whether on the facts and circumstances of the case which are driven by the clear legal distinction between "income" of a charitable trust as defined u/s 2(24) r.w.s 2(15) r.w.s 11 and "total income" as defined u/s 2(45) r.w.s 5 of Act, CIT(A) has erred in holding the total income of the assessee trust at Rs.2,48,075/- in view of the provisions of section 11&12 r.w.s 2(24) (ii)(a) of the Act.

2. Whether on the facts and circumstances of the case CIT(A) has erred in holding that the assessee trust was not required to file audit report in form 10B alongwith the return of income in view of the provisions of section 12A(l)(b) of the Act.

3. That the appellant craves leave to add, modify or delete, many of the grounds of appeal at large stage.”

2. Tersely, we advert the fact of the case is that the assessee is charitable trust defined u/s 2(24) r.w.s. 2 (15) of the Act. The return was filed u/s 139. The return was processed u/s 143(1). The disallowance of the total received amount of Rs.2,51,70,990/- was added back with the total income of the assessee. The

addition was due to the non-filing of the statutory form No. 10B of Income Tax Rule 1962. The reasons were delivered by the Id. AO is as follows:

“If the total income of the Trust/Institution exceeds the amount not chargeable to tax, accounts of such trust or institution are to be compulsory audited and provides an audit report along with his return of income. Hence, please ensure the same and file the corrected return incorporating the details of such audit, failing which the return filed in ITR 7 will be treated as defective.”

3. The claim of the assessee u/s 11 is rejected. The assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) passed the order against the revenue. Aggrieved, revenue filed an appeal before us.

4. The Id. Sr. DR vehemently argued and pointed out that the Id. CIT(A) had not discussed the main issue whether the claim u/s 11 will be applicable without filing Form -10B with the return of the assessee. The Id. Sr. DR had taken our attention in para 4.3 of the appeal order, which is extracted as below:

“4.3 I have carefully considered the facts of the case. The addition of Rs.2,51,70,990/- was due to non-submission of audit report in Form 10B along with return of income. In this regard, condition requiring the e-filing of Form 10B along with return of income is spelt out in section

12A(1)(b) of the Act. In accordance with the provision, the total income (without application of provision of section of sections 11 & 12 of the Act) should exceed the maximum amount not chargeable to tax. In case of the assessee, such computation without application of provision of section 11 & 12 was Rs.2,48,075/-. Hence, assessee was not required to file audit report prescribed in section 12A(1)(b) of the Act. Consequently, disallowance for non compliances with the provision was not called for. In view of the above, ground nos. 1 & 2 are allowed.”

5. The Id. Counsel had filed a written submission and argued that as per the provision of section 12A(1) (b) there is no need to file any statutory Form under Rule.

Here is the extract of Section 12A(1)(b) of the Act.

“12A(1)(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 56[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 form57

duly signed and verified by such accountant and setting forth such particulars as may be prescribed;]”

As per the Id. Counsel the entire observation of the Id. assessing authority is arbitrary and beyond the jurisdiction. Further, he argued that the gross total income of the assessee during the assessment was Rs.2,48,075/-. It is below the taxable limit therefore, the entire addition of the corpus is liable to be deleted. He fully relied on the order of the Id. CIT(A).

6. We heard the rival submission and relied on documents available on the record. The crux of the case is that whether the revenue is eligible to allow the benefit of section 11 for non-filer of the statutory Form 10B with the return of income. The issue was not elaborately discussed by the Id. CIT(A). The Id. Counsel for the assessee was unable to bring any judicial review in favour of the order of the Id. CIT(A). The revenue is also unable to produce any favourable order on their behalf. In our considered view, the matter is directed to remand back to the Id. CIT(A) for further adjudication of this particular issue raised by the assessing authority. Needless to say, that the CIT(A) shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence /explanation submitted by assessee in its defence shall be admitted by the Id. CIT(A) and adjudicate in accordance with law. We order accordingly.

7. In the result, the appeal of the revenue bearing **ITA No. 96/Asr/2022** is allowed for statistical purposes.

Order pronounced in the open court on 20.12.2022

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order