

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2187/MUM/2022
(Assessment Year: 2018-19)

Xprize Foundation,
74, Techno Park 74/11,
C Cross Road, Opp Gate No. 2,
MIDC SEEPZ, Andheri (East),
Mumbai - 400093
[PAN: AAACX1678A]

..... Appellant

Vs

Additional/Joint/Deputy/ACIT/
Income Tax Officer,
National E- Assessment Centre,
National Faceless Appeal Centre,
Delhi

..... Respondent

Appearances

For the Appellant/Assessee : None
For the Respondent/Department : Shri R.N. D'souza

Date of conclusion of hearing : 02.11.2022
Date of pronouncement of order : 28.11.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 19.07.2022, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, (NFAC) Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 23.02.2021, passed under Section 143(3) read with Section 143(3A) & 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Appellant has raised following grounds of appeal:
- “1.) The CIT(A) erred in not granting proper sufficient and adequate opportunity of being heard to the appellant at the time of appeal proceedings.*
 - 2. The CIT(A) erred in confirming the order of the AO on the ground that the form 10 was not filed within the statutory limits as stated u/s 11(2) of the Act.*
 - 3. The CIT(A) erred in not applying law of natural justice by not considering the application of condonation of delay despite CBDT granting the power to CIT for the condonation of delay for filing form 10.*
 - 4. CIT(A) has erred in rejecting the contention of your appellant of pending application of condonation for late filing of form 10 lying with superior authority for his disposal.”*

All the grounds pertain to the addition of INR 67,83,011/- made by Assessing Officer on account of failure of the Appellant to file Form 10 within prescribed time.

3. The relevant facts in brief are that the Appellant is a trust established for the purpose of water abundance and women safety and was registered as a charitable trust with the Commissioner of Income Tax (Exemptions), Mumbai with effect from 13.10.2015.
4. Assessment was framed on the Appellant vide order, dated 23.02.2021, income of the Appellant was assessed at INR 67,83,011/- as against 'Nil' income returned by the Appellant. The Assessing Officer denied the benefit of Section 11(2) of the Act and brought to tax the amount of INR 67,83,011/- as specified in Audit Report in Form 10B since the Appellant had

failed to file Form 10 before the due date of filing return of income under Section 139(1) of the Act.

5. In the appeal preferred against the Assessment Order, dated 23.02.2021, the CIT(A) declined to grant any relief vide order dated 19.07.2022 and dismissed the appeal.
6. Being aggrieved the Appellant is before us.
7. When the appeal was taken up for hearing, none was present for the Appellant. On perusal of records we noted that Form 10 was filled by the Appellant belatedly on 06.01.2021. An application seeking condonation of delay in filing Form 10 was also filed before Commissioner of Income Tax (Exemptions) on 21.01.2021 by relying upon the Circular No. 6 of 2020 issued by the Central Board of Direct Taxes (CBDT) issued on 19.02.2020 which is still pending adjudication. The Assessing Officer had proceeded to make the addition despite having knowledge that the condonation application had not been disposed. Similarly, the CIT(A) as dismissed the appeal without awaiting the disposal of the aforesaid application.
8. Responding to query from the Bench, the Learned Departmental Representative submitted that the condonation application was filed after substantial delay on 21.01.2021. Even Form 10 was filed after notices were issued during the assessment proceedings. Since the Appellant had failed to comply with the mandate of filing Form 10 within the prescribed time, the Assessing Officer was correct in denying the benefit of accumulation of income and making addition of INR 67,83,011/- in the hands of the Appellant.

9. We have considered the submissions advanced by Ld. Departmental Representative and perused the material on record. The exemption under Section 11 is available in case specified percentage of the income is applied by a charitable institution for the purpose of the objects of the trust during the year in which the same is received. However, a charitable institution is permitted to accumulate or set apart some income for future application provided certain conditions are satisfied, one such condition being filing Form 10 before the due date of filing return of income under Section 139(1) of the Act.
10. The power to condone delay in filing Form 10 vested with CBDT in terms of Section 119 of the Act. In view of the representations received by CBDT seeking condonation of delay in filing Form No. 9A and Form No. 10 under Section 119(2)(b) of the Act, Circular No.3 of 2020 [F.NO. 197/55/2018-ITA-I], dated 03.01.2020 was issued by CBDT whereby the Commissioners of Income-tax were authorized to admit Form No. 9A and Form No. 10 filed belatedly after examining the cause for delay in respect of Assessment Year 2018-19 or for any subsequent Assessment Years subject to the conditions specified therein. The aforesaid Circular was followed by Circular No. 6 of 2020 issued by the CBDT on 19.02.2020 which was relied upon by the Appellant while filling application for condoning delay before Commissioner of Income Tax (Exemptions). The relevant extract of the aforesaid Circular reads as under:

“2. Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee

and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31st March of the respective assessment years i.e. Assessment Years 2016-17, 2017-18 and 2018-19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.”

11. A perusal of Circular No. 3 and 6 of 2020 shows that the same were issued with a view to expedite the disposal of application filed by the trust or institution for condoning the delay. In the present case an application seeking condonation of delay was filed by the Appellant Commissioner of Income Tax (Exemptions) who had option to either accept the application or reject the same as not maintainable, or being without merit which would have enabled the Appellant to pursue legal remedy. Since the application was not disposed off, the Assessing Officer had to conclude the assessment based on material on record. The CIT(A) also did not find it appropriate to await the disposal of the aforesaid application. In our view, given the facts and circumstances of the present case, the Appellant cannot be left remediless to suffer the consequences of non-disposal of his application seeking condonation of delay in filing Form 10. Accordingly, we set aside the order passed by the CIT(A) and remand the issue back to the file of the Assessing Officer for fresh adjudication after taking into account the order passed by the Commissioner of Income Tax disposing off the application filed by the Appellant seeking condonation of delay in filing Form 10. The Appellant is also

directed to take steps to pursue the disposal the aforesaid application.

12. In the result, the present appeal is allowed for statistical purposes.

Order pronounced on 28.11.2022.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.11.2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai