



॥ आयकर अपीलीय न्यायाधिकरण, पुणे “ए” न्यायपीठ, पुणे में ॥



**IN THE INCOME TAX APPELLATE TRIBUNAL, PUNE “A” BENCH, PUNE
BEFORE HON’BLE SHRI S.S. GODARA, JUDICIAL MEMBER
AND**

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपीलसं. / ITA No. 645/PUN/2021

Kokan Kala Shikshan Vikaas Sanstha

157, Netarde, Kholbagwadi,

Sindhudurg – 416511.

PAN:AACTK0913A

..... अपीलार्थी / **Appellant**

बनाम / V/s.

Deputy Commissioner of Income Tax

CPC, Bengaluru.

.....प्रत्यर्थी / **Respondent**

द्वारा / Appearances

Assessee by : Shri Sarvesh Khandelwal

Revenue by : Shri Ramnath Murkunde

सुनवाई की तारीख / Date of conclusive Hearing : 01/12/2022

घोषणा की तारीख / Date of Pronouncement : 30/12/2022

आदेश / ORDER

PER G. D. PADMAHSHALI, AM;

The order of first appellate authority [for short “**FAA / NFAC**”] passed u/s 250 of the Income-tax Act, 1961 [for short “**the Act**”] confirming the denial of exemption claimed u/s 11 & 12 by the Deputy Commissioner of Income Tax, CPC, Bengaluru [for short “**AO**”] vide its order dt. 12/07/2019 passed u/s 143(1) of the Act, is challenged by the present appeal on the following grounds;



“Ground no 1: Section 11 of the Income Tax Act

On the facts and circumstances prevailing in the case and as per the provisions of the Act, denial of exemption u/s 11 of the Act on account of delay in furnishing the audit report electronically, is not in accordance to the provisions of the Act. The exemption u/s 11 may kindly be granted to the appellant.

Ground no 2: Section 143(1)

On the facts and circumstances prevailing in the case and as per the provisions of the Act, the disallowance of exemption u/s 11 of the Act on account of delay in furnishing the audit report electronically, is not permissible and notwithstanding that no additions on account of disallowances are to be made, even if such additions are to be made, it cannot be by way of intimation under section 143(1)(a) of the Act, as it is on account of debatable issue. The addition so made may kindly be deleted.

Ground no 3: Residuary Ground

The appellant prays to be allowed to add, amend, modify, rectify, delete and raise any ground of appeal at the time of hearing.



2. Concisely stated facts borne out of the case records are;

2.1 The appellant assessee is a Trust engaged in charitable activities in the field of education, cultural, social, medical relief and woman empowerment etc., and registered u/s 12AA of the Act, had for assessment year 2018-19 [for short "**AY**"] filed its return of income [for short "**ITR**"] u/s 139(4D) on 13/07/2018 declaring total income at ₹3,30,680/- after a claim of exemption for ₹36,21,75/- from the voluntary contribution received ₹39,43,555/-.

2.2 The Ld. AO, after putting assessee to notice u/s 143(1)(a), the ITR was processed u/s 143(1) of the Act denying the claim of exemption for non-submission of audit report in Form 10B alongwith or before filing the ITR and determined the total income at ₹39,52,385/- .

2.3 Aggrieved by the denial of exemption, the assessee on one hand filed an appeal before Ld. **FAA** on 18/12/2020 and on the other hand filed rectification application u/s 154 of the Act on



27/08/2021 accompanying proof of filing of audit report in Form No 10B on 29/02/2020, however of no success, the appellate brought up the matter before the Tribunal for reversal of order of assessment on the grounds laid at para 1 hereinbefore.

3. During the course of hearing, the learned counsel for the assessee [for short "**AR**"] submitted that, the appellant failed to attend the notice 143(1)(a) on account of IT-website technical glitches, which could not allow the appellant to download the notice / communication and vouch the contents therefore and for the reasons it remained non-complied. In support of aforesaid claim, the appellant adduced the copy of screenshot placed at "**Annexure-7**" which remained uncontroverted by the learned departmental representative [for short "**DR**"]. It is further argued that, the ultimate compliance of submission of audit report was brought to notice of Ld. **FAA**, who in-spite having co-terminus power with that of Ld. AO, has rejected to entertain the claim of exemption, which caused injustice to the appellant.



Per contra the Ld. DR supported the order passed by both the tax authorities below [for short "**TAB**"] and contended that when the assessee failed to file Form10B along with return of income, the assessee is not eligible for exemption u/s 11 of the Act as per the amendment in Finance Act, 2015 w.e.f. 01/04/2016.

4. We have heard the rival contentions of both the parties; and subject to the provisions of rule 18 of "**ITAT Rules**", perused the material placed on record, case laws relied upon by the appellant as well the respondent and duly considered the facts of the case in the light of settled legal position forewarned to either parties.

5. We note that, the ITR for the impugned AY was filed on 13/07/2018 and notice calling the audit report u/s 143(1)(a) was served on 28/02/2019 according thereby 30 days to remove deficiency by filing audit report in Form No 10B, however in the absence of any such compliance from the appellant, ITR was finally processed on 26/06/2019 denying the exemption,



which the Ld. FAA upheld quoting equi-reasons. We also note that, the assessee could not attend the communication due to IT-Website technical glitches, however has eventually filed the audit report in Form No 10B on 29/02/2020 and complied with the condition laid in section 12A(1)(b) so as to entitle for a claim of exemption envisaged u/s 11 & 12 of the Act.

6. In the evince of details filed at clause M2 of ITR filed (Internal Page 4 of ITR) on 13/07/2018, it undisputedly establishes that the appellant got its books audited u/s 12A(1)(b) of the Act from M/s S. D. Pednekar & Co which issued & furnished the said audit report on 05/07/2017 i.e. prior to filing of ITR for the impugned AY, however the copy thereof remained to be filed alongwith ITR as well in response to communication u/s 143(1)(a) of the Act on account of technical glitches beyond the control of the assessee and the deficiency came to light only upon service of demand u/s 156 of the Act. Thus, the non-compliance with communication u/s 143(1)(a) of the Act due to IT-Website technical glitches was unintentional and



beyond the control of the appellant is sufficient to form a reasonable cause for non-compliance and since the procedural compliance has been duly made good by filing the audit report on record, we see no reason to deny the exemption in the present facts and circumstance, ergo we set-aside the order of both the tax authorities below and direct the Ld. AO to grant the claim of exemption in the evince of Form No 10B.

7. Since ground no 1 is adjudicated in favour of the assessee, the balance grounds rendered academic.

8. Resultantly, the appeal of the appellant is ALLOWED in above terms.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Friday 30th day of December, 2022.

-S/d-

S. S. GODARA

JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI

ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 30th day of December, 2022.

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

1. अपीलार्थी / The Appellant.
3. The Pr. CIT, Pune
5. DR, ITAT, Pune "A" Bench, Pune

2. प्रत्यर्थी / The Respondent.
4. The Pr. CIT(E), Pune
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / By Order,
वरिष्ठनिजीसचिव / Sr. Private Secretary
आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.