

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, 'B' JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 425/JP/2022
निर्धारणवर्ष/Assessment Year : 2018-19

Tagore Shiksha Samiti 1, Gudhagorji Udaipurwati Jhunjhunu- 333 022	बनाम Vs.	The ACIT Circle (Exemption) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAATT 6527 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri S.S. Shekhawat, CA
राजस्व की ओरसे/ Revenue by: Shri Ajay Malik, CIT &
Smt. Runi Pal, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 11/01/2023
उदघोषणा की तारीख/Date of Pronouncement: 24 /01/2023

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal by the assessee is directed against the order of the ld. CIT(A) dated 25-11-2022, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2018-19. The grounds of appeal raised by the assessee are as under:-

“1. The AO (Exemption) as well as ld CIT(A) acted against provision of law ignoring Circular dated 03-01-2020 and case laws regarding allowing delay in filing audit Form 10B, having not condoned the delay as it being a procedural requirement and exemption u/s 11 and 12A cannot be denied even Audit Report filed at

the time of application u/s 154 or/ and appeal to ld CIT(A) while in this case it was filed much before appeal to the ld. CIT(A).

2. The AO (Exemption) as well the ld. CIT(A) erred to compute day of allowable 365 days as per Circular 2/2020 dated 03-01-2020 u/s 139, sd365 days should be computed w.e.f. last filing day u/s 139(4) that was 31-03-2020 while the Form 10B-the Audit Report was well filed on 19-03-2020 i.e. before the 31-03-2020.

2.1 The crux of the issue in appeal filed by the assessee samiti i.e. Tagore Shiksha Samiti, Gudha Godjika, Gudhagorji, Jhunjhunu is that the assessee samiti had filed an application for condonation of delay in filing Form No. 10B for the assessment year 2018-19 on 19-03-2020. The ld. CIT(Exemption) on perusal of e-filing data of the assessee gathered that the assessee had filed Audit Report in Form No. 10B for the year under consideration on 19-03-2020. According to the ld. CIT(E), there was delay of more than 365 days in filing the return of income from the due date of filing u/s 139(1) of the Act for the assessment year under consideration. The ld. CIT(E) vide his order dated 21-08-2020 rejected the application of Samiti dated 19-03-2020 as to condonation of delay in filing of Form No. 10B dated 19-03-2020 by exercising powers conferred u/s 119(2)(b) of the Income Tax Act as laid down in CBDT Circular No. 01/2020 (F.N. 197/55/2018-ITA-1) dated 03-01-2020.

2.2 Further, in this appeal it is also noteworthy to mention that the assessee is a charitable trust which is registered u/s 12A of the Act and it is running an

educational institution. The assessee filed its return of income for the A.Y. 2018-19 on 31-10-2018 declaring a total income of Rs.Nil after claiming exemption u/s 11 and 12 of the Act. The return of income was processed u/s 143(1) of the Act by the AO at Centralized Processing Center (CPC) vide intimation dated 17-10-2019 and thus determining the total income of the assessee at Rs.10,63,52,616/-. The AO while doing this exercise disallowed the assessee's claim of exemption u/s 11 of the Act for not furnishing the statutory audit report in Form 10B along with the return of income filed on 31-10-2018 as envisaged u/s 12A(1)(b) of the Act. Thus the AO brought to tax the entire amount of receipts of Rs.10,63,615/- as income of the assessee. Later on, the assessee aggrieved with the action of the AO at (CPC), filed rectification petition u/s 154 of the Act dated 03-10-2020 before the ACIT, Exemption (jurisdictional AO), Jaipur requesting the AO to rectify the intimation/order u/s 143(1) dated 17-10-2019. The AO after considering the request of the assessee rejected rectification application of the assessee on the ground that audit report in Form 10B was filed beyond the time limit prescribed u/s 12A(1)(b) read with 1st proviso to rule 12(2) of the I.T. Rules and the assessee's application for condonation of delay was also rejected by the Id. CIT(E), Jaipur. Accordingly, the AO passed the impugned rectification order u/s 154 of the Act dated 7-09-2020 by confirming the demand raised u/s 143(1) of the Act amounting to Rs.4,73,27,770/-.

2.3 In first appeal, the ld. CIT(A) has dismissed the appeal of the assessee by observing as under:-

“6.13 In the instant case, as seen from the submissions and documentary evidence filed by the assessee, the assessee did file application dated 19-03-2020 seeking condonation of delay in filing of statutory audit report in Form 10B as envisaged u/s 12A(1)(b) of the Act r.w.r. 17B and 12(2) of the Rules, before the Commissioner of Income Tax (Exemptions), Jaipur. The same was disposed of on 21-08-2020 stating that the application is rejected in exercise of powers conferred u/s 119(2)(b) of the Act laid down in CBDT Circular No. 2 of 2020 dated 03-01-2020.

6.14 At this juncture, it may be noted that as per the CBDT Circular No. 2 of 2020 (supra) for the AY 2018-19 or for any subsequent AYs, in terms of the provisions of Sec. 119(2) of the Act, the Commissioner of Income Tax (Exemption) has been authorized to admit belated applications of condonation of delay upto 365 days and decide the matter on merits. As such, the jurisdictional AO or any other authority, as the case may be, has no jurisdiction/authority to entertain any application seeking condonation of delay in filing audit report in Form 10B for the impugned A.Y. 2018-19 by invoking the provisions of Section 119(2) of the Act.

6.15 In order to get entitlement for claiming exemption of its income u/s 11 of the Act, it is mandatory on the part of the appellant to file the Form No. 10B or get a condonation of delay in filing the Form 10B from the CIT(E), Jaipur, without which the AO can't have the powers to allow the request of appellant trust as claimed in its rectification application. Directing the AO to do an act as pleaded by the appellant to allow the deduction u/s 11 is against the provisions of law. The AO cannot allow the deduction u/s 11 on facts and circumstances of the law except when a Court directs under alternative remedy or CIT(E) condones the delay u/s 119(2)(b) of the Act.

7.0 In the result, the appeal against rectification order u/s 154 of the Act for the A.Y. 2018-19 is dismissed.

2.4 During the course of the hearing, the ld. AR of the assessee prayed that it was a bona fide mistake on the part of the trustee who believed that it was the auditorresponsibility to upload all the required documents without any follow up on their part. The issue came to the knowledge of the appellant when the exemption was disallowed and demand was raised by the department. The ld. AR further prayed that the delay in filing the Form No. 10B occurred beyond the control of the appellant and the appellant filed the Form No. 10B immediately upon having come to know that it could not be filed in accordance with law. The ld. AR of the assessee submitted that the appellant trust had no wrong intention to avoid filing of Form No. 10 B. The ld. AR of the assessee further submitted that filing of audit report 10B alongwith I.T. Return is a procedural matter and not mandatory. He further submitted that filing of audit report in Form10B alongwith I.T. Return is Directory in nature. To this effect,the ld. AR relied upon following case laws on the issue in question.

1. CIT vs Gujarat Oil and Allied Industries Ltd. (1993) 201 ITR 325 (Guj) *in which it is held that the provision about furnishing of the auditor's report alongwith the return has to be treated as procedural provision and, therefore, directory in nature.*
2. G.V. Infosolutions Pvt. Ltd. vs DCIT, Circle 10(2) and others , 261 taxmann..com 482 (Del.)

3. Sujatha Ramesh VS CBDT, New Delhi (2017) 87 Taxmann. Com 228 (Ker.)
4. B.M. Malani vs CIT (2008) 219 CTR 313
5. Jay Vijay Express Carriers vs CIT-III (2014) 34 Taxmann.com 61 (Guj)
6. CIT vs Shahzed Nand Charity Trust (1997) 228 ITR (PH) – Exemption available to the trust may not be denied merely for delay in furnishing audit report. The audit report can even be submitted at the appellate stage either before the ITO or before the appellate authority

2.5 On the other hand, the ld. DR argued that the application under section 119(2)(b) of the Act was rejected by the CIT (Exemption) and subsequent to his order, an order u/s 154 of the Act was passed by the AO. Hence, the assessee trust should have filed the appeal against the order of ld. CIT(E) passed u/s 119(2)(b) before the ITAT and the appeal of the assessee trust is not maintainable on technical reason. However, the ld. DR has fairly admitted that looking to various judgements cited by the ld. AR of the assessee in his written submission as to filing of Form 10B belatedly in spite of CBDT Circular No. 2/2020 dated 03-01-2020, the case of the assessee can be disposed of on merit instead of technical latches.

2.6 In rejoinder, the Id. AR of the assessee prayed that the argument of the Id. DR is not maintainable as there is no provision to file the appeal before the ITAT against the order of the Id. CIT(E) passed u/s 119(2)(b) of the Act. Even the Id. CIT(E) has not correctly interpreted the CBDT Circular (supra) and he has partly considered it and adopted that delay is beyond 365 days and further he has not considered the merit of the case whereas the circular of CBDT (supra) is very clear that upto 365 days delay there is no necessity of considering reasonable cause and considering the direction of the CBDT given in para 4 (ii) that even delay beyond 365 days should be considered based on reasonable cause in filing Form no. 10B.

2.7 We have heard both the parties and perused the materials available on record. The issue in question is that the assessee trust has not submitted the Form 10B alongwith return of income for which exemption was not allowed by the AO while passing the order u/s 143(1) dated 17-10-2019 and demand of Rs.4,73,27,770/- was raised. The assessee had filed application before the Id. CIT(E), Jaipur for condonation of delay in filing Form No. 10B who vide his order dated 21-08-2020 rejected the application vide his order dated 19-03-2020. Subsequently, the assessee filed an appeal before the Id. CIT(A) who also adopted the same methodology as adopted by the Id. CIT(E) and thus dismissed the appeal of the assessee on technical reasons. The Bench has gone through the entire

episode in the case and noted that the assessee should not suffer for want of technical latches and the case should be decided on merit and the approach of the authorities should be justice oriented so as to advance the cause of justice. It is also worthwhile to mention that Hon'ble Gujarat High Court has given verdict in the case of CIT vs Gujarat Oil and Allied Industries Ltd. 201 ITR 325 as under:-

“Provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice. The court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the AO or appellate authority by assigning sufficient cause.”

The Bench taking into consideration all the above facts and circumstances of the case feels that the delay in filing the Form No. 10B is condoned and the AO is directed to consider the claim of the assessee and give necessary effect as per law. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 24 /01/2023.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-

(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 24/01/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Tagore Shiksha Samiti
2. प्रत्यर्थी / The Respondent- ACIT (Circle), Exemption
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 425/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar