

**आयकर अपीलीय अधिकरण, 'सी' / SMC न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' /SMC BENCH, CHENNAI**  
**श्री महावीर सिंह, उपाध्यक्ष के समक्ष**  
**BEFORE SHRI MAHAVIR SINGH, VICE-PRESIDENT**

आयकरअपीलसं./I.T.A.No.83/Chny/2023

(निर्धारणवर्ष / Assessment Year: 2018-19)

M/s. M R Pratap Public Charitable Trust No.3, Villa Enchantrees, Ranjit Road Kotturpuram, Chennai-600 085.	Vs	The ADIT, CPC , Bengaluru
PAN: AABTM 1789R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. R.Vijayaraghavan, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. AR.V.Sreenivasan, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	27.02.2023
घोषणाकीतारीख /Date of Pronouncement	:	27.02.2023

**आदेश / ORDER**

This appeal filed by the assessee is arising out of order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi vide appeal No. ITBA/NFAC/S/250/2022-23 / 1048258865(1) dated 27.12.2022. The impugned intimation u/s.143(1) of the Income Tax Act, 1961 (hereinafter 'the Act') was passed by order dated 21.05.2019 for the relevant assessment year 2018-19 by the CPC., Bengaluru, by disallowing expenses amounting to Rs.88,890/-.

2. For this issue, the assessee has raised various grounds, including that the assessee has not filed Form No.10B along

with return of income. The assessee has raised various issues vide ground no.2, which reads as under:-

*“1. The Commissioner of Income tax (Appeals), National Faceless Appeal Centre (NFAC) is contrary to law, facts and circumstances of the Act.*

*2. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of charitable expenses amounting to Rs.88,890/-and adding to the total income of the appellant for not filling the Form-10B along with the return of Income.*

*2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that during the course of appellate proceeding the appellant has filed the audited accounts and audit report in form no-10B electronically on 11.12.2022, with in the time as provided u/s 139(9).*

*2.2 The Appellant had not been given an opportunity to rectify any defects in filing of the return as per Section 139(9) read with Explanation thereto. As this is a rectifiable defect u/s.139(9), the return and report should not have been rejected by the Commissioner of Income tax (Appeals).*

*2.3 The Commissioner of Income tax (Appeals) ought to have appreciated that the jurisdictional High Court in the case of Jayant Patel has held that Audit Report can be filed in the course of Appellate proceedings.*

*2.4 The Commissioner of Income tax (Appeals) ought to have appreciated that as held by the Apex Court itself the decision of the Apex Court in Wipro Finance Ltd (rendered in the context of Section 10A), is not applicable to cases of belated filing of Audit Reports.*

*2.5 The Commissioner of Income tax (Appeals) ought to have accepted the Audit Report and should have decided the case on merits.”*

3. Now, at the time of hearing, learned counsel for the assessee stated that he is ready to go back to the Assessing Officer, in case, other issues on merits are kept open for adjudication by the Assessing Officer, as the assessee has

moved a petition before the CBDT for condonation of delay in filing Form No.10B. When this fact was pointed out to the learned Senior DR, he raised no objection.

4. After hearing both the sides, I am keeping the issues legal as well as issue on merits as open and the Assessing Officer will re-adjudicate the same after decision of the CBDT, whether condoning delay in filing Form No.10B or not. The Department will also take steps to get decision of CBDT at the earliest on the assessee's condonation petition in Form No. 10B. The assessee will also pursue the matter with CBDT. In terms of above, order of the CIT(A) and that processing by CPC u/s.143(1) are set aside and matter is remanded back to the file of the Assessing Officer.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27<sup>th</sup> February, 2023

**Sd/-**

**(महावीर सिंह)**

**(Mahavir Singh)**

**उपाध्यक्ष/ Vice-President**

चेन्नई/Chennai,

दिनांक/Dated 27.02.2023

DS

आदेश की प्रतिलिपि अद्येषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.