

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member  
AND  
Shri Laliet Kumar, Judicial Member**

ITA.No.713/Hyd/2022		
Assessment Year: 2018-19		
Swarna Educational Academy, Tirumalagiri, Hyderabad – 500010.  PAN : AATFS9420R.	Vs.	The Income Tax Officer, Exemption Ward 1(4), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri Darshan Jakharia
Revenue by:		Shri KPRR Murthy.
Date of hearing:		13.03.2023
Date of pronouncement:		14.03.2023

**ORDER**

**PER LALIET KUMAR, J.M.**

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi, dt.21.10.2022 for the A.Y. 2018-19 on the following grounds :

*“1. The Learned Commissioner of Income (Appeals), National Faceless Appeals Centre [referred to as "CIT(A)" in short] erred in facts and law while passing the order u/s 250 of the Income' Tax Act, 1961.*

*2. The Learned CIT(A) erred in upholding the denial of exemption u/s 11 ignoring that the appellant society had got its accounts audited and obtained report in form 1013 well before the due date of filing return of income, thereby in substance the appellant complied with the conditions for claiming exemption.*

*3. The Learned CIT(A) erred in ignoring that the delay in uploading of audit report was not attributable to the appellant Society as the delay occurred at the auditor's end (which is confirmed by the auditor in affidavit as well) and therefore the. 'appellant should not be penalised for mere procedural lapse on the part of auditor.*

*4. The Learned CIT(A) erred in ignoring that the appellant has filed an application before CBDT and then before Pr. CCIT seeking condonation of delay and further communication from the authority is awaited.*

*5. The Learned CIT(A) erred in not considering the case laws relied upon by the appellant squarely applicable in, the facts and circumstances of the present case. Further the learned CIT(A) also erred by placing reliance on the case which is distinguishable on facts.”*

2. The brief facts of the case are that assessee is a society registered under section 12AA of Income tax Act and the assessee society filed its return of income on 03.11.2018 with nil income. Thereafter, defective return notice dated 09.04.2019 was received indicating that no income details have been provided in the return of income, however, the assessee society claimed TDS and had filed return in Form Type 7 and has not claimed any deduction exemptions under section 11 or clauses of Section 10 or Section 13A or Section 13B in schedule Part B-TI of the return. In response to the same, the assessee filed return of income on 21.5.2019 correcting the defect declaring the income at Rs.1,45,308/-. Subsequently, assessee received intimation u/s 143(1) of the Act on 17-10-2019 in which application of funds of Rs.4,13,68,008/- and accumulation of fund amounting to Rs.70,85,653/- under section 11(1) of the Act were not allowed and determined income at Rs.4,85,98,969/-. As the society is registered under section 12AA, application of funds and accumulation is allowable. However the same is not considered in the intimation under section 143(1). Aggrieved by the disallowances assessee filed the present appeal.

3. Feeling aggrieved with the order dt.17.10.2019 passed u/s 143(1) of the Act, by CPC, Bangalore, assessee filed the present appeal which was later migrated to the Ld. CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

4. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

5. Before us, ld. AR has submitted that in the present case, since the benefit claimed u/s 11 of the Act denied by the Assessing Officer and upheld by ld.CIT(A) were nullified due to order dt.26.12.2022 passed by PCCIT(E), Delhi and the rectification order dt.16.01.2023 passed by the jurisdictional Assessing Officer, no question of challenging the present appeal.

5.1. Before us, in support of its contentions, ld. AR for the assessee filed written submissions mentioning the developments in the facts of the present case enclosing copies of order dt.26.12.2022 passed by PCCIT(E), Delhi and also rectification order dt.16.01.2023 passed by the jurisdictional Assessing Officer.

6. The brief facts of the written submissions filed by the assessee are that assessee society was denied the benefit of section 11 of the Act due to delay in online uploading of from 10B i.e., audit report u/s 12A(1)(b) of the Act. Thereafter, it filed an application before the PCCIT(Exemption), Delhi u/s 119(2)(b) of the Act for the condonation of the delay and during the pendency of condonation petition, ld.CIT(A) dismissed the appeal, hence, the assessee society approached the Tribunal. Meanwhile, PCCIT(E), Delhi condoned the delay. Later, jurisdictional Assessing Officer

had passed rectification order allowing the benefit u/s 11 of the Act and accepted the return of income and accordingly deleted the demand raised earlier.

7. Per contra, ld. DR raised no objection in allowing the present appeal due to developments in the facts of the case.

8. We have heard the rival submissions and perused the material on record, so also the copies of order dt.26.12.2022 passed by PCCIT(E), Delhi and also rectification order dt.16.01.2023 passed by the jurisdictional Assessing Officer. We find that in the present case, as the benefit claimed u/s 11 of the Act denied by the Assessing Officer and upheld by the ld.CIT(A) were already nullified, the present appeal will become infructuous. Accordingly, the appeal of the assessee is dismissed as infructuous.

9. In the result, the appeal of assessee is dismissed as infructuous.

Order pronounced in the Open Court on 14<sup>th</sup> March, 2023.

**Sd/-**

**Sd/-**

<b>(RAMA KANTA PANDA)</b> <b>ACCOUNTANT MEMBER</b>	<b>(LALIET KUMAR)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 14<sup>th</sup> March, 2023.

***TYNN/sps***

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2	ITO, Exemption Ward - 1(4), Hyderabad.
3	DR, ITAT Hyderabad Benches
4	Guard File

*By Order*