

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.950/Bang/2022 : Asst.Year 2018-2019

M/s.Mulki Sundar Ram Shetty Nagar Ayyappa Swamy Temple Trust, No.9, 5 th Main, MSRS Nagar, Vijaya Bank Layout Bengaluru – 560 076. PAN : AACTM4557A.	v.	The Income Tax Officer Exemption Ward - 2 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Darshan Bhat, CA

Respondent by : Sri.Gudimella VP Pavan Kumar, JCIT-DR

Date of Hearing : 28.03.2023	Date of Pronouncement : 28.03.2023
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 01.08.2022 passed u/s 250 of the I.T.Act. The relevant assessment year is 2018-2019.

2. The solitary issue that is raised is whether the CIT(A) is justified in upholding the action of the CPC in denying the assessee's claim of exemption u/s 11(1) of the I.T.Act.

3. The brief facts of the case are as follows:

The assessee is a temple trust, registered u/s 12AA of the I.T.Act. For the assessment year 2018-2019, the return of income was filed on 21.09.2018 declaring 'Nil' income after claiming exemption u/s 11 of the I.T.Act. The return of income was processed u/s 143(1) of the I.T.Act by the CPC,

wherein the claim of exemption u/s 11 of the I.T.Act was denied. The reasoning for denial of the claim of exemption u/s 11 of the I.T.Act was for the reason that the assessee had belatedly filed Form No.10B by 5 days (i.e. on 26.09.2018).

4. Aggrieved, the assessee filed appeal before the first appellate authority. The CIT(A) after referring the Board Circulars No.10/2019 dated 22.05.2019 and No.28/2019 dated 27.09.2019, held that the assessee has not stated anything about the condonation of delay filed before the CIT(Exemption). The first appellate authority rejected the appeal of the assessee, since the delay in filing the Audit Report has not been condoned by the CIT(E).

5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paper book comprising of 30 pages enclosing therein the certificate issued u/s 12A of the I.T.Act, copy of the computation of statement of income, financial statements, copy of Form 10B issued by the Accountant for the relevant assessment year, copy of the acknowledgment for having filed the audit report in Form 10B, copy of the order of the CIT(E) condoning the delay in filing the audit report in Form No.10B, etc. The learned AR submitted that the delay of 5 days in filing the Audit Report in Form No.10B was condoned by the CIT(E) u/s 119(2)(b) of the I.T.Act, hence, the assessee is entitled to the claim of exemption u/s 11 of the I.T.Act.

6. The learned Departmental Representative supported the order of the CIT(A).

7. We have heard rival submissions and perused the material on record. The due date of filing of return u/s 139(1) of the I.T.Act was 30.09.2018. The return of income was filed on 21.09.2018. The Audit Report in Form No.10B was e-filed on 26.09.2018. The Audit Report has been filed 5 days after filing of the return. The CPC has denied the claim of exemption u/s 11 of the I.T.Act, for the reason that the Audit Report was not filed along with the return of income. The assessee has placed on record the order of the CIT(E), wherein he has condoned the delay of 5 days in furnishing the Audit Report in Form No.10B. The same reads as follows:-

“Mulki Sundar Ram Shetty Nagar Ayyappa Swamy Temple Trust, PAN:AACTM4557A filed an application in this office on 13/07/2020 requesting for condonation of delay in filing Form 10B for the Assessment Year 2018-19.

2. After considering the facts and circumstances of the case and in the light of CBDT circular No.2/2020 dated 03-01-2020 in F.No.197/55/2018-ITA-I, the delay in filing Form No.10B for the A.Y. 2018-19 is hereby condoned.

3. The JAO is directed to give effect to this order u/s 119(2)(b) of I.T.Act, 1961. Consequent to giving effect to this order, if the case results in refund, the same may be adjusted against the existing demand, if any.”

8. Since the CIT(E) has condoned the delay in filing the Audit Report, the assessee is entitled to exemption u/s 11 of the I.T.Act, provided other conditions are satisfied for claiming exemption u/s 11 of the I.T.Act. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 28th day of March, 2023.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 28th March, 2023.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFAC Delhi
4. The Pr.CIT, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore