

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.390/Ind/2022
Assessment Year: 2015-16

Navratna Sukrat Foundation 35, Tilak Nagar Indore	बनम/ Vs.	CPC, Bangalore
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AABTN7221 K		
Assessee by	Shri Rajesh Mehta & Shri Apurva Mehta, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	11.04.2023	
Date of Pronouncement	21.04.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 16.09.2022 passed by learned Commissioner of Income-Tax, National Faceless Appeal Centre, Delhi [**Ld. CIT(A)**], which in turn arises out of rectification-order dated 11.04.2019 passed by learned CPC, Bangalore [**Ld. AO**] u/s 154 of Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2015-16, the assessee has filed this appeal on various grounds as mentioned in Appeal Memo.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The exact controversy involved in various grounds of appeal is: Whether or not the assessee was entitled for exemption u/s 11/12 as claimed in the return of income, when the audit-report (Form No. 10B) was filed after filing of return but before processing u/s 143(1)?

4. Apropos to this issue, the precise facts are: The assessee is a religious trust, engaged in carrying out religious activities, registered u/s 12A of the Income-tax Act, 1961 and entitled for exemption u/s 11/12; accordingly it claimed exemption u/s 11/12 in the return of income filed on 31.03.2017. When the AO processed return u/s 143(1) on 07.08.2018, he did not allow exemption u/s 11/12 for the reason that the audit report (Form No. 10B) was not filed by assessee with return of income. Subsequently, the assessee filed rectification-application u/s 154 requesting the AO to allow exemption as claimed in return of income. But the AO rejected assessee's request vide order dated 11.04.2019; thus the exemption is again denied. Getting no success at the level of AO, the assessee went in first-appeal to CIT(A). But even at that stage, the assessee did not get any relief. Now, the assessee has come in this appeal before us.

5. Ld. AR submitted that the assessee is engaged in religious activities; that the registration granted to it by tax authorities u/s 12A was in force; that the assessee had been granted benefit of section 11/12 in preceding assessment-years as well as subsequent assessment-years. He further submitted that the assessee filed return of income on 31.03.2017 and prior to such filing, the accounts were duly audited on 20.07.2016, a copy of the audited-accounts alongwith audit-report (Form No. 10B) is placed at Page No. 1 to 2 in Paper-Book. However, the auditors of assessee failed to e-file/upload the audit-report alongwith the return of income. But subsequently before processing of return by AO u/s 143(1), the assessee arranged to get the audit-report e-filed/uploaded on 28.04.2018. Ld. AR submitted that the CIT(A) has, without appreciating these facts, dismissed the appeal of assessee merely on a technical defect that the audit-report was not filed

alongwith the return of income. Ld. AR submitted that except such technical defect, there is no other reason to deny the benefit of section 11/12 to assessee. Ld. AR submitted that the e-filing/uploading of audit-report is done by auditors and not by assessee; therefore the defect is not *per se* attributable to assessee. Ld. AR submitted that in any case, the defect is due to an inadvertent human error and the assessee should not be denied the legitimate exemption, when the assessee is genuinely doing religious activities for the welfare of public and satisfying all conditions prescribed in income-tax law for being entitled to exemption. Ld. AR submitted that if the audit-report obtained by assessee on 20.07.2016 but filed on 28.04.2018 is accepted, the assessee would be entitled to the benefit of exemption. Ld. AR placed a heavy reliance on the latest decision of **ITAT in Savitri Foundation Vs. ITO, ITA No. 1925/Mum/2021 (AY 2018-19) order dated 01.08.2022** wherein the AO made processing of return u/s 143(1) denying exemption u/s 11 to assessee for the very same reason of non-uploading of audit report before filing of return but subsequently the assessee uploaded audit-report during the course of first-appeal; when the matter reached ITAT, the Mumbai Bench has allowed exemption to assessee. Ld. AR submitted that the decision taken by ITAT is directly applicable to assessee. Ld. AR also relied upon following decisions in support of the same proposition:

- (i) ITAT, Jodhpur Bench in ITO, Exemption Ward Vs. Society for Education Conscientisation Awareness & Training, ITA No. 461/Jodh/2018 dated 06.05.2019
- (ii) ITAT, Ahmedabad Bench in Puravanchal Lokhit Mandal Vs. ITO, Exemption Ward, Vadodara, ITA No. 966/Ahd/2019, dated 30.11.2022
- (iii) Hon'ble Gujrat High Court in Sarvodaya Charitable Trust Vs. ITO, Exemption (2021) 125 taxmann.com 75 (Gujrat)

6. Per contra, Ld. DR vehemently defended the orders of lower-authorities and submitted that furnishing of audit-report alongwith return of income is a pre-condition for allowability of exemption u/s 11. Since the assessee has not fulfilled such condition, the lower-authorities have rightly denied the assessee's claim of exemption u/s 11 and there is no infirmity in the action of lower-authorities.

7. We have heard rival contentions of both sides and examined the present controversy in the light of judicial decisions. At first, we are convinced that the controversy is directly settled in favour of assessee by decision in **Savitri Foundation (supra)** where the Hon'ble Mumbai ITAT, following the decision of **Hon'ble Mumbai High Court in CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee 378 ITR 103** has observed and held thus:

“4. Submissions made by rival sides heard, orders of authorities below examined and the case law on which the ld. Authorized Representative of the assessee placed reliance considered. The assessee is a charitable trust registered under section 12AA of the Act and has been purportedly enjoying the benefits of section 11 since 2011. In the impugned assessment year, the benefit of exemption under section 11 of the Act has been denied to the assessee for the reason that assessee has failed to furnish audit report along with return of income. The contention of the ld. Authorized Representative of the assessee is that the audit report was available with the assessee at the time of filing of return of income however due to inadvertent error the assessee failed to upload Audit Report in Form 10B along with e-filing of return of income. Non-filing of Audit Report is a bonafide error. The assessee has placed on record Audit Report dated 19/10/2018 in the prescribed Form 10B at page 15 of the Paper Book. The assessee after receiving the intimation under section 143(1) of the Act uploaded the Audit Report on 18/04/2020 in First Appellate proceedings.

5. In my considered view non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same.

6. The Hon'ble Bombay High Court in the case of **CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee (supra)** has held that late filing of required documents would not disentitle the assessee from availing benefit of section 11 of the Act. Thus, in the facts of the case and in the light of decision of Hon'ble Bombay High Court, I deem it appropriate to restore the file back to Assessing Officer for de novo assessment after considering the audit report filed by the assessee, in accordance with law.

7. In the result, impugned order is set aside and appeal by assessee is allowed for statistical purposes.”

8. Other decisions relied upon by Ld. AR cited above have also held the same view. Respectfully following the ratio of all these decisions, we are of the view that in the present case, the assessee can't be denied the benefit of exemption u/s 11 as claimed in the return of income for mere delay in filing of audit-report. We, therefore, deem it fit to remand this matter back to the file of AO for a fresh assessment after considering the audit-report filed by assessee, in accordance with law. The assessee succeeds in this appeal.

9. Resultantly, this appeal of assessee is allowed for statistical purpose in terms indicated above.

Order pronounced in the open court on 21/04/2023

Sd/-

(VIJAY PAL RAO)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 21.04.2023

Patel/Sr. PS

- Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	
7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	