

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 194/Rjt/2022
Assessment Year: 2016-17**

Late Arjan Kanji Smarak Charitable Trust Bhachau O.K.D.C.C. Bank, Ramwadi Vistar Bhachau Bhachau-370140, Gujarat PAN No: AAATL4056D (Appellant)	Vs	The Deputy Commissioner of Income Tax (CPC), Bangalore (Respondent)
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**Assessee Represented: Shri D.M. Rindani, A.R.
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 09-03-2023
Date of pronouncement : 10-05-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the Appellate order dated 10.05.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the Intimation passed under section

143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2016-17.

2. The solitary issue involved in this appeal is whether the Ld. NFAC right in not condoning the delay of 852 days as no sufficient cause has been shown by the assessee u/s. 249(3) of the Act.

2.1. The brief fact of the case is that the appellant is a Charitable Trust duly registered under section 12A of the Act and having objects of providing education facilities to the society by running schools and relief to the poor. For the Assessment Year 2016-17, the assessee filed its Return of Income on 17.10.2006 admitting Nil income. The return was processed u/s.143(1) of the Act on 03.01.2018 determining the total income at Rs. 29,80,677/- and served on the same day.

2.2. The assessee filed rectification petition on 14.02.2018 but the rectification application was not disposed of by the ITO, Exemption till 15.04.2019. The assessee filed rectification application on 15.04.2019 before ITO Exemption, which was also not disposed of till 25.05.2020. Thereafter the assessee third rectification application on 25.05.2020 before ITO, Exemption which was not disposed of till filing of the appeal by the assessee. Therefore after seeking legal advice of Counsel, the assessee filed an appeal on 03.06.2020 thereby there is a delay of 852 days in filing the appeal. Thus the assessee claimed in spite of three rectification applications moved before the A.O. which were not disposed of by the A.O. It is thereafter the assessee filed the above appeal with a

delay of 852 days. However the Ld. NFAC held that the assessee has not made out sufficient cause in filing the above appeal and thereby dismissed the same relying upon various case laws and without going into the merits of the case. Thus the appeal was dismissed in limine by Ld. NFAC.

3. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The learned Commissioner (Appeals), NFAC, Delhi erred in not admitting the appeal of the Appellant in limine by failing to appreciate that the Appellant had reasonable cause for delay of 852 days in filing the appeal before Commissioner (Appeals).

2. The learned Commissioner (Appeals), NFAC, Delhi erred in not adjudicating the appeal on merits and thus failed to appreciate that benefit of Sec. 11 could not have been denied by CPC u/s. 143(1)(a) of the Act.

3.1. Ld. Counsel Shri D.M. Rindani appearing for the assessee submitted that the assessee has made out sufficient cause in not filing the appeal.

4. Per contra, the Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue supported the order passed by the Lower Authorities and requested to dismiss the assessee's appeal.

5. We have given our thoughtful consideration and perused the materials available on record. In fact, it is seen from the intimation dated 03.10.2018 passed u/s. 143(1) of the Act, the concluding part reads as follows:

"If you are not satisfied with the intimation u/s. 143(1), you may seek rectification as per section 154 by filing an online application for rectification for which details are available on website <http://incometaxindiaefiling.gov.in> with you User ID and Password and choosing Rectification".

5.1. Thus following this instructions, the assessee made rectification applications on 14.02.2018, 15.04.2019 and 25.05.2020 which were not disposed of by the A.O. It is thereafter the assessee filed the present appeal before Ld. NFAC with a delay of 852 days, we find that “sufficient cause” is being proved by the assessee in filing the appeal with a delay of 852 days. Thus we hereby condone the delay of 852 days in filing the appeal.

5.2. However on merits of the case, non-filing or late filing of Form 10B – Audit Report by the assessee. From time to time various Circulars are issued by CBDT, more particularly Circular No. 2/2020 [F. No. 197/55/2018-ITA-1] dated 03.01.2020 which reads as follows:

3. Representations have been received by the Board/field authorities stating that Form No. 10B could not be filed along with the return of income for A. Y. 2016-17 and A.Y. 2017-18. It has been requested that the delay in filing of Form No. 10B may be condoned. Previously, vide instruction in F.No. 267/482/77-IT(part) dated 9-2-1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee.

4. Accordingly, the CBDT issued Circular No. 10/2019 circulated through F.No. 197/55/2018-ITA-1 in supersession of earlier circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trust or institution for condoning the delay in filing Form No. 10B and in the exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes vide Circular No. 10/2019 dated 23rd May, 2019 and Circular No. 28/2019 dated 27th September, 2019 both issued vide F.No. 197/55/2018-ITA-I has directed that

(i) The delay in filing of Form No. 10B for A.Y. 2016-17 and A.Y. 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned

(ii) In all other cases of belated applications in filing Form No. 10B for years prior to AY. 2018-19, The commissioner of Income-tax are authorized to admit and dispose of by 31-3-2020 such applications for condonation of delay u/s 119(2)(b) of the Act The Commissioner will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves

that the assessee was prevented by reasonable cause from filing such application within the stipulated time.

5.3. As per the above Circular issued by CBDT, the power to condone the delay in filing Form No.10B is vested u/s. 119(2) of the Act by the Commissioner of Income Tax (Exemption). The Ld. CIT(A) do not have the power to condone the delay in filing Form 10B. Thus there is no point in setting aside the matter back to the file of Ld. CIT(A) who cannot condone the delay in filing Form 10B u/s. 119(2) of the Act. However in the interest of justice and following Circular No. 2/2020, we hereby condone the delay of filing Form No. 10B. To meet the ends of justice it is not simply sufficient in condoning the delay in filing Form 10B, the contents in the Form 10B is to be verified before granting exemption u/s. 11 of the Act to an assessee. We therefore of the considered opinion to set aside the matter to the file of the Assessing Officer to verify Form No. 10B, whether it is in accordance with the provisions of law and thereby grant the exemption u/s. 11 and 12 of the Act. With this observation, the appeal filed by the Assessee is allowed for statistical purpose.

6. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 10-05-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 10/05/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट