

अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1058/CHNY/2022**

निर्धारण वर्ष /Assessment Year: 2017-18

M/s. Ragas Educational Society,
No.2/102, East Coast Road,
Uthandhi,
Chennai – 600 119.

The ACIT,
v. Central Circle 1(2),
Chennai.

PAN: AAATR 3106Q

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Y. Sridhar, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 17.05.2023

घोषणा की तारीख/Date of Pronouncement

: 17.05.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Chennai in ITA No.105/2019-20/CIT(A)-18 dated 13.09.2022. The assessment was framed by the ACIT, Central Circle 1(2), Chennai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 27.08.2019

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing the claim of exemption u/s.11 of the Act and accumulation of income u/s.11(2) of the Act for the reason that the statutory Form No.10 has not been filed with the due date u/s.139(1) of the Act.

3. At the outset, it is noticed that the CIT(A) has recorded categorical finding that the assessee has applied application for condonation of delay in filing Form No.10 before Pr.CIT but Pr.CIT has not yet decided the assessee's application. Hence, the CIT(A) dismissed the appeal but directed that the assessee may have remedy may have a remedy by seeking rectification u/s.154 of the Act, in case Pr.CIT condoned the delay in filing Form No.10 before the due date u/s.139(1) of the Act. The CIT(A) observed in paras 7.2 & 7.3 as under:-

7.2 The admitted fact is that the appellant had filed Form 10 before the due date of filing of the return of income u/s 139(1) but the return of income was filed on 21/03/2018 when it was due u/s 139(1) on 7/11/2017 (extended date). The appellant had explained the reasons for non-filing of the return by the due date and it had also applied for condonation of delay in filing of the return before the Pr.CIT as provided in Circular No.6 of 2020. But the fact remains is that the Pr. CIT has not passed any order condoning the delay in filing of the return of income. Only when the Pr.CIT condones the delay in filing of the return the appellant may be entitled to accumulation of

income of Rs.2 cr. as requested in Form No.10 though filed before the due date of filing of the return. In these circumstances, I have no other alternative except to confirm the order of the AO as the Pr.CIT has not yet condoned the delay in filing of the return.

7.3 However, the appellant may have a remedy by seeking rectification of the order of the AO in case it gets the order from the Pr.CIT condoning the delay in filing of the return and in that case, as the appellant had already submitted Form 10 seeking accumulation u/s 11(2), the AO would allow accumulation of income of Rs.2 cr as per law.

It was informed to Id. Senior DR that since the assessee's application for condonation is pending before competent authority i.e., Pr.CIT and not yet decided, the matter has to be remanded back to the file of the AO in view of the decision of Co-ordinate Bench of the Tribunal in the case of M/s. Jaya Educational Trust vs. DCIT in ITA No.3114 & 3115/CHNY/2019, wherein exactly on identical circumstances, the Tribunal had sent back the matter by observing as under:-

21. In this case, although the assessee has not filed return of income on or before due date specified u/s.139 (1) of the Act, but said returns have been filed on or before due dates specified u/s.139(4) of the Act. Further, the assessee has filed Form No.10 electronically on or before due date specified u/s.139 (1) of the Act. Insofar as non-filing of return of income u/s.139(1) of the Act, the assessee has moved a petition before the competent authority in terms of CBDT Circular No.6 of 2020 and such application is pending for disposal. Therefore, we are of the considered

view that when the assessee has filed return of income on or before due date specified u/s.139 (4) of the Act and claimed accumulation of income by filing Form No.10 before completion of assessment, then the AO should not have rejected exemption claimed by the assessee for accumulation of income u/s.11 (2) of the Act. However, since the matter is pending before the competent authority i.e., Pr.CIT, Central-1 for condonation of delay in filing return of income, we are leaving the issue to the discretion of the authorities concerned for condoning the delay.

22. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the assessee is entitled for exemption u/s.11 of the Act in respect of total income for the assessment years 2012-13 and 2013-14 because there is no violations as referred to u/s.13 (1)(c) r.w.s 13(2) of the Act. Hence, we direct the AO to allow exemption u/s 11 for Asst. year 2012-13 and 2013-14. As regards assessment years 2016-17 and 2017-18, insofar as exemption u/s.11 of the Act is concerned, the assessee is entitled for such exemption because there is no violations as referred to u/s.13(1)(c) of the Act. But, in respect of accumulation of income u/s.11(2) of the Act, we direct the AO to consider the issue after taking note of outcome of petition filed by the assessee before the Pr.CIT, Central-1 for condonation of delay in terms of CBDT Circular No.6 of 2020 and also by considering ratio laid down by the Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners Association, *supra*.

Considering the decision of Co-ordinate Bench, we also remit the issue back to the file of the AO and advice the competent authority i.e, Pr.CIT, Chennai to decide the assessee's condonation petition

expeditiously so that the AO can decide the issue. In term of the above, appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 17th May, 2023 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 17th May, 2023

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.