

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: B: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.1308/Del/2022
Assessment Year: 2019-20

ITO (E), Ward-1(3), New Delhi	vs.	Centre for Health and Social Justice, G-Block, Saket, New Delhi 110017 PAN AAATC 7866 L
(Appellant)		(Respondent)

For Revenue :	Shri Vipul Kashyap, Sr.DR
For Assessee :	Shri S.K. Chaturvedi, CA

Date of Hearing :	19.04.2023
Date of Pronouncement :	29.05.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of NFAC, New Delhi dated 31.12.2021 for AY 2019-20.

2. The ground of revenue is as follows:-

1. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in not appreciating the facts that the assessee filed its Audit report in Form 10B after filing of income tax return in contravention with CBDT circular No.2/2020 dated 03.01.2020 wherein Para 2 states that "As per Rule of the Income-tax Rules, 1962 (hereafter 'Rules) the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. Further, as per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form alongwith the return of income results in disentitlement of the trust or institution from claiming exemption under sections 11 and 12 of the Act."

3. Pressing in to service sole ground of revenue the Id. Senior DR submitted that the CIT(A) has erred in not appreciating the facts that the assessee filed its Audit report

in Form 10B after filing of income tax return in contravention with CBDT circular No.2/2020 dated 03.01.2020 wherein Para 2 states that "As per Rule of the Income-tax Rules, 1962 (hereafter 'Rules) the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. Further, as per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form alongwith the return of income results in disentitlement of the trust or institution from claiming exemption under sections 11 and 12 of the Act. Therefore the Id. CIT(A) has grossly erred in allowing relief to the assessee and hence first appellate order may kindly be set aside by restoring that of the Assessing Officer.

4. Replying to the above the Id. Authorized Representative (AR) of assessee drawing our attention towards para 8.2 of first appellate order submitted that as per law a charitable organisation is eligible revenue and capital expenditure applied during the previous year relevant to assessment year under consideration. He further submitted that the assessee was denied claim of exemption u/s. 11 & 12 of the Act for the reason that the report in form 10B could not be filed before filing of return of income. The Id. AR vehemently pointed out that the Id. CIT(A) has properly followed well accepted principles tax jurisprudence and thereafter grant relief to the assessee by directing the Assessing Officer consult to verify as to whether cost of new assets for claim of exemption u/s. 11(11A) of the Act, is greater than Serial No. 8 of Schedule AI. The Id. AR submitted that no interference is called for in the first appellate order therefore sole ground of revenue may kindly be dismissed.

5. First of all, it is pertinent to note that The appellant has pointed out that vide Finance Act, 2020, the Government has brought amendment that audit report can be filed before the due date irrespective of the date of filing of ITR, but where delay has occurred in filing the said report due to reasons beyond control of the assessee, the exemption u/s. 11 & 12 cannot be denied. The appellant has referred to Circular No. 10/2019 issued in F. No. 197/55/2018-ITA-I. Further, the appellant has relied on various judicial precedents to argue that merely for late filing of return of income and audit report in Form 10B, the claim of deduction us. 11 & 12 cannot be denied to a trust. Considering the facts of the case and appellant's written submissions, I am inclined to agree with the appellant's claim that no deduction us. 11 & 12 can be denied merely on the ground that the return of income and audit report in Form 10B were filed after the due date. I find that the assessee's case is squarely covered by the decision of the Hon'ble ITAT Chennai Bench 'A' in the case of Jaya Educational Trust vs. DCIT [2021] 130 taxmann.com 225 (Chennai - Trib.). In said the case, the AO denied the claim of exemption Us. 11 & 12 on the ground that the assessee trust did not file its return of income on or before the due date. The CIT(A) also confirmed the action of the

Assessing Officer. The ITAT Chennai considered the facts of the case and the reason advanced by the assessee for delay in filing of return of income and requisite audit report in Form No. 10B and held as under:-

21. In this case, although the assessee has not filed return of income on or before due date specified us. 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 us.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."

6. The Id. CIT(A) in para 7 noted that the appellant has uploaded copy of acknowledgment of ITR for the relevant period and report in Form No. 10B and dully proved that it is enjoining registration u/s. 12A of the Act and had duly complied with the condition prescribed in section 11(2) and 11(5) of the Act in respect of deduction of income set apart by it. These facts have not been controverted by the Id. Senior DR. In view foregoing, we are of the view that the Id. CIT(A) after considering the totality of the facts and circumstances rightly allowed the claim of assessee u/s. 11(1A) of the Act and to direct the Assessing Officer to verify the same in accordance with the directions given in para 8.2 of first appellate order.

7. On careful consideration of above, from the assessment order we note that the Assessing Officer denied claim of exemption u/s. 11 & 12 of the Act, to the assessee for the reason of non-filing of from 10B with the return of income or before filing of return of income. However, the Id. CIT(A) examine the claim of assessee and conclusion of Assessing Officer and thereafter allowed relief to the assessee by directing the Assessing Officer to verify the fact as to whether the cost of new asset for claim of exemption u/s. 11(1A) is greater than SI No. 8 of Schedule AI after allowing due opportunity of hearing to the assessee. We are unable to see any ambiguity, perversity or any valid reason to interfere with the findings arrived by the Id. CIT(A). Accordingly, sole ground of revenue is dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29.05.2023.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 29th May, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi