

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'B', KOLKATA

[Before Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 480/Kol/2022
Assessment Year : 2018-19

ITO (Exemption), Ward-1(1), Kolkata	Vs .	Indian Sugar Mills Association PAN: AAATI 3441 B
Appellant		Respondent

Date of Hearing	15.05.2023
Date of Pronouncement	25.05.2023
For the Assessee	Shri Arvind Agarwal, Advocate
For the Revenue	Smt. Ranu Biswas, Addl. CIT/DR

ORDER

Per Sonjoy Sarma, JM:

This appeal in ITA No. 480/Kol/2022 for A.Y. 2018-19 is preferred by the revenue against the order of the Commissioner of Income Tax, National Faceless Appeal Centre, Delhi (NFAC) [Ld. CIT in short], dated 13.06.2022. The revenue has raised the following grounds of appeal:

"1. Whether from the facts & circumstances of the case, ld. CIT(A), NFAC, Delhi has erred in not taking cognizance of the fact that an order passed u/s 119(2)(b) of the Income Tax Act, 1961 dated 17.08.2020 by the CIT (Exemptions) Kolkata wherein the condonation of delay in filing of Form 10B was rejected.

2. whether on the basis of facts & circumstances of the case, ld. CIT(A), NFAC, Delhi has erred in not appreciating the fact that subsequent to the orders passed by the jurisdictional Hon'ble Calcutta High Court in the case of (i) Commissioner of Income Tax vs Rai Bahadur Bissesswarlal ... reported in 195 ITR 825 dated 22.04.1991 and (ii) Commissioner of Income Tax vs Hardeodas Agarwalla Trust reported in 198 ITR 511 dated 14.06.1991] CBDT has issued Circular No. 2/2020 dated 03.01.2020 authorizing CIT to decide on the issue of condonation of

delay in filing Form 10B and therefore order passed by the CIT(A), NFAC is in contravention to the provisions of the Act and in violation

3. For that the assessee craves leave to alter, add, amend, moderate, substitute or delete any one or more of the ground or grounds of appeal at any time before or in course of hearing of the appeal.”

2. Brief facts of the case are that the assessee filed its return of income on 30.07.2018 declaring income of Rs. 1,81,67,130/- which was found to be defective and subsequent to the notice issued by the CPC to the assessee, the assessee filed another return of income on 22.11.2019 declaring total income of Rs. 1,78,89,980/-. However, doing so, the assessee also filed Form No. 10B dated 31.07.2018 for the period under consideration on 12.12.2019 and it was filed much beyond the due date of filing of audit report for the relevant period. While processing the return of income by CPC vide its order dated 26.02.2020, the claim of the assessee for benefit of exemption was denied.

3. Aggrieved by the order of CPC, assessee filed a rectification petition with CPC on 04.06.2020 and claim of the assessee was denied by CPC vide order dated 10.08.2020 by citing reason that ‘assessee has not e-filed the audit report in Form 10B along with the return of income or before filing the return of income’. The assessee in order to get condonation of delay in filing of Form 10B filed an application before CIT(Exemption), Kolkata u/s 119(2)(b) of the Act. However, petition filed by the assessee was rejected since delay in filing the application was more than 365 days.

4. Dissatisfied with the above order dated 10.08.2020, assessee filed an appeal before the ld. CIT(A), NFAC on 04.09.2020 but the issue of non allowing benefit of exemption by CPC in its rectification order dated 154 of the Act. Ld. CIT(A), NFAC allowed the appeal of the assessee vide order dated 13.06.2022 by observing as follows:

“4.2.1 I have carefully gone through the submission of the appellant. I have also gone through the records and facts of the case and case laws cited by the appellant.

4.2.2 It is seen from records of the case that the appellant had obtained Form 10B from the auditors on 31.07.2018. It uploaded the said form on 12.12.2019 much before the processing of the return which was 04.06.2020. Various courts have held that filing Form 10B is directory in nature and deduction u/s 11 cannot be denied once form 10B has been filed. Gujrat High Court in Gujrat Oil & Allied Industries (1993) 201 ITR 325 has held that auditor’s report along with the return has to be treated as procedural provision and therefore directory in nature. Accordingly, I direct the AO to allow deduction u/s 11 as per law.”

5. Dissatisfied with the above order, revenue is in appeal before this Tribunal.

6. At the time of hearing, ld. DR submitted that the order passed by the ld. CIT(A), NFAC, Delhi is bad in law by which allowing exemption to the assessee despite the fact that condonation of delay in filing Form 10B having been rejected CIT(Exemption) vide his order dated 14.08.2020. On the other hand, ld. AR submitted that order passed by the ld. CIT(A) is a reasoned order and discuss all the issues at page 6 para 4.2 onwards and further he contended that subsequent to Board Circular No. 2/2020 dated 3rd January, 2020, the CBDT had

issued another circular dated 19.07.2022 by which Board had delegated about the powers to PCIT/CIT to condone the delay in filing of Form 10B beyond 365 days upto three years from the assessment year 2018-19 or for subsequent years and in present case of the assessee, the time for condonation of delay in filing Form 10B is much within three years time prescribed by Circular No. 16/2022 dated 19.07.2022. Therefore, there is no need to interfere with the order passed by the Id. CIT(A) by this Tribunal.

7. We have heard the rival submission of the parties and perused the material available on record. We noticed that the Id. CIT(A) allowed the appeal of the assessee by relying on the decision of Hon'ble Gujrat High Court in the case of Gujrat Oil & Allied Industries reported in 201 ITR 325 has held that filing of Form 10B is directory and not mandatory. In the case of assessee, Form 10B was obtained on 31.07.2018 and which was subsequently uploaded on e-portal on 12.12.2019. In such scenario, the claim of the assessee cannot be denied. We have noticed that subsequent to the Board's Circular No. 2/2020 dated 03.01.2020, another Board's Circular No. 16/2022 dated 19.07.2022 issued under which the provision of section 119(2)(b) has delegated the powers to PCIT/CIT to condone the delay in filing Form 10B beyond 365 days upto 3 years from the assessment year 2018-19 or for subsequent years and if this circular had applied in the case of assessee then also the time for condonation is as much as within 3 years of such prescribed limit in filing Form 10B. Therefore, we do not find any infirmity in the order passed by the Id. CIT(A), NFAC by allowing the appeal

of the assessee. Accordingly, grounds taken by the revenue are rejected and the appeal of the revenue is dismissed.

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

Order pronounced in the open court on 25.05.2023.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 25.05.2023
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- ITO (Exemption), Ward-1(1), Kolkata.
2. Respondent – Indian Sugar Mills Association, Ansal Plaza, C Block, II Floor, Andrews Ganj Shanpur Jat, South East Delhi – 110049, Delhi.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata