

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHIR PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 511/Mum/2023
(A.Y: 2020-21)

Bombay Sarvodaya Mandal, 299, Shantashram, Javaji Dadji Road, Nana Chowk, Mumbai-400007.	Vs.	ACIT, CPC Post no 2, Electronic City, Bangalore-560500.
PAN/GIR No. : AAATB0020H		
Appellant	..	Respondent

Appellant by :	Mr.Samir Shah.AR
Respondent by :	Ms.Jayashree Thakur.DR

Date of Hearing	25.04.2023
Date of Pronouncement	26.04.2023

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi/CIT(A) passed U/sec 250 of the Act.The assessee has raised the following grounds of appeal:

(1) The Ld. CIT (A) has erred in law and on the facts of the case in confirming the actions of the assessing officer in denying the exemption u/s.11 (1) (a) and 12 of the act.. The action is unjustified and unwarranted as the denial of exemption is merely on the technical grounds and not on merits.

(2) Without prejudice the Ld. CIT (A) has erred in law and on the facts of the case in confirming the actions of the assessing officer in denying the deduction of Rs. 29,29,247/- spent on the object of the trust and earning income of Rs.29,29,247/-.

Without prejudice, the denial of deduction is excessive.

(2) Your Petitioners craves leave to add, alter, amend and / or withdraw all or any of the above grounds of appeal.

2. The brief facts of the case are that, the assessee is a charitable trust and is registered under section 12A of the Act. The main objects of trust are to propagate Gandhian moral ethical values through Gandhi Philosophy Books, Gandhi website and various educational and constructive programs. The assessee has filed the return of income on 08.02.2021 disclosing a total income of RsNil income after claiming exemption u/s 11 of the Act. The assessee's books of accounts are audited and the assessee has obtained the Form.No. 10B from the auditor on 13.01.2021 and there was delay in uploading the audit report by 15 days but was filed electronically

before filing the Income Tax return. The return of income was processed u/sec143(1) of the Act on 29-11-2021 by the CPC and the exemption u/s 11(1)(a) of the Act was not considered as the form No 10B was not filed within the time and the total income was determined at Rs. 29,29,247/-.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and observed that the assessee has filed the return of income claiming exemption u/s 11(1)(a) of the Act, whereas the Form 10B was filed on 30.01.2021, since there is a delay in filing the audit report in form 10B. The CIT(A) has confirmed the disallowance of Rs.29,29,739 and dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts and submissions on the delay. Further the assessee has applied for condonation of delay in filing the Form.No

10B under section 119(2)(b) of the Act and order was passed on 10.03.2023 after disposal of the appeal. The Ld.AR substantiated the submissions with factual paper book and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. Heard the rival submissions and perused the material on record. The sole grievance of the assessee that the CIT(A) has erred in not considering the facts on delay in filling the Audit report in Form, No, 10B and confirming the action of the A.O. The Ld.AR submitted that the assessee has applied for condonation of delay in filing the Form. No 10B under section 119(2)(b) of the Act and order was passed on 10.03.2023 after disposal of the appeal. The Ld. AR has referred at Page 10 of the paper book where the order U/sec 119(2) (b) of the Act was placed. Therefore, considering the facts, circumstances and the principles of natural justice set aside the order of the CIT(A) and remit the entire disputed issues to the file of the CIT(A) to adjudicate afresh and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the

information for early disposal of the appeal and allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 26.04.2023.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 26.04.2023

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//()

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(Asst. Registrar)
ITAT, Mumbai