

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'सी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.241/Kol/2023
Assessment Year: 2020-21

ITO (Exemption), Ward-1(2), Kolkata..... Appellant
vs.

Debendra and Rohini Memorial Trust..... Respondent
Kalyanpur Barida, Egra Medinipur,
Purba-721429, W.B-721429.
[PAN: AACTD0883C]

Appearances by:

Shri Vijay Kumar, Addl. CIT, Sr. DR., appeared on behalf of the appellant.
Shri Miraj D. Shah, AR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 18, 2023

Date of pronouncing the order : June 27, 2023

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 02.01.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The revenue in this appeal has taken the following grounds of appeal:

"1. Whether from the facts and circumstances of the case Ld. CIT(A), NFAC, Delhi has erred in facts by holding that assessee was entitled for exemption despite its failure to file return of income as per the provisions of section 12A(1)(ba) of the Income Tax Act 1961.

2. Whether from the facts and circumstances of the case Ld. CIT(A), NFAC, Delhi has erred in not appreciating the law and provision of section 12A(1)(ba) of the Income Tax Act 1961 clearly mandates that in order to be eligible for exemption return of income has to be filed within the time allowed u/s 139(4A) of the Act."

3. The sole issue taken by the revenue in this appeal is relating to the action of the CIT(A) in deleting the additions made by the Assessing Officer/CPC while processing the return of assessee u/s 143(1) of the Act on account of disallowance of deduction u/s 11 of the Act for not filing the return of income within time as prescribed u/s 139(1) of the Act as required u/s 12A(1)(ba) r.w.s 139(4A) of the Act.

4. At the outset the ld. counsel for the assessee has submitted that the issue is squarely covered by the decision of the Tribunal in the case of “Bangarh Educational Welfare Trust vs. ITO” in ITA No.496/Kol/2021 dated 02.01.2022, wherein the Tribunal taking note of the CBDT Circular No.F.No.173/193/2019-ITA-I dated 23.04.2019 has decided the matter in favour of the assessee observing as under:

“8. We have heard the rival contentions and perused the records placed before us. The assessee is a charitable trust established for imparting education to rural areas without any profit motive. It enjoys registration u/s 12AA of the Act granted vide order dated 12.09.2018 effective from A.Y 2018-19 onwards. It claimed benefit u/s 11 and 12 of the Act of Rs. 13587109/-. However, CPC while processing u/s 143(1)(a) of the Act denied the said exemption on account of two reasons; firstly the return of income was not filed before due date as prescribed u/s 139(4) of the Act and secondly audit report on Form 10B not uploaded before due date prescribed under the Act. Now, undisputedly in the case of assessee, the return of income is filed on 15.11.2018 and audit report on form 10B e-filed on 30.03.2019. Now, before adverting to the grounds, we would first like to go through the relevant provisions which have a direct bearing on the issue of requirement of filing of audit report and income tax return by the trust or institutions registered u/s 12A of the Act. Section 12A(1)(b) and 12(1)(ba) of the Act reads as follows:

“Conditions for applicability of sections 11 and 12.

12A. (1) The provisions of [section-11](#) and [section-12](#) shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—

(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of [section-11](#) and [section-12](#) exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of [section-288](#)⁴⁸[before the specified date referred to in [section-44AB](#) and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form⁴⁹ duly signed and verified by such accountant and setting forth such particulars as may be prescribed;]

(ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of [section-139](#), within the time allowed under that section.

9. Section 12A(1)(ba) of the Act provides that the provisions of section 11 and 12 shall apply in relation to income of any trust or institution if the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139 i.e. within the time allowed under that section. Now, since reference has been made to section 139(4A) of the Act and the same is reproduced below:

“S.139(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-

tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far may be, apply as if it were a return required to be furnished under sub-section (1).]]”

10. Now, going through the provisions to section 139(4A) of the Act shows that the assessee is required to file the return as per the provisions of section 139(1) of the Act. Now, perusal of section 139(1) shows that in the case of the assessee which is required to get its account audited, the due date is 30.09.2018 and for A.Y 2018-19 this date was further extended to 31.10.2018 vide CBDT’s order dated 24.09.2018. Now, since the assessee has filed the return on 15.11.2018, it is a belated return. Thus, there remains no dispute to the fact that the return of income filed by the assessee is a belated return which as per section 139(5) of the Act could have been filed latest by 31.03.2019. Now, at this stage, we would like to refer to Circular issued by CBDT on 23.04.2019 giving clarification with regard to time allowed for filing of return of income subsequent to insertion of clause (ba) in sub-section 1 of section 12A of the Act and the same is reproduced below:

*F.No. 173/193/2019-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, Dated: 23 April, 2019

*To,
The Pr. DGIT (Systems),
New Delhi.*

Subject : Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in subsection 1 of section 12A of the income –tax Act , 1961.

Sir,

Undersigned is directed to refer to the representation (s) received on above mentioned subject stating that while processing of ITR-7 for the

A.Y. 2018- 19, in respect of the belated returns filed u/ s 139(4) of the Income Tax Act, 1961 (Act), the following is being communicated u/s 143(1)(a) of the Act:-

“As per section 12A(1)(ba) of the Income -tax Act , 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise the exemption u/s-11 i.e. sr. no 4(i) and 4 viii in schedule Part BTI is not allowed.”

Based on this, exemption u/s 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

“as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under subsection (4A) of section 139, if the total income without giving effect to 05 Standards & Norms, Legal Series Vol. XII, Issue 1, April 2019 CBDT CLARIFICATION ON PENALTIES FOR DELAYED FILING OF RETURN IN ITR-7 the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/ s 139 of the Act or otherwise. In order to provide clarity in this regard , it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to incometax shall furnish the return of income within the time allowed under section 139 of the Act. These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years.”

3. Additionally, an excerpt of circular 02/2018 dated 15.02.2018 “Explanatory Notes to the Provisions of the Finance Act, 2017” on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

“the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income -tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A

of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income -tax Act.”

3. Thus, for a trust registered U/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.

This issues with the approval of Chairman(CBDT).

*(Vinay Sheel Gautam)
JCIT (OSD) (ITA-I)
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E-mail: vinaysheel.gautam@gov.in*

*11. From perusal of the above referred circular, we find that in Para 3 of the said circular specifically states that a trust registered u/s 12AA of the Act, benefit of section 11 shall be available if the return of income is filed within the time allowed **u/s 139** of the Act. It further states that orders u/s 143(1)(a) of the Act in those cases in which demand has been raised on this issue may please be rectified. From the circular, we note that an amendment was brought in by insertion of clause (ba) of section 12A(1) of the Act from 2018-19 onwards through which one of the requirements for claiming the benefit u/s 11 and 12 of the Act was to file the return of income within time allowed u/s 139(4A) of the Act. It seems that specially for A.Y 2018-19, when the Form ITR-7 was being processed and for such belated return, demand was raised, representations were received from various assesseees on this issue. Taking note of this issue, the said CBDT Circular has issued and while dealing with this issue, the returns filed within the time allowed u/s 139 of the Act have been directed to be accepted for the purpose of considering benefit of deduction u/s 11 of the Act. Now, since only section 139 of the Act has been mentioned and does not specify whether it is about u/s 139(1) of the Act or section 139(5) of the Act, the view beneficial to the assessee needs to be accepted and, since section 139(1) and section*

139(5) are part of section 139 only and in this section 139 and sub-section (5) provides the mechanism to file a belated return, therefore, for A.Y 2018-19, even if the assessee files the return before the last date of filing of belated return the same should be treated as due compliance to section 12A(1)(ba) of the Act. For the year under appeal, the belated return could have been filed before 31.03.2019, and since the assessee has filed the return on 15.11.2018, therefore, considering the directions of CBDT Circular dated 23.04.2019, which are binding on the Revenue authorities, we are of the view that the assessee has fulfilled the conditions provided under sub-clause (ba) of section 12A(1) of the Act and has filed the return of income within the time allowed.”

5. The ld. DR could not point out any contrary decision to this effect.

6. Therefore, in the light of the decision of the Coordinate Bench of the Tribunal in the case of “Bangarh Educational Welfare Trust vs. ITO” (supra), we do not find any merit in the appeal of the revenue and the same is hereby dismissed.

7. In the result, the appeal of the revenue stands dismissed.

Kolkata, the 27th June, 2023.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 27.06.2023.

RS

Copy of the order forwarded to:

1. ITO (Exemption), Ward-1(2), Kolkata
2. Debendra and Rohini Memorial Trust
3. CIT(A)-
4. CIT- ,

5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches