

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 104/Rjt/2023  
Assessment Year: 2019-20**

Sorthiya Ahir Gnatino Utaro, Opp.Bhavnath Mandir, Main Road, Bhavnath, Jungadh  PAN No: AAETS6103J (Appellant)	Vs	The ADIT (CPC), Bangalore  (Respondent)
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**Assessee Represented: Shri D.M. Rindani, A.R.  
Revenue Represented: Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 06-07-2023  
Date of pronouncement : 12-07-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Assessee as against the Appellate order dated 15.02.2023 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the rectification order passed under section 154 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2019-20.

2. The brief facts of the case is that the assessee filed its Return of Income for the Assessment Year 2019-20 on 24-09-2019 declaring total income of Rs. 9,400/- and then filed revised return on 18-02-2020 along with Form No. 10 namely "Statement of income accumulated by the Trust or set apart for carrying out the purpose of the Trust" as required u/s. 11(2) of the Act. The return was processed by CPC, Bengaluru vide Intimation u/s. 143(1) dated 18-05-2020 denying the benefit of section 11 of the Act on the ground that Form No. 10 not filed with Return of Income and demanded a tax of Rs. 3,94,780/-.

2.1. The assessee filed a Rectification Petition on 27-06-2020 informing that Form No. 10B was uploaded on 18-02-2020 along with the Revised Return and therefore requested to grant the benefit of exemption u/s. 11(2) of the Act. The above Rectification Petition was rejected vide order dated 14.08.2020 on the ground that as per section 13(9), exemption u/s. 11(2) is allowed if (a) Return is filed before the due date, (b) Statement in Form No.10 has to be e-filed before the due date. Since the assessee has not e-filed on Form No. 10 within due date, hence exemption u/s. 11(2) is not allowed to the assessee.

3. Aggrieved against the Rectification Order, the assessee filed an appeal before Ld. National Faceless Appeal Centre. The Ld. NFAC dismissed the assessee appeal on the ground that the assessee has e-filed Form No. 10 on 18.02.2020 that is after the due date specified u/s. 139(1) of the Act. As per section 13(9) of the Act exemption u/s. 11(2) is allowed only if Form 10 is e-filed before the

due date specified u/s. 139(1) of the Act. As the assessee filed Form 10 after the due date, but along with the revised return which is not eligible for claim of exemption u/s. 11(2) of the Act. Therefore the appeal filed by the assessee was dismissed.

4. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

*1. The Learned Commissioner (Appeals), NFAC, Delhi erred in upholding action of ADIT, CPC in rejecting the rectification application u/s 154 made by the Appellant and in making adjustment to the returned income of the Appellant by way of intimation u/s 143(1) of the Act and in denying claim of deduction of Rs. 17,00,000/- u/s 11(2) of the Act to the Appellant, failing to appreciate that this was not a case of prima facie adjustment permissible u/s 143(1)(a).*

*2. On merits, the Learned Commissioner of Income-tax (Appeals) - NFAC, Delhi erred in confirming action of assessing officer in making addition of Rs. 17,00,000/- by disallowing claim of accumulation made u/s 11(2) of the Act by the Appellant in the return of income filed for the year.*

*3. The Learned Commissioner of Income-tax (Appeals)- NFAC, Delhi failed to appreciate that the Appellant had duly filed Form 10 alongwith revised return of income u/s 139(5) of the Act.*

*4. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.*

4.1. Ld. Counsel Mr. D.M. Rindani appearing for the assessee submitted that the assessee Trust was filing the original return filed Form 10B which also certified the amount of accumulation made by the assessee Trust. Though Form 10 was filed belatedly but alongwith the Revised Return, therefore the CPC is not correct in denying the claim of exemption u/s. 11 of the Act. Originally there were some technical issues on e-filing Portal of the Department, therefore Form 10 could not be uploaded. In fact, the Chartered Accountant who filed the Form No. 10 have filed an

affidavit explaining the technical error in uploading and filing the same belatedly along with the Return of Income.

4.2. The Ld. Counsel relied upon Jurisdictional High Court judgment in the case of Trust For Reaching The Unreached-Vs.-CIT (Exemption) reported in [2021] 126 taxmann.com 77 (Guj.) and CIT Vs. Nagpur Hotel Owners Association reported in 247 ITR 201 (SC).

5. Per contra, the Ld. Sr. D.R. Shri B.D. Gupta appearing for the Revenue supported the order passed by the lower authorities and further submitted the CIT (Exemption) refused to condone the delay in Form No. 10 belatedly filed by the assessee on the ground that no reasonable cause was made out by the assessee for belatedly filing Form No. 10. Further on verification of balance sheet of the assessee for the financial year 2018-19, it is noticed that the assessee Trust has not invested the funds in specified modes, but further verification of copies of fixed deposits of Bank of Baroda of Rs. 16,00,000/- and Rs. 7,00,000/-. It is noticed the same were being invested during the next financial Year 2019-20. Thus the assessee Trust failed to invest the accumulation u/s. 11(2) of the Act of Rs. 17,00,000/- in specified modes as per section 11(5) of the Act within the stipulated time. Therefore the CIT(Exemption) not satisfied with the reasons added by the assessee and rejected the condonation of delay in filing Form 10 for the Assessment Year 2019-20. Therefore the rejection of exemption made by the Assessing Officer does not require any interference and the assessee appeal is liable to be dismissed.

6. We have given our thoughtful consideration and perused the materials available on record. It is an admitted fact that the assessee filed its original Return of Income claiming accumulation of Rs. 17,00,000/- u/s. 11(2) of the Act by filing the return along with the Audit Report in Form 10B. It is thereafter the assessee filed Revised Return along with Form No. 10 on 18.02.2020. While the CPC processing the Revised Return of Income, denied the exemption u/s. 11 of the Act on the ground that Form No. 10 was not filed along with the original Return filed u/s. 139(1) of the Act. The assessee's Rectification Petition was also rejected, as per Section 13(9) of the Act, which prescribes to file the Return within the due date along with the Statement in Form 10. Though CIT(Exemption) denied the condation of filing of Form 10 on the ground that the assessee not invested the funds in specified modes as per Section 11(5) of the Act within the stipulated time. The assessee has clarified that the accumulated amount is deposited in bank as per the provisions of section 11(5) within six months from the year ended in which the accumulation made. The assessee claimed the accumulated amount deposited of Rs. 16,00,000/- and Rs. 7,00,000/- on 03-09-2019. Thus the same are deposited within the period specified u/s. 11(2) of the Act. The Ld. CIT(Exemption) verified only balance sheet for the year ended 31.03.2019, while the above amount was reflected in the balance sheet of the year ended 31.03.2020. Therefore the findings arrived by the Ld. CIT(Exemption) is not correct in law. Further though the assessee filed Form No. 10 belatedly along with the Revised Return, however Form No. 10B which was filed along with the original return also

certifies the amount of accumulation made by the assessee Trust. Without looking into the same, the assessee was denied the benefit of exemption u/s. 11 of the Act, which in our considered opinion is not correct in law.

6.1. The Hon'ble Supreme Court of India in the case of Nagpur Hotel Owners Association (cited supra) held as follows:

*“.....5. 5. It is abundantly clear from the wordings of sub-s. (2) of s. 11 that it is mandatory for the person claiming the benefit of s. 11 to intimate to the assessing authority the particulars required, under r. 17 in Form No. 10 of the Act. If during the assessment proceedings the AO does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from s 11 and is subjected to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our opinion, it is reasonable to presume that the intimation required under s. 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under s. 11 of the Act, therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings.”*

6.2. Similarly the Jurisdictional High Court in the case of Trust For Reaching The Unreached Through Trustee (cited supra) held as follows:

*“.....33. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, the respondent might be justified in denying the exemption under section 12 of the Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the*

legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.

34. We may also refer to the decision of this Court in *CIT v. Gujarat Oil & Allied Industries* [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment. This Court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-tax Officer or before the appellate authority by assigning sufficient cause.

6.3. Respectfully following the above judicial precedents, we hereby set aside the order passed by the Lower Authorities and direct the JAO to allow the claim of exemption u/s. 11 of the Act. Thus the Grounds of Appeal raised by the assessee are hereby allowed.

7. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 12-07-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 12/07/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट