

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 1757/DEL/2022 [A.Y 2020-21]

Himanshu Education Society
C/o Jindal Public School
Dashrathpuri, Dabri Palam Road
Palam Village, Delhi

Vs.

The I.T.O
Ward - Exemption -1(2)
Delhi

PAN : AAATH 2320 N

(Applicant)

(Respondent)

Appellant by : Shri Sachit Jolly, Adv

Department By : Shri T. James Singson CIT- DR

Date of Hearing : 08.08.2023

Date of Pronouncement : 10.08.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 12.06.2022 pertaining to Assessment Year 2020-21.

2. The grievance of the assessee read as under:

"1. That the CIT(Appeals) erred on facts and in law in confirming the action of the Assessing Officer ('AO') in passing the intimation dated 30.11.2021 under Section 143(1) of the Income Tax Act, 1961 ("Act") for the relevant Assessment Year ("AY") 2020-21 whereby income of the Appellant has been computed at Rs. 10,16,26,224 as against Nil Income returned by the Appellant.

2. That the CIT(Appeals) erred on the facts and in law in passing the order in undue hurry and In gross violation of the principles of natural justice inasmuch as no opportunity of personal hearing was provided to the Appellant.

3. That the CIT(Appeals) erred on the facts and in law in upholding the adjustment made by the AO in denying the complete exemption claimed by the Appellant under Section 11/12 of the Act by applying provisions of clause (ba) of Section 12A of the Act on the ground that the return of Income was filed by the Appellant belatedly beyond the due date.

4. That the CIT(Appeals) failed to appreciate that even in terms of Section 12A(ba) of the Act, the claim of the Appellant is maintainable as the return of income has been filed under Section 139(4) of the Act.

5. *Without prejudice*, the CIT(Appeals) failed to adjudicate that no adjustment was warranted in the present case as the issue of denying exemption under Section 1112 of the Act in case of belated return was clearly debatable in nature and hence beyond the jurisdiction vested with the Assessing Officer u/s 143(3) of the Act

6. Without prejudice, the Id. CIT(A) further failed to consider that there were sufficient bonafide reasons beyond the control of the appellant and which needed condonation which led to the belated filing of the return of income

7. That the Id. CIT(A) erred on the facts and in law in alleging that the audit report in Form 10B was filed by the appellant belatedly without appreciating that the same was filed within the due date."

3. Briefly stated, the facts of the case are that the assessee filed its Return of Income on 25.03.2021 declaring total income at Rs. NIL. Return was processed u/s 143(1) of the Income-tax Act, 1961 [the Act, for short]

on 30.11.2021 determining total income at Rs. 10,03,18,955/- as the deduction u/s 11 of the Act was denied while processing the return.

4. The assessee carried the matter before the ld. CIT(A) but without any success.

5. Before us, the ld. counsel for the assessee vehemently stated that CPC in the impugned order did not specify the reasons for denying the benefit of exemption u/s 11/12 of the Act. It is the say of the ld. counsel for the assessee that even the request made by the assessee online was not responded.

6. The ld. counsel for the assessee further stated that though the return was filed on 25.03.2021, but the Tax Audit Report in Form 10B was filed on 14.12.2020. The ld. counsel for the assessee further pointed out that though the return was not filed u/s 139(1) of the Act, but was certainly filed u/s 139(4) of the Act and, therefore, the assessee is very much eligible for exemption u/s 10/11 of the Act.

7. The Id. DR strongly supported the findings of the Id. CIT(A) and read the operative part.

8. We have carefully perused the orders of the authorities below. It is true that while denying exemption u/s 11/12 of the Act, no intimation was given to the assessee which amounts to violation of principles of natural justice. It is true that the return was not filed u/s 139(1) of the Act, but it is equally true that the return was filed u/s 139(4) of the Act.

9. Section 12A contains the conditions for applicability of sections 11 and 12 of the Act and at clause (ba), it is provided:

“The person in receipt of the income has furnished return of income for the previous year in accordance with the provisions of sub-section 4A of section 139 of the Act within the time allowed under sub-section (1) or sub-section (4) of that section”.

10. This has been inserted by the Finance Act, 2017 w.e.f. 01.04.2018 and reference to sub-section (1) or sub-section (4) is inserted by the Finance Act 2023 w.e.f 01.04.2023.

11. Memorandum explaining the provisions in the Finance Bill 2023, as explained above, the amendment is as under:

"9. Denial of exemption where return of income is not furnished within time

9.1 As per the provisions of twentieth proviso to clause (23C) of section 10 of the Act, if the return of income is not furnished by a trust or institution under first regime within the time under section 139 of the Act, exemption under sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act shall not be available to such trust or institution.

a. Similarly, as per the provisions of clause (ba) of sub-section (1) of section 12A of the Act, if the return of income is not furnished by a trust or institution under the second regime within the time under section 139 of the Act, exemption under section 11, 12 of the Act shall not be available to such trust or institution.

b. Section 139 of the Act was amended by the Finance Act, 2022 providing for an option to the taxpayers to furnish updated return of income up to 2 years from the end of assessment year.

c. This resulted in unintended consequences of allowing exemption under section 11, 12 of the Act and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available to the trusts where they furnish updated return of income. Accordingly, it is proposed to clarify that the exemption under section 11, 12 and sub-clause (iv)/(v)/(vi)/(via) of clause (23C) of section 10 of the Act will be available only if the return of income has been furnished within the time allowed under sub-section (1) or subsection (4) of section 139 of the Act.

d. Hence, it is proposed to,

a) amend the twentieth proviso of clause (23C) section 10 of the Act to provide that the fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall furnish the return of income for the previous 62 year in accordance with the provisions of sub-section (4C) of section 139 of the Act, within the time allowed under sub-section (1) or sub-section (4) of that section.

b) amend clause (ba) of sub-section (1) of section 12A of the Act to provide that the person in receipt of the income shall furnish the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139 of the Act, within the time allowed under sub-section (1) or sub-section (4) of that section.

e. These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years."

12. In light of the aforementioned legal position, we are of the considered view that the assessee is very much eligible for exemption u/s 11/12 of the Act. We, therefore, direct the Assessing Officer to allow the claim of the assessee as claimed by it.

13. In the result, the appeal of the assessee in ITA No. 1757/DEL/2022 is allowed.

The order is pronounced in the open court on 10.08.2023.

Sd/-

[YOGESH KUMAR U.S.]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 10th August, 2023.

VL/

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	