

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
DR. B.R.R.KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1417/Del/2022
(ASSESSMENT YEAR 2016-17)**

Shri Krishna Das Jajoo Smark Trust 7/18, Jaju Apartment Nehru Enclave Delhi-110 019 PAN-AAATS 2301J (Appellant)	Vs.	Income Tax Officer Ward Exemp.2(2) Delhi (Respondent)
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Appellant by	Mr. Sandeep Jhanwar, CA
Respondent by	Mr. Anuj Garg, Sr. DR

Date of Hearing	03/08/2023
Date of Pronouncement	30/08/2023

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal filed by Assessee against the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT (A)", for short], dated 18/04/2022 for Assessment Year 2016-17.

2. The following grounds raised by assessee in this appeal:

"1. The Ld. CIT erred in passing the order u/s, 250 of the Act, upholding the assessment order passed by the CPC/A.O. u/s. 143(1)/154 of the Act.

2. The Ld. CIT(A) erred in not allowing deduction u/s 11(1)a) of the Act of Rs.5,70,300 being 15% of Gross income as statutory deduction on the reason being Audit Report in form 10B not furnished.

3. The Ld. CIT(A) erred in not allowing the actual expenses incurred on the object of the trust of Rs. 44,64,200 and treated the donation received for corpus fund of Rs. 1.50,000 as income without assigning any reason and erred in upholding the disallowance made by AO.

4. The appellant craves in lieu to add, amend or alter the above grounds of appeal.”

3. Brief facts of the case are that the assessee registered trust u/s 12A of the Act and filed its Return of Income for the A.Y. 2016-17 on 04.08.2016 declaring total income at NIL and claimed exemption u/s 11 of the Act for the amount applied to charitable purposes in India during the previous year of Rs.51,84,510/-. The return of income was processed, wherein exemption u/s 11 of the Act was denied. Thereafter, the assessee filed a rectification application on 08.10.2018 and an order u/s 154 of the Act was passed by the CPC, Bangalore on 25.01.2019 determined total income of Rs.51,84,110/- without granting any exemption u/s 11 of the Act stating that the assessee has not furnished details of audit in the Schedule Audit Information and Form 10B in Audit Report is not E-filed along with the return or before filing the return. Aggrieved by the order dated 25/01/2019 passed u/s 154 of the Act, the assessee preferred an Appeal before the CIT(A). The Ld. CIT(A) vide order dated 18/04/2022, dismissed the Appeal filed by the assessee by confirming the

order of the A.O/CPC. Aggrieved by the order of the CIT(A) dated 18/04/2022, the assessee preferred the present Appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee submitted that the ITR duly filed along with the details of audit and have furnished in the Schedule of Audit Information and Form 10B in Audit Report, wherein it is clearly stated that the Trust is liable for Audit and obtained Audit Report in Form 10B dated 25/05/2016 from the Chartered Accountant duly filled in ITR schedule. Further submitted that, the requirement of submission of Form 10B along with the ITR is one of the conditions for claiming the benefit of section 11 of the Act which is directive in nature and not mandatory. Thus submitted that the grounds of Appeal are deserves to be allowed.

5. Per contra, the Ld. Departmental Representative relied on the orders of the Lower Authorities.

6. We have heard both the parties and perused the material available on record. The only reason for not granting an exemption u/s 11 of the Act by the A.O/CPC is that the Audit Report in Form No. 10B not furnished on or before ITR filed. The requirement of submission of Form 10B along with ITR is one of the conditions for claiming the benefit of Section 11 of the Act but the said condition is directive in nature and not mandatory as held by the various Courts and also the Coordinate Bench of the Tribunal. Considering the fact

that the assessee had submitted Audit Report in Form 10B dated 25/05/2016 we deem it fit to restore the matter to the file of A.O./CPC to consider the Audit Report and adjudicate the matter afresh. Accordingly, we set aside the order of the Lower Authorities and remand the matter to the file of the A.O. for de-novo consideration with a direction to consider the Audit Report in Form No.10B submitted by the assessee and decide the matter afresh in accordance with law.

7. In the result, Appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 30th August, 2023

Sd/-
(Dr.B.R.R. KUMAR)
ACCOUNTANT MEMBER
Dated: 30/08/2023
Pk/R.N, Srps

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

