

IN THE INCOME TAX APPELLATE TRIBUNAL  
“DB” BENCH, JABALPUR  
BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 99/Jab/2022

(A.Y: 2010-11)

&

ITA No. 17/Jab/2023

(A.Y: 2011-12)

IMC of ITI, Gotegaon, Annex Bldg, Mission Chowk, Jabalpur Madhya Pradesh- 482001.	Vs.	ITO (Exemption) Jabalpur, Madhya Pradesh- 482001.
PAN/GIR No. : AAAAI2999F		
Appellant	..	Respondent

Appellant by :	Shri Rahul Bardia. FCA.AR
Respondent by :	Shri Shiv Kumar. Sr.DR

Date of Hearing	13.09.2023
Date of Pronouncement	20.09.2023

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

These are the two appeals filed by the assessee against the separate orders of the National Faceless Appeal Centre (NFAC) / CIT(A) passed u/s 154 and 250 of the Act.

2. Since the issues involved in these appeals are similar and identical hence they are clubbed and heard together and consolidated order is passed. For the sake

convenience, we shall take up ITA No.99/Jab/2022 For the A.Y 2010-11 as a lead case and facts narrated .The assessee has raised the following grounds of appeal:

*1. That the CIT(appeals) erred in rejecting the claim of refund of Rs. 69290/- on the basis of alleged non-filing of ITR whereas the assessee claiming exempt income u/s 10(23C)(iiiab) also being substantially financed by the Govt., without referring section 139(4) (e), which require filling of ITR mandatory w.e.f 1.4.2016 i.e. from A.Y. 2016-17*

*2. That the CIT(appeals) erred in rejecting the claim of refund Rs. 69290/-alleging not having filed the ITR-7 on 14.06.2013 ask acknowledgment No. 299140613004324 affixed on forwarding letter, as per practice, not affixing seal on the ITR page, without confirming from the ask center and without referring I.Tax Portal compliance response sheet ack. No 17396072110817 dated 11.08.2017 showing ITR filed on 14.06.2013 and 10B report filed on 02.07.2013 ask ackn. No. 299020713006490*

3. The brief facts of the case are that, the assessee is registered u/s 12AA of the Act and the assessee has filed the ITR -7 manually along with Form.No.16A issued by the bank on 14-08-2013 through ASK centre of the Income Tax Department for claiming of refund of Rs. 69,290/- . The assessee has also filed application for approval from

Commissioner, Jabalpur for condoning the delay in filling the return of income for A.Y.2010-11 for claiming TDS refund u/sec119(2) of the Act. Further the assessee has filed the Audit Report in Form. No.10B dated 23-09-2011 with the income tax department ASK centre on 2-07-2013 and the assessee has filed the rectification petition u/sec154 of the Act and the A.O found that the assessee is only receiving interest from savings bank account and interest on FDR. And there is no evidence showing income from fees receipt or grant from government from the audited financial statements and has rejected the claim of exemption u/s 10(23C) (iiiab) of the Act vide order dated 8-07-2021.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). In the appellate proceedings, it was explained that the assessee was registered u/s 12AA of the Act and has claimed exemption. Whereas the CIT(A) considered the facts and submissions of the assessee and dealt on the issues at Para 5 to Para 5.1 of the order and observed that the assessee has not filed the return of income within the time limit specified and there is no data was found nor any pendency of refund is reflected that the

assessee has filed the valid return of income as per the report and the resolution for grievance application of the assessee was disposed off by letter dated 3-08-2021. Therefore the CIT(A) considering the facts and material on record has dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing the Ld.AR submitted that the CIT(A) has erred in not considering the submissions that the assessee was registered u/s 12AA of the Act and the assessee has filed the ITR-7 manually along with Form.No.16A issued by the bank on 14-08-2013 through ASK center of the Income Tax Department for claiming of refund of Rs. 69,290/-. Whereas the audit report in Form no 10B was filed on 02.07.2013 and the AO has wrongly mentioned in the order passed U/sec154 of the Act that the Form No10B was not filed. The Ld. AR contentions are that the assessee is a educational society imparting vocational education courses without charging fee and prayed for allowing the appeal. Per Contra, the Ld. DR submitted that the assessee has not filed the valid return of income within

the time limit as per the provisions of the Act and supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld. AR that the assessee has filed an appeal against the order u/s 154 of the Act as the claim of refund was rejected on the ground that the no return of income was filed. Whereas the assessee has filed the ITR -7 manually along with Form.No.16A issued by the bank on 14-08-2013 through ASK center of the Income Tax Department for claiming of refund of Rs. 69,290/-. The assessee has also filed the Audit Report in Form. No.10B dated 23-09-2011 with the income tax department ASK center on 2-07-2013. The assessee has filed the rectification petition u/sec154 of the Act and was rejected. Further the Ld.AR has referred to provisions of Sec. 139(iva) of the Act which requires mandatory filling of return of income w.e.f 1.4.2016 i.e from A.Y 2016-17 and whereas the present A.Y is 2010-11. We find that the assessee has filed an application with the Commissioner of Income Tax for approval under U/sec119(2) of the Act for belated claim of TDS Refund and delay be condoned in filling the return of

income for A.Y 2010-11 on 30-05-2013 placed at page 31 of the paper book. Whereas the delay in filing the return of income and claim of belated refund are within the purview of Section 119 (2) of the Act and the assessee has filed the application for condonation of delay as referred above, Further the return of income was filed manually with the ASK center of Income tax department and the status as per the compliance response sheet is "Return Not received" placed at page 25 of the paper book. And the return of income was filed beyond the specified time limit under the Act. Further the resolution for grievance application U/sec 119(2) of the Act dated 30-05-2013 & 28-01-2021 was disposed off vide letter dated 3-08-2021 placed at page 10 of the paper book. Therefore the remedy for considering these facts, information, and grievances cannot be a subject matter of the appeal. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the assessee.

7. In the result, the appeal filed by the assessee is dismissed.

**ITA 07/Jab/2023, A.Y 2011-12**

8. As the facts and circumstances in this appeal is identical to ITA No 99/Jab/2022, A.Y 2010-11 on the

disputed issues and the decision rendered in the above paragraphs will apply *mutatis mutandis* to this appeal also. Accordingly, the grounds of appeal of the assessee are dismissed.

9. In the result, the appeals filed by the assessee are dismissed.

Order pronounced in the open court on 20.09.2023

Sd/-  
(OM PRAKASH KANT)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Jabalpur, Dated 20.09.2023

KRK, PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT (Judicial)
4. The PCIT
5. DR, ITAT, Jabalpur
6. Guard File

आदेशानुसार / BY ORDER,

सत्यापित प्रति // True Copy //

1.

( Asst. Registrar)  
ITAT, Jabalpur