

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.100 & 101/RPR/2020
निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18

Shrishti Institute of Medical Science and Research Centre,
Pandey Complex Near Petrol Pump,
Niharika, Korba-495677 (C.G.).

PAN : AACAS5201L

.....अपीलार्थी / Appellant

बनाम / V/s.

Commissioner of Income Tax (Exemption),
Bhopal

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.102/RPR/2020
निर्धारण वर्ष / Assessment Years : 2018-19

Saksham
MIG-1 Ameri Sagar DWIP,
Sagar DWIP Ameri,
Bilashpur-495001(C.G.).

PAN : AAEAS6801Q

.....अपीलार्थी / Appellant

बनाम / V/s.

Commissioner of Income Tax (Exemption),
Bhopal

.....प्रत्यर्थी / Respondent

Assessee by :Shri Y.K. Mishra, Advocate
Revenue by :Shri V.K. Singh, CIT-DR

सुनवाई की तारीख / Date of Hearing :21.09.2023

घोषणा की तारीख / Date of Pronouncement : 25.09.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the aforementioned assesseees are directed against the respective orders passed by the Commissioner of Income-Tax (Exemption), Bhopal [for short "CIT(E)"] u/s 119(2)(b) of the Income Act, 1961 (for short "Act"), dated 15/16.09.2020, wherein the applications filed by the respective assessee's seeking condonation of the delay that was involved in filing of the audit report in "Form No. 10BB" r.w Rule 16CC of the Income Tax Rules, 1962 were rejected by him. As common issues are involved in the aforementioned appeals, therefore, the same are being taken up and disposed off vide a consolidated order.

2. We shall take up the appeal filed by the assessee appellant in ITA No. 100/RPR/2020 as the lead matter, and the order therein passed shall apply mutatis mutandis to the other two appeals.

3. The assessee appellant has assailed the impugned order passed by the CIT(Exemption), Bhopal u/s 119(2)(b) of the Act, wherein the assessee's application seeking condonation of the delay in filing its audit report in "Form No. 10BB" was declined by him, as under:-

Shrishti Institute of Medical Science and Research Centre & Ors. vs. CIT(E)
ITA No. 100, 101& 102/RPR/2020



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIT EXEMPTION BHOPAL

To, SHRISHTI INSTITUTE OF MEDICAL SCIENCE AND RESEARCH CENTER PANDEY COMPLEX NEAR PETROL PUMP, NIHARIKA KORBA 495677, Chhattisgarh India	
---	--

PAN: AACAS5201L	Assessment Year: 2016-17	Dated: 15/09/2020	DIN & Order No : ITBA/COM/F/17/2020-21/1027972949(1)
--------------------	-----------------------------	----------------------	---

Sir/ Madam/ M/s,

Subject: Condonation under section 119(2)(b) - Order

The assessee Shrishti Institute of Medical Science and Research Center submitted Application for condonation of delay in filing Form 10BB for AY 2016-17.

Assessee filed ITR for AY 2016-17 on 18.03.2017 and relevant period's Form No. 10BB was filed on 29.06.2017. Reason for delay in filing Form No. 10BB has been attributed to Accountant death.

The due date for filing ITR and Form 10BB for AY 2016-17 was 30.09.2016, (extended to 17.10.2016). In the condonation application, the assessee society has not given any genuine reason, whatsoever, for not furnishing the same as provided in the Act which could have prevented from filing the Form 10BB in time.

The explanation is not acceptable due to the fact that the assessee society was required to file form 10BB alongwith ITR as per 10th proviso of Section 10(23C) of the Act and Rule 16CC of I.T.Rules.

Thus, it is seen that the case of the assessee does not fulfill the conditions of Board's Circular No. 10/2019 dated 22/05/2019. Thus the application of the assessee for condonation of delay in filing Form 10BB is hereby rejected.

ABHAY KUMAR SINGH

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO:201, II Floor, REAC, BHOPAL, REAC, BHOPAL, BHOPAL, Madhya Pradesh, 462016
Email: BHOPAL.CIT.EXMP@INCOMETAX.GOV.IN, Office Phone:07552426419

* DIN- Document identification No.

4. We have heard the ld. Authorized Representatives for both the parties, and perused the order passed by the CIT(Exemption), Bhopal u/s 119(2)(b) of the Act.

5. At the very outset, we may hereinabove observe that the captioned appeal filed by the assessee appellant is not maintainable before us. We say so for the reason that an assessee is not vested with any right to assail an order passed by a Commissioner u/s 119(2)(b) of the Act by preferring an appeal before the Appellate Tribunal. For the sake of clarity, Section 253(1) of the Act that specifically lists out the orders that are appealable before the Appellate Tribunal is culled out as under:-

“253. (1) Any assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order—

(a) an order passed by a Deputy Commissioner (Appeals) before the 1st day of October, 1998 or, as the case may be, a Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A⁹⁰[, section 271AAB, section 271AAC, section 271AAD], section 271J or section 272A; or

⁹⁰[(aa) an order passed by a Joint Commissioner (Appeals) under section 154, section 250, section 270A, section 271, section 271A, section 271AAC, section 271AAD or section 271J; or]

(b) an order passed by an Assessing Officer under clause (c) of section 158BC, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, after the 30th day of June, 1995, but before the 1st day of January, 1997; or

(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or

⁹¹[(c) *an order passed by,*

(i) a Principal Commissioner or Commissioner under section 12AA or section 12AB or under clause (vi) of sub-section (5) of section 80G or under section 263 or under section 270A or under section 271 or under section 272A or an order passed by him under section 154 amending any such order; or

(ii) a Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General or a Principal Director or Director under section 263 or under section 272A or an order passed by him under section 154 amending any such order; or]

(d) an order passed by an Assessing Officer under sub-section (3), of section 143 or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order; †or

(e) an order passed by an Assessing Officer under sub-section (3) of section 143 or section 147 or section 153A or section 153C with the approval of the Principal Commissioner or Commissioner as referred to in sub-section (12) of section 144BA or an order passed under section 154 or section 155 in respect of such order; †or

(f) an order passed by the prescribed authority under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10.”

As an order passed by a Commissioner u/s 119(2)(b) of the Act does not find any mention in the list of orders that are appealable before the Appellate Tribunal, therefore, we are constrained to observe that the present appeal filed by the assessee is not maintainable before us. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Gujarat** in the case of **CIT Vs. Rasida Ibrahimhai Vohra (2014) 42 taxmann.com 85 (Gujarat)**. The Hon'ble High Court had observed that as an order passed by the Commissioner u/s 119(2)(b) is an administrative order; therefore, the

same is not appealable before the Tribunal. Apart from that, it was observed that as an order passed u/s 119(2)(b) does not find any mention in the orders appealable before the Tribunal u/s 253 of the Act; therefore, no such appeal was maintainable before the Tribunal. Accordingly, the High Court based on its aforesaid observations had set-aside the order of the Tribunal, observing, that the latter had erroneously entertained the appeal against the order passed by the Commissioner u/s 119(2)(b) of the Act and had restored the matter to his file to re-adjudicate the matter afresh.

6. On the basis of our aforementioned deliberations, the captioned appeal filed by the assessee appellant is dismissed as not maintainable.

7. Resultantly, the appeal filed by the assessee appellant in ITA No. 100/RPR/2020 is dismissed as not maintainable.

8. As the facts and the issues involved in these remaining two appeals i.e. ITA No. 101/RPR/2020 & ITA No. 102/RPR/2020 remains the same as were there before us in the aforementioned appeal in ITA No. 100/RPR/2020, therefore, our order therein passed shall apply mutatis mutandis for disposing off the aforementioned appeals.

9. Resultantly, the captioned appeals of the respective assessee appellants in ITA No. 101/RPR/2020 and ITA No. 102/RPR/2020 are dismissed as not maintainable.

10. In the result, all the captioned appeals i.e. ITA No.100 to 102/RPR/2020 are dismissed as not maintainable.

Order pronounced in open court on 25th day of September, 2023.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 25th September, 2023
***Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (A), Raipur
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.