

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “C”, MUMBAI**

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)

AND

MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.2255/Mum/2023
(Assessment year : 2017-18)

Pir Makhdum Saheb Charitable Trust, Ground Floor, Dargah Shatief, Dargah Street, Mahim, Mumbai-400 016 PAN : AAATP4004F	vs	Income-tax Officer, National e-assessment Centre, Delhi
APPELLANT		RESPONDENT

Present for the Assessee	Shri Rahul Hakani
Present for the Department	Shri H.M. Bhatt, Sr.AR

Date of hearing	27/09/2023
Date of pronouncement	16/10/2023

ORDER

Per Padmavathy S (AM):

This appeal is against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, ‘the CIT(A)’] dated 27/01/2022 for A.Y. 2017-18.

2. The assessee raised the following grounds of appeal:-

“1, On the facts and circumstances of the case and in law, the Learned CIT(A) has erred in not confirming the delay i.e. non-condonation of delay of filing Form 10BB during the course of Assessment which otherwise is to be filed with ITR-7.

2. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming the addition of Rs.2,46,02,499/- (being the Income of the Charitable Trust), made by the Learned Assessing Officer.

3. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in confirming the disallowances of expenses of Rs.2,43,95,585/- made by the Learned Assessing Officer.”

3. The assessee is a trust registered with Director of Income-tax (Exemptions), Mumbai under section 12A of the Income-tax Act (in short, ‘the Act’) vide registration No.TR/41493. The assessee is also registered with the Charity Commissioner, Mumbai and has approval under clauses (iv) and (v) of section 10(23C) from A.Y. 2017-18 onwards. The assessee, for the assessment year 2017-18 filed the return of income on 21/10/2017 declaring Nil income. Subsequently, the assessee filed the audit report in Form No.10BB on 15/03/2019 electronically. The case was selected for scrutiny and the notice under section 143(2) was duly served on the assessee. The assessee submitted the Income & Expenditure Account, balance-sheet, etc. before the Assessing Officer. The Assessing Officer noticed that the assessee did not file the audit report in Form No.10BB while filing the return of income even though its income for the year under consideration is higher than the exempt limit. The Assessing Officer further noticed that the assessee only during the assessment proceedings i.e. on 16/03/2019 filed the audit report in form 10BB. Therefore, the Assessing Officer issued a showcause notice as to why the exemption claimed by the assessee should not be disallowed. The assessee submitted before the Assessing Officer that Form 10BB was filed late due

to lack of knowledge. The assessee further submitted that it has filed an application on 29/11/2019 before the CIT(E) for condonation of delay in filing Form 10BB. The Assessing Officer did not accept the submissions of the assessee for the following reasons:-

“ (i) The assessee trust has received the 10(23C) certificate (dated 26.07.2017) well before the due date of filing of return of income for A.Y 2017-18 (extended due date was 07.11.2017). Further, the assessee trust itself has applied for 10(23C) certificate and is well aware of the provisions of section 10(23C), it is just his afterthought.

(ii) It is seen from the records, that in previous years (A.Y 2013-14 & 2014-15) the assessee has filed audit report in Form 10B. In current year's return of income, the assessee trust has claimed exemption both u/s 10(23C) and u/s 11 of the IT Act. Since, the assessee claimed exemption under both the sections, the assessee was required to file audit report either in Form 10B or Form 10BB. However, the assessee trust has failed to file audit report in any Form before the due date.

(iii) Further, as per data available on e-filing portal it is seen that the assessee trust is a regular defaulter and also not filed audit report in Form 10B for A.Y 2016-17 & 2015-16.”

4. Accordingly, the Assessing Officer treated the entire receipt of the assessee as income while completing the assessment under section 143(3) of the Act. Aggrieved, the assessee preferred further appeal before the CIT(A). The CIT(A) held that as per section 12A(1)(b), since the income of the trust exceeds the amount which is not chargeable to tax, the trust is required to get its books of account audited and furnished audit report along with the return of income. Since the assessee has failed to do so, the provisions of sections 11 and 12 shall not apply in relation to the income of the assessee and accordingly, the CIT(A) upheld the order of the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

5. The Ld.AR submitted that the exemption cannot be denied merely for the reason that the form 10BB was not filed along with the return of income. The Ld.AR further submitted that the assessee has filed form 10BB while filing the revised return of income online and the same has not been considered by the lower authorities. The Ld AR also submitted that the assessee has submitted an application before the CIT(Exemption) for condonation of delay in filing form 10BB along with an affidavit stating the reasons for delay.

6. The ld DR supported the orders of the lower authorities.

7. We heard the parties and perused the material on record. The assessee though got its accounts audited well before the due date for filing the return of income, did not file Form 10BB at the time of filing the return of income. The assessee subsequently filed a revised return on 16/03/2019 along with Form 10BB. The assessing officer did not consider the Form 10BB filed by the assessee for the reason that the same was not filed along with the return of income and thereby denied the exemption under section 11. On perusal of records we notice that the assessee has filed a petition for condonation of delay before the CIT(Exemptions) filing an affidavit stating the reasons for delay in filing Form 10BB. The assessee has stated that it has received the exemption certificate under section 10(23C) from CIT(Exemptions) vide order dated 26.07.2017 which is applicable from AY 2017-18 and that the year under consideration is the first year in which form 10BB was required to be filed. The assessee further submitted that due to lack knowledge and proper guidance from the professional, form 10BB was not filed along with the original return of income. Accordingly the assessee prayed for condonation of delay. During the course of hearing, the ld AR submitted the copy of the form

10BB submitted online and the affidavit filed before the CIT(Exemptions). It is also noticed from the records that the assessee has audited the accounts and the certificate in form 10B is also obtained. Keeping in view the fact that the year under consideration was the first year of filing audit report in form 10BB electronically and assessee trust being not aware of the procedural technicalities due to lack of regular professional guidance, which is a sufficient reason to condone the delay. Further the assessee has filed form 10BB subsequently along with the revised return of income. Therefore we condone the delay in filing Form 10BB. The lower authorities have not examined the allowability of exemption under section 11 on merits but have denied the exemption for the reason that Form 10BB was not filed in time. Therefore we remit the issue back to the assessing officer with a direction to condone the delay in filing Form 10BB and examine the audit report afresh to allow exemption under section 11 in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

9. In result the appeal is allowed for statistical purposes.

Order pronounced in the open court on 16/10/2023

Sd/-

sd/-

(KULDIP SINGH)	PADMAVATHY S.
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt :16th October, 2023

Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai