

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 265/Ind/2023**  
**Assessment Year : 2016-17**

Shri Jan Sewa Sankalp Sansthan, 16, Opp. New Collector Office, Sehore (Assessee / Appellant)	<b><u>बनाम/</u></b> <b>Vs.</b>	Assistant Director of Income Tax, CPC, Bangalore (Revenue / Respondent)
<b>PAN: AAGAS4432 B</b>		
Assessee by	Shri Moksha Solanki, CA and Shri Soumya Bumb, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.10.2023	
Date of Pronouncement	25.10.2023	

**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 01.12.2021 passed by learned Commissioner of Income-Tax, (Appeals), NFAC, Delhi ["Ld. CIT(A)"], which in turn arises out of intimation of assessment dated 30.04.2018 passed by CPC, Bangalore ["Ld. AO"] u/s 143(1) for Assessment-Year ["AY"] 2016-17, the assessee has filed this appeal on following effective grounds:

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the arbitrary disallowance made by Centralized Processing Centre under intimation passed u/s 143(1) of the Act. The appellant prays that the said disallowance to be deleted.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the action of AO, in disallowing deduction of amount applied for charitable purpose u/s 11 merely on the ground that the audit report in form 10B has been filed after due date of filing of return of income. The appellant prays that the said disallowance to be deleted.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in the imposing tax on the total receipts without reducing the application made and taxing gross receipt in violation of real income concept.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) erred in passing the order in haste without discussing the merits of the case and in arbitrary manner which is prayed to be quashed."*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The registry has informed that the present appeal is delayed by 533 days and therefore time-barred. Ld. AR submits that the assessee has filed an application for condonation of delay supported by an affidavit on stamp. On perusal of the application/affidavit, we observe that the assessee has made averment that although the email address [jsss.vinod@gmail.com](mailto:jsss.vinod@gmail.com) belonging to assessee was filled at two places prescribed in Form No. 35 of first-appeal filed to CIT(A) but the department sent order of first-appeal to [sahunk.associates@gmail.com](mailto:sahunk.associates@gmail.com) which was email address of assessee's erstwhile counsel. Hence, the impugned order did not reach to assessee and the erstwhile counsel also did not inform assessee. Subsequently, with the assistance of new counsel after lapse of time, the assessee came to know of the impugned order; hence there occurred delay. Ld. AR very humbly submits that there is no deliberate lethargy, negligence or mala fide intention of assessee in making delay and the assessee does not stand to derive any benefit because of delay. Ld. AR prayed to condone the delay. Ld. DR did not raise any objection to assessee's prayer looking into the reason of delay. We find that the assessee has a reasonable cause for delay in filing present appeal. Placing reliance on provisions of section 253(5) of the act and decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs**

**Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with appeal.

4. Brief facts leading to present appeal are such that the assessee-society, an entity registered u/s 12A by CIT(Exemption), Bhopal vide order F.No. CIT(E)/BPL/HQ/12A/01/2014-15 dated 19/12/2014, filed return of income of relevant AY 2016-17 on 15.09.2017 in Form No. ITR-7 declaring a total income of Rs. 2,610/- after claiming exemption of Rs. 29,62,361/- u/s 11/12 of Income-tax Act, 1961. The AO processed assessee's return u/s 143(1) after making an addition/adjustment of Rs. 29,62,361/- by disallowing exemption u/s 11/12 claimed by assessee and thereby determining total income at Rs. 29,64,971/-. Aggrieved, the assessee carried matter in first-appeal but could not succeed. Now, the assessee has come in next appeal before us.

5. Ld. AR for assessee made following submissions to assail the impugned order:

(i) Firstly, it is submitted that the CIT(A) has upheld the addition/adjustment by observing that the assessee filed return of income in a wrong form of ITR, on the basis of a note embedded by AO in intimation u/s 143(1). The order of CIT(A) is re-produced below for an immediate reference:

*"4.1 Ground Nos. 1 to 4 and 6:*

*In this regard, on perusal of the intimation u/s 143(1), the CPC in Page No. 6 of the intimation inter alia stated the following as the reason for the adjustment u/s 143(1):*

**"3) As per Rule 12(g) of Income-tax Rules, 1962, person covered under 139(4A) or (4B) or (4C) or (4D) or (4E) or (4F) are required to file the return in Form No. ITR-7.**

**If the taxpayer is not covered under any of the above sections, then the return has to be filed in Form No. ITR-5 or ITR-6 as applicable."**

*4.3 The appellant is required to comply with the provisions of the Act/Rules with respect to filing of the Income-tax Return in the applicable form. Here, the CPC has held that the appellant has not filed in the applicable form and therefore the adjustments have been made. The present appeal is against the*

*intimation u/s 143(1) and not an appeal arising from a scrutiny assessment order. Therefore, only prima facie material available on record cash be considered and the appellant has not filed the ITR in the applicable form. Therefore, the CPC is competent to make necessary adjustments as per the provisions of the Act. Therefore, I do not find any reason to interfere the findings of the AO/CPC. Therefore, the action of the CPC is upheld. Accordingly, the grounds of appeal are dismissed."*

In this regard, Ld. AR carried us to section 139(4A) which prescribes thus:

**"Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1)."**

Ld. AR submitted that the assessee declared total income of Rs. 2,610/- after claiming exemption of Rs. 29,62,361/- u/s 11/12, thus the assessee's total income without giving effect to the provisions of section 11/12 was Rs. 29,64,971/- which exceeded the maximum amount not chargeable to tax. Therefore, the assessee is very much covered by section 139(4A). Accordingly, the assessee has correctly filed return in Form ITR-7 as required by Rule 12(g) of Income-tax Rules, 1962 and the AO/CPC has wrongly made a note in Page No. 6 of intimation u/s 143(1) that the assessee has not filed return in correct form and the CIT(A) has also wrongly upheld the addition/adjustment on the basis of such 'note' included in the intimation u/s 143(1) passed by AO/CPC.

(ii) Then, Ld. AR made another submission that the 'note' embedded in intimation u/s 143(1) about filing of return in wrong form, does not seem to be the correct reason of making addition/adjustment by AO/CPC. Ld. AR submitted that, in his mindful understanding, the AO/CPC has made addition by disallowing exemption u/s 11/12 for a different reason i.e. for

the reason of non-filing of auditor's report in Form No. 10B in time. Ld. AR submitted that the assessee filed return of income on 15.09.2017 and intimation u/s 143(1) was passed by AO on 30.04.2018. In so far filing of audit report in Form No. 10B is concerned, Ld. AR placed before us a copy of Form No. 10B, downloaded from Income-tax Website, and tried to demonstrate that although the audit-report was signed/filed by auditors on 18.04.2016 but there occurred delay on the part of assessee in approving the said report which could ultimately be done on 04.02.2022. Therefore, the audit-report could not be taken into consideration by departmental systems/software. Ld. AR submitted that in the first blush, the assessee's simple default of not approving audit report in time, should not be viewed as non-filing of auditor's report. Alternatively, if the date of 04.02.2022 is considered as 'filing date', then also there are numerous decisions of ITAT Benches as well as High Courts where it has been held that the belated filing of audit report is a mere procedural lapse for which the substantive exemption u/s 11/12 validly available to assessee cannot be denied. Ld. AR placed reliance mainly on following decisions:

- (a) Hon'ble Gujrat High Court in Association of Indian Panel Board Manufacturer Vs. The DCIT, Tax Appeal No. 655 of 2022, judgement dated 21.03.2023
- (b) ITAT, Indore in Navratna Sukrat Foundation Vs. CPC Bangalore, ITA No. 390/Ind/2022 order dated 21.04.2023

6. Ultimately, Ld. AR concluded his submission by contending that whatever way the assessee's case is seen, the exemption claimed by assessee must be allowed.

7. Ld. DR for revenue supported the orders of lower-authorities.

8. We have considered rival submissions of both sides and perused the orders of lower-authorities. We have given a careful consideration to the pleadings made by both sides. After consideration, we come to a conclusion that in present case, there appears a necessity of firstly ascertaining the

exact reason of addition/adjustment made by AO/CPC for disallowing exemption u/s 11/12 i.e. whether it was non-filing of return in correct form or it was non-filing/belated-filing of audit report. Even after finding that, there may be further necessity to verify various events/dates narrated by Ld. AR in the matter of filing or approving audit-report. Lastly, if need arises, there may also be necessity to decide the case of assessee in the light of judicial rulings cited above. Therefore, it would be appropriate in these circumstances to remit this case back to the file of AO who would look into all claims raised by Ld. AR including the judicial decisions. The AO shall carry out a proper exercise, without being influenced by previous orders, so that the grievance of assessee is adequately resolved.

**9. Resultantly, this appeal of assessee is allowed for statistical purpose.**

*Order pronounced in the open court on 25.10.2023.*

Sd/-  
(VIJAY PAL RAO)  
JUDICIAL MEMBER

sd/-  
(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 25.10.2023

CPU/Sr. PS

*Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Indore Bench, Indore*