

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 262/Asr/2023
Assessment Year: 2018-19**

Voluntary Medicare Society C/o Bhat Durani & Associates, 207 1 st Floor, Yatri Bhawan II, Durga Nag Dalgate, Srinagar, Pin-90001 [PAN:-AADAV8533H] (Appellant)	Vs.	Income Tax Officer (Exemptions) Ward Jammu (Respondent)

Appellant by	Sh. Upendra Bhat, CA
Respondent by	Sh. Ravinder Mittal, Sr. DR

Date of Hearing	30-10-2023
Date of Pronouncement	22.11.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1, NFAC, Delhi, [in brevity the ‘CIT (A)’], order passed u/s 250 of the Income Tax Act 1961, [in brevity ‘the Act’] for

A.Y. 2018-19. The impugned order was emanated from the order of the Id. CPC, Bangaluru, [in brevity 'the AO'] order passed u/s 154 of the Act.

2. The brief facts is that the assessee is a society registered under section 12AA of the Act. During the impugned assessment year, the assessee filed return of income u/s. 139 (1) on dated 06.02.2019. Whereas the due date for filing was 30.09.2018. The appellant has filed form no. 10B on 12.02.2019 which was beyond the prescribed time. The return was processed u/s. 143(1). Due to non-filing of Form no. 10B, the entire application of funds was added back with the total income of the assessee i.e. Rs.1,49,35,907/- and accordingly the tax was levied. The assessee filed petition u/s. 154 of the Act and prayed that **CBDT Instruction No 173/193/2019-ITA-1 dated 23/4/2019** and **CBDT Circular No-6/2020 dated 19/02/2020** are applicable for assessee for acceptance of return filed U/s 139(4A) of the Act. But the assessee remained unsuccessful. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

3. The Id. AR of the assessee has filed submissions, which were kept in the record. The Id. AR vehemently argued and pointed out that though the return was no filed u/s. 139(1) but the same was furnished u/s. 139(4A). So, the assessee is eligible for deduction u/s. 11 empowered by the **CBDT Instruction No**

173/193/2019-ITA-1 dated 23/4/2019 and CBDT Circular No-6/2020 dated 19/02/2020. The delay for filing the return and Form 10B are condoned by the CBDT on this Circular.

4. The Id. AR relied on the section 12A(1)(b) and he mentioned that it is pertinent to mention that section 12A(1)(b) as applicable for assessment year 2018-19 requires the assessee to get the accounts audited by an accountant as defined under section (2) of section 288 and file the report along with the return. But unlike in subsequent years there is no separate time limit provided for filing the same. However, sub-clause (b) of section 12A(1) provides the time for filing the return in accordance with sub-section (4A) of section 139. CBDT in the instructions No. 173/193/2019-ITA-1 dated 23rd April 2019 directed that time allowed under section 139(4A) is time allowed under section 139(4).

5. The Id. DR vehemently argued and mentioned that specific CBDT instruction is applicable for the competent Authority. So assessee can approach competent authorities for acceptance of Form no. 10B in persuasion of filing u/s. 139(4A).

6. We heard the rival submissions and considered the documents available in the record. As per the grounds of assessee, the assessee was pursuing for relief

application of section 154 of the Act. The return was processed u/s. 143(1) in persuasion of the documents filed in the return and accordingly the declaration form 10B was missing at that time. But the issue covered by the CBDT instruction no. 173/193/2019-ITA-1 dated 23.04.2019& CBDT Circular 6/2020 which are squarely applicable to the revenue authorities. So, the applicability of rectification U/s 154 is binding on the revenue authorities,

In our considered view by following the CBDT Instruction no. 173/193/2019-ITA-1, that if the return is filed within the specified time limit of sub section of 139 would be eligible for the benefit given by the above mentioned CBDT circular and should avail the benefit of exemption u/s. 11 of the Act. In our considered opinion the Id. CIT(A) erred in misinterpreting the aforementioned circular and, therefore, to that extent the order of the CIT(A) is erroneous and deserves to be set aside.

7. Further, the grievance of the assessee is that the delay has not been condoned in spite of CBDT circular No.06/2020 dated 19.02.2020. The above said circular is reproduced as under.

“Circular No. 6/2020

F.No.197/55/2018-ITA-I

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi, the 19th February, 2020

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Return of Income for A.Y 2016-17, 2017-18, and 2018-19 and Form No. 9A and Form No. 10. -Reg,

Representations have been received seeking condonation of delay in filing Return of Income by the Charitable Institutions for the Assessment Year 2016-17 onwards on the grounds of hardship. The Board has issued Circulars authorizing the Commissioners of Income Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay u/s 119(2)(b) of the Income-tax Act, 1961 (Act). However, in those cases where the Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in filing of Form 9A & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.e.f. 01.04.2016, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing Return of Income before the due date.

2. Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31st March of the respective assessment years i.e. Assessment Years 2016-17, 2017-18 and 2018-19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.

3. For all other application for condonation of delay not mentioned above, the power of condonation of delay u/s 119(2)(b) of the Act will continue with the respective authorities as per the extant Rules and Practice.

(Gulzar Ahmad Wani)

Under Secretary (ITA-I)”

In the light of the mandate of the CBDT in the afore mentioned circular We direct the Id. AO to consider the return of the assessee and allow the benefit as per the provisions of the law.

We accordingly remit back the matter to the file of the Id. AO to follow CBDT instructions and accepting the assessee's claim, duly meant during the filing of return as well as form 10B. It is pertinent that assessee is not at all the defaulter for filing the declaration in form no.10B, considering the circular of CBDT. Only for technical mistake the benefit should not be infringed u/s. 11 of the Act.

Needless to say, that the Id. AO shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings. The evidence/explanation submitted by assessee in its defence shall be admitted by the Id. AO and adjudicated on merits in accordance with law and considering the CBDT Circular & Instruction. We order accordingly.

8. In the result, the appeal of the assessee **ITA No. 262/ASR/2023** is allowed for statistical purposes.

Order pronounced in the open court on 22.11.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order