

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3732/MUM/2023
(Assessment Year: 2014-15)**

**Dwarkadas Pragji Vandravan Trust,
Mumbai,**

Sampat H. H., E-1-17, Kripa Nagar,
Irla, S.V. Road, Vile Parle (West),
Mumbai - 400056
[PAN: AAATD2459G]

..... **Appellant**

**Income Tax Officer (Exemptions),
1(2) Mumbai,**

MTNL Tel Ex Building, Comballa Hills,
Peddar Road, Mumbai - 400026

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Pradip Kapasi
For the Respondent/Department : Shri Manoj Kumar Singh

Date

Conclusion of hearing : 08.11.2023
Pronouncement of order : 29.11.2023

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 25/08/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 17/12/2019, passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The relevant facts in brief are that the Appellant is a public trust registered under the Bombay Public Trust Act, 1950 since 1953. The Appellant was also granted registration under Section 12A of the Act in 1975. The Appellant did not file return of income for the Assessment Year 2014-15. Subsequently, the case of the Appellant was re-opened under Section 147 of the Act since the Assessing Officer had reasons to believe the Appellant had not filed return of income even though the total receipts of the Appellant exceeded the maximum amount not chargeable to tax. In response to notice dated 26/03/2019 issued under Section 148 of the Act, the Appellant filed return of income on 23/05/2019 declaring income of INR 36,75,160/- Since the Appellant did not file any response to the notices issued under Section 142(1) of the Act, the Assessing Officer completed the reassessment proceedings vide order, dated 17/12/2019, passed under Section 143(3) read with Section with 147 of the Act. While assessing the total income of the Appellant at INR 52,11,201/- as against returned income of INR 36,75,160/-, the Assessing Officer disallowed deduction for expenses of INR 15,36,041/- claimed by the Appellant on the ground that the Appellant had failed to furnish Audit Report in Form 10B and/or other relevant documentary evidence is to support the claim for deduction of the aforesaid expenses.
3. Being aggrieved, the Appellant preferred appeal before CIT(A) belatedly. While the CIT(A) condoned the delay in filing appeal, the CIT(A) upheld the above disallowance made by the Assessing Officer vide order, dated 25/08/2013.
4. Being aggrieved, the Appellant is now in appeal before us.
5. The Learned Authorised Representative for the Appellant appearing before us submitted that the Appellant was not granted opportunity

of being heard and therefore, the impugned order be set aside and the issue raised in appeal be remanded back to the file of CIT(A) for fresh adjudication. In support of the aforesaid contention, the Ld. Authorised Representative for the Appellant submitted that the Appellant had filed application, dated 28/02/20220, for seeking condonation of delay in filing Form 10B to the concerned Commissioner of Income Tax (Exemptions) which was pending adjudication. Further, in response to notice of hearing, dated 04/08/2023, issued by the CIT(A), the Appellant had moved an adjournment application, dated 08/08/2023, seeking time till 29/08/2023. However, the CIT(A) proceeded to dispose of the appeal vide impugned order, dated 25/08/2023, without considering the same. Per contra, the Learned Departmental Representative supported the order passed by the CIT(A) and submitted that sufficient opportunity was granted to the Appellant during the assessment proceedings as well as appellate proceedings. Therefore, the order passed by the CIT(A) should be affirmed.

6. We have considered the rival submissions, and perused the material on record. We note that the CIT(A) has passed the order impugned after taking into consideration the facts as stated in the memorandum of appeal in Form 35. The order impugned does not make any reference to the application for adjournment, dated 08/08/2023, filed by the Appellant. The Appellant has been proceeded ex-parte. While confirming the disallowance made by the Assessing Officer, the CIT(A) has noted that the Appellant had failed to file Income Tax Return along with Form 10B for the Assessment Year 2014-15 within the prescribed time and the Income Tax Return as well as Form 10B filed by the Appellant subsequently were non-existent in the eyes of law. In this regard, we note that the Appellant has placed on record the death certificates of the trustee as well as

Application, dated 28/02/2020, filed before Commissioner of Income Tax (Exemptions) for seeking condonation of delay in filing Form 10B. It is admitted position that the aforesaid application is pending adjudication and that the order passed on the same would have direct bearing on the issue under consideration. Given the aforesaid facts and circumstances of the case, we deem it appropriate and in interest of justice to set aside the ex-parte order, dated 25/08/2023, passed by the CIT(A) without granting the Appellant sufficient opportunity of being heard and restore the appeal back to the file of the CIT(A) with the directions to adjudicate of the same afresh after granting Appellant a reasonable opportunity of being heard, and after taking into consideration the order passed by the Ld. Commissioner of Income Tax (Exemptions) on the application seeking condonation of delay filed by the Appellant. The Appellant is directed to place a copy of this order before the Ld. Commissioner of Income Tax (Exemptions) and make a request for early disposal of the aforesaid application seeking condonation of delay in filing Form 10B. In terms of the aforesaid, Ground No. 1 to 3 raised by the Appellant are Allowed while rest of the grounds raised (i.e., Ground No. 4 to 11) are disposed of as being infructuous.

7. In result, the present appeal preferred by the Assessee is treated as allowed for statistical purposes.

Order pronounced on 29.11.2023

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 29.11.2023
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai