

**IN THE INCOME TAX APPELLATE TRIBUNAL “DB” BENCH,
VARANASI**

**BEFORESHRI B R BASKARAN, ACCOUNTANT MEMBER
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

**ITA No. 79/Mum/2023
(A.Y. 2021-22)**

Abhishek SewaSanstha Near KamalpatiTripathi Degree College, Chanadauli, Uttar Pradesh-232104	Vs.	PCIT (Central) lucknow Uttar Pradesh
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABAA8533G		
Appellant	..	Respondent

Appellant by :	Shri. S.K. Garg Advocate
Respondent by :	Shri. Robin Chaoudhary

Date of Hearing	25.09.2023
Date of Pronouncement	23.11.2023

आदेश / O R D E R

PER AMIT SHUKLA :-

The aforesaid appeal has been filed by the assessee against the order of Principal Commissioner of Income Tax (Central), Lucknow (hereinafter “the Ld. PCIT”) u/s 119(2)(b) of the Act. At the outset this appeal is not maintainable and is dismissed *in-liminie*. However, certain aspects have been argued before us that relevant fact and correct position of law has not been considered by Ld. PCIT, therefore same are discussed in brief.

2. The brief facts are that the assessee is registered as society running educational institutions. Looking to its charitable objects, it was granted registration u/s 12AA and was also approved u/s 80G. It has filed its return of income for A.Y. 2021-22 on 15.02.2022, which within the extended due date for filing the return of income for filing returns by the CBDT. However it has filed its audit report in Form 10B on 16.09.2022. It is important to note that, as per the CBDT Circular No. 1/2022 dated 11.01.2022, the extended due dates for filing of ITR and audit report were 15.02.2022 and 15.03.2022 respectively. Since, the assessee failed to file audit report within the due date, the exemptions u/s 11(1) was denied by the CPC, Bangalore. The assessee then filed rectification application u/s 154 of the Act before CPC which was rejected. Then on 29.03.2023, the assessee filed an application for condonation of delay for filing of audit report in Form 10B for A.Y. 2021-22 before Ld. PCIT, Central Lucknow. In the submissions made before the Ld PCIT, the assessee submitted that due to ignorance of law and inadvertent on the part of the Chartered Accountant who was vested with the responsibility to ensure filing of audit report in prescribed Form 10B within time along with return, however he could not file within time prescribed, even though UDIN was generated on 13.11.2021, which was also the actual date of audit report was finally prepared. The Ld. PCIT held that there was delay of 244 days and

therefore, condonation petition for delay in filing of Form 10B cannot be accepted and accordingly same was dismissed.

3. On perusal of record, it is seen that, it is not in dispute that, there is delay in filing of audit report in Form 10B. As per the rule 17B of Income Tax Rule 1962, the audit report of the trust or institution in Form 10B has to be furnished electronically in accordance with rule 12(2). The failure to furnish such report in the prescribed form along with return of income, disentitles the trust or institution claiming exemption u/s 11&12 of the Act. However, CBDT vide by Circular No. 2/2020 dated 03.01.2020 has given certain relaxation in filing of Form 10B for the A.Y. 2016-17 and A.Y. 2017-18 and also for the years prior to A.Y. 2018-19, whereby the Commissioners of Income Tax were given authority and power u/s 119(2) to condone the delay in filing Form 10B and dispose off the petitions by 31.03.2020, if the Ld. CIT was satisfied that assessee was prevented by reasonable cause. However vide same circular, it was provided that for A.Y. 2018-19 or for any subsequent assessment years, where there was delay up to 365 days in filing Form 10B the Ld. CITs were authorized to admit such application of condonation of delay u/s 119(2) and decided on merit. The relevant paragraph of said circular reads as under:-

“4. Accordingly, the CBDT issued Circular No. 10/2019 circulated through F.No. 197/55/2018-ITA-I in supersession of earlier circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trust or institution for condoning the delay in filing Form No. 10B and in the exercise of the powers conferred

under section 119(2) of the Act, the Central Board of Direct Taxes vide Circular No. 10/2019 dated 23rd May, 2019 and Circular No. 28/2019 dated 27th September, 2019 both issued vide F.No. 197/55/2018-ITA-I has directed that :—

- (i) *The delay in filing of Form No. 10B for A.Y. 2016-17 and A.Y. 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.*
- (ii) *In all other cases of belated applications in filing Form No. 10B for years prior to AY. 2018-19, The commissioner of Income-tax are authorized to admit and dispose off by 31-3-2020 such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioner will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time.*

5. In addition to the above, it has also been decided by the CBDT that where there is delay of upto 365 days in filing Form No. 10B for Assessment Year 2018-19 or for any subsequent Assessment Years, the Commissioners of Income-tax are hereby authorized to admit such belated applications of condonation of delay under section 119(2) of the IT Act and decide on merits.”

4. Then another circular was issued by the CBDT, Circular no. 16/2022 dated 19.07.2022, whereby the condonation of delay u/s 190(2) (B) of the Act for filling of form 10B for A.Y. 2018-19 and subsequent years, that delay up to 365 days has been extended up to 3 years for filling of Form 10B. The relevant circular reads as under:

- “1. *In exercise of the powers conferred under section 119(2) of the Income-tax Act, 1961 (hereinafter referred to as 'Act'), the Central Board of Direct Taxes (CBDT) by Circular NO.2 /2020 [F.No. 197/55/2018-ITA-I] dated 03.01.2020 authorized the Commissioners of Income-tax to admit applications of condonation of delay in filing Form No. 10B for A Y 2018-19 or for any subsequent Assessment Years where there is delay of upto 365 days and decide on merits.*

2. **Further to the powers delegated to Commissioners of Income-tax as discussed above, the CBDT hereby directs that where there is delay of beyond 365 days upto three years in filing Form No. 10B for Assessment Year 2018- 19 or for any subsequent Assessment Years, the Pr. Chief Commissioners of Income-tax 1 Chief Commissioners of Income-tax are authorized to admit such applications of condonation of delay under section 119(2) of the Act and decide on merits.**
3. *The Pr. Chief Commissioner / Chief Commissioner or Commissioners of Income-tax, as the case may be, while entertaining such applications for condonation of delay in filing Form No. 10B, shall satisfy themselves that the applicant was prevented by reasonable cause from filing such Form within the stipulated time.*
4. *Further, the Pr. Chief Commissioner / Chief Commissioner of Income-tax, as the case may be, shall preferably dispose the application within three months of receipt of the application.”*

5. Here in this case, the delay is of 244 days has been calculated by Ld. PCIT. To count the due date he has referred to some Circular no. 1 of 2022 dated 11.01.2022, which was a general circular issued for extension of a standard time limits and was not particularly applicable for filling of Form 10B. The relevant circular as referred by the Ld. PCIT reads as under:

“On consideration of difficulties reported by the taxpayers and other stakeholders due to COVID and in electronic filing of various reports of audit under the provisions of the Income-tax Act, 1961 (Act), the Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, provides relaxation in respect of the following compliances:

1. *The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 30th September 2021, in the case of assessee referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, as extended to 31st October 2021 and 15th January 2022 by **Circular No.9/2021 dated 20.05.2021** and **Circular No.17/2021 dated 09.09.2021** respectively, is hereby further extended to 15th February, 2022;*
2. *The due date of furnishing of Report of Audit under any provision of the Act for the Previous Year 2020-21, which was 31st October,*

- 2021, in the case of assessee referred in clause (aa) of Explanation 2 to sub-section (1) of section 139 of the Act, is hereby extended to 15th February, 2022;
3. The due date of furnishing of Report from an Accountant by persons entering into international transaction or specified domestic transaction under section 92E of the Act for the Previous Year 2020-21, which was 31st October 2021, as extended to 30th November 2021 and 31st January 2022 by **Circular No.9/2021 dated 20.05.2021** and **Circular No.17/2021 dated 09.09.2021** respectively, is hereby further extended to 15th February, 2022;
 4. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 31st October 2021 under sub-section (1) of section 139 of the Act, as extended to 30th November 2021 and 15th February 2022 by **Circular No.9/2021 dated 20.05.2021** and **Circular No.17/2021 dated 09.09.2021** respectively, is hereby further extended to 15th March, 2022;
 5. The due date of furnishing of Return of Income for the Assessment Year 2021-22, which was 30th November 2021 under sub-section (1) of section 139 of the Act, as extended to 31st December 2021 and 28th February 2022 by **Circular No.9/2021 dated 20.05.2021** and **Circular No.17/2021 dated 09.09.2021** respectively, is hereby further extended to 15th March, 2022.

Clarification 1: It is clarified that this extension shall not apply to Explanation 1 to section 234A of the Act, in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of that section exceeds one lakh rupees.

Clarification 2: For the purpose of Clarification 1, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Act, the tax paid by him under section 140A of the Act within the due date (without extension under Circular No.9/2021, Circular No.17/2021 and this Circular) provided in that Act, shall be deemed to be the advance tax."

6. This circular is not at all applicable and has wrongly been quoted by Ld.PCIT. The relevant circular on condonation of delay for filling of Form 10B for A.Y. 2018-19 and subsequent years are circular no. 2/2022 dated 03.01.2022; and circular under 16/2022 dated 19.07.2022. These circulars clearly give powers to the authorized CITs to admit belated application for condonation and decide the

application on merit, if there is a reasonable cause. The Ld. PCIT has rejected the application and stating that the reasons given by assessee are unsubstantiated explanation that it was due to '**recalcitrance**' of the tax auditor.

7. Once power of condonation of delay has been given to Ld. PCIT u/s 119(2) for filling of Form 10B for A.Y. 2018-19 and subsequent assessment years, then such a power has to be liberally construed in beneficial manner and not to deny benefit on such a venial error of delay when Audit report in Form 10B was obtained earlier and UDIN was also generated before time but could not be filed within due date of 15th March 2022 to a trust found to be carrying on genuine charitable activities. From the perusal of petition of condonation of delay it is seen that the assessee has been registered u/s 12AA for the purpose of education and there is no denying fact that it is carrying out activities as per its object. During the year the assessee had total receipts of 1,85,35,067/- which expended for education activities. Since, year 2021 was affected by pandemic of Covid therefore time limits were extended from time to time and the due date of returns was upto 15th February 2022 and filling of audit report was upto 15th March 2022. The audit of the assessee society was conducted by CA Punit Kumar Singh of Varanasi and audit report was issued on 13.11.2021. Since, every audit report has to be substantiated by UDIN and the same was generated on 28.01.22, specifying the date of audit as

30.11.2021. Even though the audit report was issued within the due date and the return of income was filed on 15.02.2022 which was extended due date prescribed by CBDT, however, the only mistake was that the audit report was not uploaded by the tax auditor on or before 15th March 2022. The assessee was under the bonafide belief that once the audit report has been obtained earlier, must have been uploaded. Since, audit report has been uploaded on 16.09.2022 which was delay of little above 180 days and not 244 days, for which reasonable view could have been taken.

8. Those aforesaid observation has been made on the facts and material on record and such erroneous assumption by the Id. PCIT while rejecting the condonation petition. However, as held in the starting para, there is no provision under the Act that petition for condonation u/s 119(2) of the Act is appealable before the Tribunal. The scope of appeal has been provided Sec. 253 of the Act, however, there is no such provision to file appeal before the Tribunal against any such order passed u/s 119(2) by the PCIT. The condonation of power has been given only to authorized Commissioner of Income Tax and not to any other Appellate Authorities including ITAT. Thus, the appeal of the assessee filed against order dated 23.06.2023 u/s 119(2)(b) is held to be not maintainable. The assessee is liberty to approach Hon'ble High Court under the writ jurisdiction or may approach Id. PCIT Central Lucknow who is authorized Commissioner

of Income Tax u/s 119(2) to consider the application for condonation in light of the facts mentioned above once again. Accordingly, appeal of the assessee dismissed as not maintainable.

Order Pronounced in Open Court on 23rd November, 2023

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Place: Mumbai

Date 23.11.2023

ANIKET SINGH RAJPUT/STENO

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

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

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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