

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.2658/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2016-17)

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| Shri Nrusinh Saraswati Yog Chintan Math Trust 16, Narayan Niwas, Opp, Railway Station, Thane East, Maharashtra-400603. | बनाम/ Vs. | ITO, Exemption Ward, Thane Quereshi Mansion, Gokhale Road, Naupada, Near Teen Hath Naka, Thane West-400602. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGTS6735E | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| Assessee by: | Shri Ramkrishna Lingsur | |
| Revenue by: | Shri S. N. Kabra (Sr. AR) | |

सुनवाई की तारीख / Date of Hearing: 30/11/2023

घोषणा की तारीख /Date of Pronouncement: 12/12/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Trust against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 05.06.2023 for the assessment year 2016-17.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO denying the accumulation u/s 11(2) of the Income Tax Act, 1961 (hereinafter "the Act") to the tune of Rs.10,50,000/- despite the fact that the application for condonation of delay in filing Form 10 was pending before Ld. CIT(E), Pune.

3. Brief facts are that the assessee Trust which enjoys registration u/s 12A of the Act had filed its return of income on 15.09.2016



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declaring total income at Rs.2,16,310/-; and claimed accumulation of income u/s 11(2) of the Act to the tune of Rs.10,50,000/-, which was denied by AO for the reason that assessee didn't upload Form 10 within the due date as specified under sub-section (1) of section 139 of the Act, which was the requirement of law as brought in by amendment inserted in section 11(2) of the Act by Finance Act, 2015. But assessee had uploaded Form-10 belatedly only on 22.11.2016 (2 months delay) and pointed out the cause for the delay (i) this was the first year after such a requirement was necessary and certain practical issues cropped up viz (ii) the trustees were not having Digital Signature Certificates (iii) not able to properly link Aadhaar with PAN which resulted in difficulties for EVC (*Electronic Verification Code*) or generation of OTP (*One Time Password*). Hence, assessee contented that Form 10 could not be submitted within time [*though it was uploaded two (2) months after due date but well before the commencement of assessment proceedings*], which were not deliberate or intentional on the part of assessee, and due to technical glitches. However, as noted supra, since AO didn't had power to condone the delay, he disallowed the claim for accumulation of income u/s 11(2) of the Act by order dated 25.12.2018. Meanwhile, assessee taking note of the CBDT Circular No.7/2018 delegating the power to the Ld. CIT(E) to condone the delay, filed application for condoning the delay [in uploading the Form-10] before the Ld. CIT(E) on 26.12.2018. And simultaneously, assessee preferred an appeal before the Ld. CIT(A) against the action of AO disallowing accumulation of income u/s 11(2)



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of the Act, which was dismissed by him on the ground that assessee failed to place the order of Ld CIT(E) Pune condoning the delay in uploading Form-10. Aggrieved, the assessee is before us.

4. We have heard both the parties and perused the records. The aforesaid facts are not repeated for the sake of brevity. The only issue is regarding disallowance of accumulation of income u/s 11(2) of the Act. The AO has disallowed the accumulation of income u/s 11(2) of the Act, since assessee failed to upload Form 10 before the due date of filling of return of income u/s 139(1) of the Act. Admittedly assessee has uploaded Form 10 but there was a delay of two months in uploading for reasons cited supra, which according to assessee, were not deliberate or intentional on the part of assessee, and attributable to technical glitches. Be that as it may, since the CBDT has delegated power (supra) to Ld. CIT(E) to condone delay in such cases, it is noted that the assessee had preferred application before Ld. CIT(E), Pune, for condoning the delay which was attributed to several causes discussed (supra); and it appears that application is pending before Ld. CIT(E) from 26.12.2018, and as on date it has not been disposed of by Ld. CIT(E). According to assessee, it is pursuing the matter with the office of Ld. CIT(E) and has filed reminder regarding the pending application for condonation of delay. In the aforesaid factual backdrop, the limited prayer of assessee is that the matter be restored to AO for consideration, in anticipation that Ld CIT(E) would dispose of the application filed by assessee. In the light of the foregoing, taking note that this relevant assessment year (AY. 2016-17) was the first year



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wherein it had to upload Form 10 within the prescribed time, and there were technical issues faced by assessee, which prevented assessee from uploading Form 10 in time and was able to successfully upload only on 22.11.2016 (*after two months*); and since the assessee had approached Ld. CIT(E) for condonation of delay as noted supra vide application dated 22.12.2018, and expects to receive the order from Ld. CIT(E) because it has filed reminder and is following up with the office of the Ld. CIT(E), Pune, the claim of assessee (*accumulation of income u/s 11(2) of the Act*), is restored back to the file of AO to be decided afresh after the Ld. CIT(E) passed the order one way or the other. And the AO may verify from the office of Ld. CIT(E) about the fate of the application for condonation of delay and accordingly pass order in accordance to law. And needless to say, assessee be given opportunity of being heard.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 12/12/2023.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/12/2023.
Vijay Pal Singh, (Sr. PS)



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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, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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