

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 647/Srt/2023 (Assessment Year 2020-21)

(Physical hearing)

Mahavir Educational Trust, 6/1020, Opp. Jay Jalaram Khaman, Balaji Road, Nani Chhipwad, Gopipura, Surat-395001. (Gujarat) PAN No. AAATN 4014 C	Vs.	Addl.C.I.T., C.P.C. Bangalore, Jurisdictional A.O. Exemption Ward, Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Sapnesh Sheth, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Appeal instituted on	26/09/2023
Date of hearing	21/12/2023
Date of pronouncement	21/12/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] dated 07/06/2023 for the Assessment Year (AY) 2020-21. The assessee has raised following grounds of appeal:

- “(1) On the facts and circumstances of the case as well as on the subject, the Id. CIT(A), NFAC has erred in confirming the action of ADIT(CPC) in making huge addition by disallowing the amount claimed as application of income and accumulation of income although audit report in Form 10B was uploaded on portal and the delay in filing of audit report was condoned by Id. CIT(E).
- (2) The appellant craves leave to add, alter, or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the impugned order was passed by the Id. CIT(A) on 07/06/2023, however, the present appeal is filed only on 26/09/2023, thus there is a delay of 51 days in filing appeal before the Tribunal. The assessee has filed application for condonation of delay which is supported by the affidavit of one of the Trustee of the assessee Trust. The Id. AR of the assessee submits that the assessee is an educational trust. Though, the impugned order was passed on 07/06/2023, the order was not uploaded on ITBA Portal. The assessee lodged a complaint on 20/06/2023 vide grievance acknowledgment No.12402535 dated 27/06/2023. On raising such grievance, the impugned order was uploaded on portal. The assessee thereafter downloaded the order and filed present appeal before the Tribunal. In making grievance and downloading the order, the actual period of limitation for filing appeal has expired. Though, there is no delay in filing appeal from the date of communication of the order, yet the application is filed as the delay in filing appeal from the date of passing the order is neither intentional nor deliberate but due to the reasons that actually the order was not uploaded on ITBA Portal. The Id. AR of the assessee submits that the assessee has good case on merit and is likely to succeed if the case is heard on merit. Mere technical reason of delay which was not otherwise

intentional should not come in getting the justice. The Id. AR of the assessee prayed for condoning the delay.

3. On merit, the Id. AR of the assessee submits that the assessee is a charitable institution, engaged in imparting education. The assessee is having registration under Section 12AA/12AB of the Act. While filing return of income, the assessee could not upload Form 10B for claiming benefit of accumulation of income. The assessee filed application for condonation of delay before Id. CIT(Exemptions), Ahmedabad on 09/02/2022. The application for condonation of delay was allowed by the Id. CIT(Exemptions) vide his order dated 24/02/2022. The CPC while processing the return of income, not allowed the accumulation of income thereby determined the total income of assessee at Rs. 35,33,835/-. Though, the application for condonation of delay in filing Form 10B was allowed by the jurisdictional CIT(Exemptions), however, the same could not be uploaded before the Id. CIT(A) while filing submission. It was due to inadvertence and bonafide impression that alongwith submission, the assessee/Id. AR of the assessee has uploaded the same. The Id. AR of the assessee submits that copy of order under Section 119(2)(b) dated 24/02/2022 for condoning the delay in filing Form 10B alongwith copy of Form 10B dated 28/05/2021 is placed on record. The Id. AR of the assessee submits that the present appeal is continuation of assessment proceeds, once the delay in filing Form 10B has been condoned by the

jurisdictional CIT, it may be considered by this Bench. The assessee may be allowed accumulation of income under Section 11/12 of the Act.

4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue on the issue of condonation of delay submits that the Bench may take decision as per law. Though, the assessee should explain each and every day delay in filing appeal. On merit, the Id. Sr. DR for the revenue submits that the entire facts and circumstances of the present case show the lethargic conduct of assessee-trust, they are not following the various mandate prescribed under Income Tax Act or Rules. Despite allowing delay in filing Form 10B, the assessee again not furnished copy of the satisfaction or consideration by the Id. CIT(A).
5. I have considered the submission of both the parties and perused the record carefully. First advertent to the issue of delay in filing appeal, I find that in the affidavit for condonation of delay, the trustee of assessee specifically contended that the impugned order was not uploaded on ITBA portal and that it was uploaded only when raising grievance. I find merit in the submission of Id. AR of the assessee that initially the delay was only because of reason that the impugned order was not available on the portal. Such fact is not otherwise countered by showing adverse evidence by the Revenue. Considering the facts and circumstances of the case, I find that the assessee has shown reasonable cause for condoning the

delay of 51 days in filing appeal. Thus, the delay in filing appeal is condoned. Now adverting to the merit of the case.

6. I find that only dispute is about filing Form 10B belatedly despite the fact that the delay in filing Form 10B was condoned by Id. CIT(Exemptions) on 24/02/2022, copy of which is available at page No. 6 of paper book. I find copy of Form 10B report dated 28/05/2021 is also available on record. Considering the legal position that appeal is continuation of assessment proceedings, therefore, I allow filing of Form 10B on record. Considering the fact that Form 10B was obtained prior to filing return of income, therefore, jurisdictional Assessing Officer is directed to allow necessary relief of accumulation of profit on verification of Form 10B as per law.
7. In the result, appeal of assessee is allowed.

Order announced in open court on 21st December, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated 21/12/2023
**Ranjan*
Copy to:
1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat