

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Justice C.V. Bhadang (Rtd.) (President) & Shri B.R. Baskaran (AM)

I.T.A. No. 3032/Mum/2023 (A.Y. 2016-17)

Sha Kalidas Pragji Charitable Trust C/o. Shri Dinesh Maniar, Maniar Galli Swadeshi Market Kalbadevi Road, Mumbai-400 002. PAN : AACTS2391G (Appellant)	Vs.	CIT(Exemption) Ward 2(3) Mumbai (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Shri Sunny Kachhwaha
Date of Hearing	14.12.2023
Date of Pronouncement	14.12.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 29-06-2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2016-17.

2. The assessee is aggrieved by the decision of Ld CIT(A) in rejecting the claim for deduction of accumulation of income u/s 11(2) of the Act.

3. The facts relating to the issue are set out in brief. The assessee is a charitable trust registered u/s 12A of the Income tax Act. The assessee filed its return of income for the year under consideration on 20-10-2016, which was beyond the due date prescribed u/s 139(1) of the Act. The Ld A.R

submitted that the due date prescribed for filing return of income for trusts, whose accounts are audited is specified u/s 139(1) of the Act as 30th September of the relevant year. The said due date was extended to 17th October, 2016.

4. During the year under consideration, the assessee has claimed deduction of Rs.13,35,258/- as accumulation of income u/s 11(2) of the Act. The intimation about accumulation of income in the prescribed Form no.10 was also required to be filed on or before the due date prescribed u/s 139(1) of the Act. However, the assessee filed Form no.10 belatedly on 21.10.2016. Hence, taking into consideration the extended due date, there was a delay of three days and four days respectively in filing return of income and Form no.10

5. It is pertinent to noted that the Commissioner of Income tax (Exemption) was given power to condone the delay in filing Form No.10. However, the assessee did not file any petition before the Ld CIT seeking condonation of delay.

6. Since the above said Form no.10 was not filed within due date prescribed u/s 139(1) of the Act and further, since the delay in filing the above form was not condoned by Ld CIT(E), the AO rejected the claim for accumulation of income claimed by the assessee u/s 11(2) of the Act. Accordingly, the AO assessed the total income of the assessee at Rs.13,35,260/-.

7. The assessee filed appeal before ld CIT(A) challenging the assessment order so passed by AO. However, the Ld CIT(A) rejected the appeal of the assessee upholding the view expressed by the AO. Aggrieved, the assessee has filed this appeal before the Tribunal.

8. We heard the parties and perused the record. We notice that the provisions of sec.11(2)(c) states that the intimation about accumulation of income in Form no.10 has to be given on or before the due date prescribed for filing return of income u/s 139(1) of the Act. We notice that the CBDT has given the power to condone the delay in filing the above said Form no.10 to the Commissioner of Income tax (Exemptions). In this regard, the Circular no.6/2020 dated 19th February, 2020 issued by CBDT was brought to our notice. Thus, the power to condone the delay and admit belated applications is an administrative action and it is vested with Ld CIT (Exemptions). Since the delay in filing Form no.10 has not been condoned by Ld CIT(E), we are of the view that the Ld CIT(A) was justified in rejecting the appeal of the assessee.

9. The ld A.R submitted that the assessee was pursuing appellate remedy and hence it did not file condonation petition before ld CIT(E). We have earlier noticed that the power to condone the delay and admit belated applications is an administrative action and it is vested with Ld CIT (Exemptions). Hence, the assessee may move appropriate petition before Ld CIT(E) requesting him to condone delay in filing Form no.10 for the year under consideration, if so advised.

10. In the result, the appeal filed by the assessee is dismissed.

Pronounced accordingly on 14.12.2023.

Sd/-
[Justice C.V. Bhadang (Rtd.)]
President

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 14/12/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)

4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai