

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**
BEFORE

SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

आ.अपी.सं / **ITA No.539/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2016-17)

Srimad Virat Pothuluri Veerabrahmendra Swamulavari Matam, Kadapa. 8/124-1, Kandimallayapalli, Kadapa, Andhra Pradesh. PAN : AAGTS2599Q.	Vs.	The Income Tax Officer, Exemption Ward, Tirupati.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by:	Shri S. Ramarao, Advocate.
राजस्व द्वारा/Revenue by:	Ms. Sheetal Sarin, Sr. AR.

सुनवाई की तारीख/Date of hearing:	21.12.2023
घोषणा की तारीख/Pronouncement on:	22.12.2023

ORDER

PER LALIET KUMAR, J.M.

The captioned appeal is filed by the assessee feeling aggrieved by the order of Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi dt.21.08.2023 invoking proceedings under section 143(3) of the Income Tax Act, 1961 (in short, "the Act") for the A.Y 2016-17.

2. The appeal filed by the assessee is barred by limitation by 14 days. It has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

2.1 The grounds raised by the assessee read as under :

“1. The Ld.CIT(A) is erroneous both on facts and in law.

2. The Ld.CIT(A) ought to have directed to accept the Form 10 filed along with the revised return of income or at least should have considered the fact that the said Form 10 was available in the record as on the date of passing the order by the Ld.CIT(A).

3. The Ld.CIT(A) erred in confirming the action of the Assessing Officer in determining the total income at Rs.77,45,857/-.”

3. The brief facts of the case are that assessee is a religious Trust, filed its return of income for A.Y. 2016-17 on 16.10.2016 along with Audit Report in Form 10B, disclosing an income of Rs.Nil, after claiming exemption u/s 11 of the Act. The Trust is registered u/s 12A of the Act. The case has been selected for scrutiny and a notice u/s 143(2) of the Act was issued to the assessee on 06.07.2017 which was duly served. The assessee trust has furnished the information as called for and also produced the manually maintained books of accounts and vouchers for verification.

3.1. During the course of assessment, Assessing Officer noticed that at the time of filing of original return of income on 16.10.2016, the assessee had not filed Form 10 which was required to be filed along with the return of income. Further, the assessee filed the revised return of income on 09.03.2018 along with that the assessee had claimed the accumulation amount of Rs.77,06,068/- over and above of 15% of the gross income. Along with the revised return, the assessee filed Form 10. The Assessing Officer, after relying upon the provision of Section 11(2) and section 13(9) of the Act had not considered the claim of assessee for accumulation of the amount and treated the same as income of the Trust for the year under consideration and accordingly passed assessment order on 18.12.2018 u/s 143(3) of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who also rejected the claim of the assessee. The finding of the Id.CIT(A) is given as under :

“8. I have considered the facts of the case and assessment order. The AO, denied exemption u/s. 11 of the Act holding that the assessee failed to furnish the audit report in Form 10 along with or before filing the return of income. In response to hearing notices issued u/s. 250 of the Act, no response was made by the appellant. Considering the facts of the case, it is clear that the reason for denying the exemption claimed u/s. 11 & 12 by the AO was non filing of audit report in Form 10. However, the appellant has not explained /furnished any details regarding filing of Form 10. As per Rule 17B of the Income-tax Rules, 1962 the audit report of the accounts of such a Trust or Institution is to be furnished in Form No. 10. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust or institution from claiming exemption under section 11(2) of the Act. Therefore, the AO is justified in denying exemption u/s. 11(2) of the Act. The disallowance made by the AO is upheld. The grounds raised by the appellant regarding this issue are dismissed.”

5. Feeling aggrieved with the order of Id.CIT(A), the assessee is now in appeal before us.

6. Before us, the main contention of the Id. AR for the assessee is that once the revised return has been filed along with Form 10B, then there is a substantial application and the claim of the assessee for accumulation of amount is required to be allowed. For the above-said purposes, the assessee has drawn our attention to the decision of the Jaipur Tribunal in the case of DCIT Vs. State Institute of Health & Family Welfare reported in (2023) 153 taxmann.com 740. The Id.AR for the assessee has drawn our attention to the return of income as well as Form 10B to that effect. The Id. AR further contended that the Id.CIT(A) has not examined the return of income and Form 10 filed along with revised return and without considering the above, the Id.CIT(A)

has passed the impugned order. It was submitted by the ld.AR that the matter may kindly be remanded back to the file of ld.CIT(A) for considering afresh in accordance with the law.

7. Per contra, ld.DR reported no objection for remanding the matter to the file of ld.CIT(A) for passing afresh order in accordance with the law.

8. We have heard the rival submissions and perused the material on record. Section 11(2) of the Act provides as under :

“11. (2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation 2 to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);

(c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA 71[or section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of

income for charitable or religious purposes, either during the period of accumulation or thereafter.”

8.1. The reading of the above said make it abundantly clear that as per section 11(2) of the Act, assessee has to furnish Form 10 on or before the due date fixed under Section 13(9) for furnishing the return of income. If the above said provision of the Act is read in conjecture with Rule 12(2) which require the filing of Form 10 mandatory to be filed along with return of income, then it is abundantly clear that assessee is required to file form 10 along with the return of income.

8.2. However, in the present case, the assessee has filed the revised return of income on 09.03.2018 and along with revised return, he filed Form 10. Since the above said aspect has not been examined by the ld.CIT(A), we therefore deem it appropriate to remand back the matter to the file of ld.CIT(A) with the directions to consider whether the revised return filed by the assessee along with Form 10 shall substitute the original return and Form 10 as required u/s 11(2) of the Act or not. The ld.CIT(A) shall pass the order after affording the due opportunity of hearing to the assessee and after considering the reply of the assessee and the judgments available on the aspect passed by the jurisdictional High Court as well as the Tribunals. The assessee also shall be at liberty to file documents, if any, as required for proving his case and the ld.CIT(A) shall consider such evidences, if any, filed by the assessee. Needless to say, the ld.CIT(A) shall examine those documents / evidence filed by the assessee and thereafter pass a detailed speaking order. Accordingly, the appeal of assessee is allowed for statistical purposes.

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

Order pronounced in the Open Court on 22nd December, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 22nd December, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Srimad Virat Pothuluri Veerabrahmendra Swamulavari Matam, Kadapa. 8/124-1, Kandimallayapalli, Kadapa, Andhra Pradesh.
2	The Income Tax Officer, Exemption Ward, Tirupati.
3	PCIT, Tirupati.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order