

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.88/SRT/2023

Assessment Year: (2016-17)

(Physical court Hearing)

Shri Modh Patni Ghanchi Gnati Punch Trust, Bahulbaug, Prichhadi Road, Haripura, Surat-395003	Vs.	Income Tax Officer, Ward-2(3)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABTS 2898 D		
(अपीलार्थी/Assessee)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Assessee by	Shri Sapnesh R Sheth, CA
निर्धारिती की ओर से /Respondent by	Shri Vinod Kumar, Sr. DR
सुनवाई की तारीख /Date of Hearing	14/12/2023
घोषणा की तारीख /Date of Pronouncement	22/12/2023

**आदेश / O R D E R**

**PER DR. A. L. SAINI, AM:**

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the National Faceless Appeal Centre, Delhi [in short “NFAC/Ld. CIT(A)”] dated 10.01.2023, which in turn arises out of an assessment order passed by DCIT,(CPC) under section 154 of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) dated 29.08.2018.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Dy.CIT, (CPC) while issuing intimation order u/s 154 of the Act in determining total income of assessee at Rs.16,21,600/- by disallowing sum of Rs.15,44,820/- claimed as application of income & Rs.76,775/- claimed as accumulation of income u/s 11(1)(a) of the I.T. Act, 1961 on the ground that audit report in Form 10B was not filed.

*2. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A), NFAC has erred in confirming the action of Dy.CIT, (CPC) in respect of gross amount of income received instead of taxing the net income i.e., net of income received & amount applied to charitable or religious purposes of Rs.15,44,820/-.*

*3. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals) may please be deleted.*

*4. Assessee craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”*

3. At the outset, Learned Counsel for the assessee submitted that assessee-trust could not file Form-10B, neither before Assessing Officer nor before NFAC/Ld.CIT(A), due to circumstances beyond its control. The Ld Counsel pointed out that the CPC / Assessing Officer has disallowed the claim of assessee in respect of application of income of Rs.15,44,820/- and accumulation of income u/s 11(1)(a) of the Act, to the tune of Rs.76,775/-. The CPC / Assessing Officer while making rectification order u/s 154 of the Act, denied the claim of assessee and made adjustment solely on the reason that the assessee did not file audit report in Form-10B. Against the order passed under section 154 of the Act, the assessee carried the matter in appeal before Id CIT(A), who has dismissed the appeal of the assessee, because the assessee did not appear before Id CIT(A).

4. Against the order of Id CIT(A), the assessee filed appeal before this Tribunal and prayer of the assessee before this Tribunal is that delay in filing the Form-10B before the lower authorities may be condoned and matter may be restored back to the file of the assessing officer to examine Form No.10B and adjudicate the issue in accordance with law.

5. On the other hand, Learned Senior-DR for the Revenue supported the order of lower authorities and argued that delay in filing of Form No.10B should not be condoned, as the assessee has neither filed Form No.-10B during assessment proceedings nor appellate stage. Such a negligent assessee should not be given second innings. Therefore, in such situation, the audit report should not be admitted and appeal of assessee may be dismissed.

6. Alternatively, the Ld. DR for the Revenue, also argued that matter may be remitted back to the file of CIT(Exemption) to condone the delay in filing Form No.-10B and the Tribunal should not condone the delay, as the Ld.CIT(Exemption) has necessary power to condone the delay in filing audit report, hence matter may be remitted back to the file of Ld.CIT(Exemption) to condone the delay.

7. In rejoinder, the Ld. Counsel submitted that audit report in Form-10B, was of course, available with the assessee but it could not be filed before the lower authorities, due to the circumstances beyond its control. The Ld. Counsel also submitted that the audit report is dated 07.10.2016, which is prior to framing the assessment order / intimation by the CPC / Assessing Officer, dated 29.08.2018. Therefore, the audit report was available with the assessee but assessee could not file it due to mistake committed by his CA/Advocate, as the assessee's CA/Advocate did not complete his assignment given to him. The Ld Counsel submitted that Tribunal has power to condone the delay therefore matter should not be remitted back to the file of the Ld CIT(E ) for condonation of delay. The Ld. Counsel then explained the reasons of delay stating that assessee-trust has already filed the Income and Expenditure Account and Balance Sheet as on 31.03.2016 before

the Bombay Public Trusts Act, 1950, on time. Hence there is no mala-fide intention to file Form No.10B late. Besides, the assessee-trust had substantially satisfied all the conditions availing the benefit of exemption u/s11 /12 of the Act. The registration certificate of the assessee-trust is effective and no default had been committed by the assessee-trust in past, hence exemption should not be denied to assessee-trust merely because the assessee-trust filed the audit report in Form-10B belated and for that Ld. Counsel for the assessee relied on the judgment of this Tribunal in the case of *Navbharat Charitable Trust vs. ITO [2023] 150 taxmann.com 311 (Surat-Trib.)*.

8. We have heard both sides in detail and also perused the records of the case including the paper book filed by the assessee-trust. Before us Ld. Counsel for the assessee submitted following documents and evidences, viz: (i) Acknowledgement of return of income along with computation of total income for A.Y 16-17 ( vide pg. 1-2 of paper book), (ii) Audit report in Form-10B along with audited Profit & Loss account and balance sheet for assessment year 16-17 (pg No.3-16 of paper book) (iii) Letter of CIT-II, certifying that the trust is registered u/s 12A(a) (vide paper book page No.17), and (iv) Certificate of registration of charity Commissioner (vide paper book pg-18).

9. As a fact finding authority, we have examined the above factual documents, and noted that the assessee filed its return of income for AY.2016-17 on 13.08.2016. The return was processed u/s 143(1) of the Act. While processing the return, the AO has not allowed deduction u/s 11 of the Act and raised demand. Against such intimation u/s 143(1) of the Act, the assessee moved rectification application u/s 154 of the Act before CPC, Bengaluru. An order u/s 154 of the Income Tax Act, 1961

was passed by DCIT (CPC) vide dated 29.08.2018 adhering to disallowance of exemption of Rs.16,21,600/- claimed u/s 11 of the Act.

10. We note that the certificate of registration of the trust is effective. Thus, looking into the facts and circumstances of the present case, where the assessee-trust has satisfied all conditions for availing benefit of exemption u/s 11/12 of the Act, such trust should not be penalized merely because the assessee has filed the Form-10B belated. We also note that Form No.-10B was available with the assessee on 07.10.2016, that is, Form No.10B is dated of 07.10.2016, therefore Form-10B has been prepared prior to assessment order and just because assessee could not file before the authorities, the assessee-trust should not be penalized. We also note that assessee-trust has already filed the Income and Expenditure Account and Balance Sheet, as on 31.03.2016, under the Bombay Public Trusts Act, 1950, on time, hence there is no mala-fide intention to file Form No.10B belated. Moreover, the assessee-trust had substantially satisfied all the conditions availing the benefit of exemption u/s 11 /12 of the Act. Therefore, we of the view that in these circumstances the delay in filing Form No.-10B should be condoned. For this reliance can be placed on the Judgement of Jurisdictional High Court of Gujarat in the case of Sarvodaya Charitable Trust, [2021] 125 taxmann.com 75(Gujarat), wherein it was held that exemption available to a charitable -trust should not be denied merely because the assessee-trust filed Form No.10B belated. Considering these facts and circumstances, we condone the delay in filing Form No.10B.

11. Since delay in filing audit report in Form No.-10B has been condoned by us, therefore we remit the issue back to the file of

Assessing Officer to examine the Form No.-10B and frame the assessment order in accordance with law. The assessee-trust is directed to appear before the Assessing Officer, and file documents and evidences, as required by assessing officer, as and when called for. For statistical purposes, the appeal of assessee is treated as allowed.

12. In the result, appeal filed by the assessee is allowed for statistical purposes in above terms.

Order is pronounced on 22/12/2023 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Dr. A.L. SAINI)**  
**ACCOUNTANT MEMBER**

सुरत / Surat

दिनांक/ Date: 22/12/2023

DKP Outsourcing Sr.P.S

**Copy of the Order forwarded to**

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By Order

Assistant Registrar/Sr. PS/PS  
ITAT, Surat