

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.10/Ahd/2023
Assessment Year: 2018-19**

Karma Falya Trust, Krishna Vruddhashram, Block No.156, CH Type, Sector - 17, Gandhinagar, Gujarat – 382 016. [PAN – AAATK 5565 C]	Vs.	The D.C.I.T., Circle – 1, Exmp., Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Divyang Shah, AR	
Revenue by	Shri Santosh Kumar, Sr. DR	
Date of Hearing	30.10.2023	
Date of Pronouncement	05.01.2024	

ORDER

This appeal is filed by the assessee against order dated 23.12.2022, passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal :-

- “1. *Whether on facts and in circumstances of the case and in law, Ld. Assessing Officer has erred in not allowing exemption of Rs.15,37,255/- under Section 11 of the Act ?*
2. *Whether, on facts and in circumstances of the case and in law, Ld. Assessing Officer has erred in making adjustment of Rs.15,37,255/- under Section 143(1) of the act ?*

3. The assessee filed return of income for Assessment Year 2018-19 on 31.12.2018 declaring total income at Rs. Nil after claiming exemption of Rs.15,37,255/- under section 11 of the Income Tax Act, 1961. The return of income was processed under Section 143(1) of the Income Tax Act, 1961 on 30.09.2019 thereby disallowing the claimed exemption of Rs.15,37,255/- under

Section 11 of the Act. The reason for the aforesaid disallowance was recorded by the CPC as under :-

“Assessee approved under Section 10(23C)(iv) or 10(23C)(v) or 10(23C)(vi) or 10(23C)(via) and claiming exemptions under sr. no.4i to 4viii in Part B-TI, but the Audit report in Form 10BB is not e-filed along with the return of income.”

4. Thus, the said claim of exemption was not allowed as application of income because the audit report applicable for trust was not filed on or before filing the income tax return. Thus, the disallowance is initiated because the Audit Report is not filed by the assessee alongwith return of income.

5. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. AR submitted that when Form No.10B (R) w for trust is not filed alongwith return of income for any trust, but the same is filed during the assessment proceedings or appellate proceedings then exemption under Section 11 of the Act should not be denied on the ground that the Audit Report under Section 12A of the Act is not filed with Income Tax Return. In this regard, the assessee has given the details of filing of the return of income and the audit report alongwith the remark which is as follows :

Date	Particulars	Attachment	Refer Annx	Refer Note
31/10/2018	<i>Audit report (i.e. Form 10B) for AY 2018-19 was duly obtained from auditor (though not filed on Income-tax portal)</i>	<i>Audit report (i.e. Form 10B)</i>	<u><i>Annx A</i></u>	N4
31/12/2018	<i>Income-tax return of appellant for AY 2018-19 is filed on the Income-tax portal</i>	<i>ITR-V along with ITR Form</i>	<u><i>Annx B</i></u>	
26/07/2019	<i>Notice u/s 143(1)(a) is issued by CPC, Bengaluru</i>	<i>Notice issued u/s 143(1)(a)</i>	<u><i>Annx C</i></u>	N1
30/09/2019	<i>Intimation u/s 143(1) is issued by CPC, Bengaluru</i>	<i>Intimation u/s 143(1)</i>	<u><i>Annx D</i></u>	

30/09/2020	<i>Rectification application is filed vide reference number 609619060300920</i>	<i>Acknowledgement receipt along with ITR V & ITR Form</i>	<u><i>Annx E</i></u>	N2
30/09/2020	<i>Rectification application is filed vide reference number 609903370300920</i>	<i>Acknowledgement receipt along with ITR V & ITR Form</i>	<u><i>Annx F</i></u>	N3
30/09/2020	<i>Audit report of appellant for AY 2018-19 filed on the Income-tax portal by auditor of appellant (i.e. CA Vishal D Langalia)</i>	<i>Acknowledgement of Receipt of Form</i>	<u><i>Annx G</i></u>	N4

Notes:

N1 - In the notice issued u/s 143(1)(a), Ld. AO has proposed not to give a benefit of amount of Rs. 15,37,255/- applied during the previous year as “application of income” because audit report for trust was not filed on or before the filling of the Income-tax return.

N2 - In this regards, rectification application was filed by auditor of appellant to rectify the some of the details of projects/ institutions run by the appellant. Further, in the original income-tax return, exemption was claimed u/s 10(23C)(iii) which is rectified by him in the said rectification application and now in the rectified return, exemption was claimed u/s 11.

N3 - While filing the original return of income, exemption was claimed u/s 10(23C)(iii). Due to this reason, applicable section for audit is 10(23C)(vi) and applicable form for audit report is Form No. 10BB. But afterwards, auditor has rectified the return and claimed the exemption u/s 11 of the act and thus, applicable section for audit will be 12A(1)(b) and applicable form for audit report will be Form No. 10B. In the 1st rectification application, auditor has forgot to change the section under which appellant is liable for audit thus, he has filed 2nd rectification application on the same day (i.e. 30th September, 2020).

N4 - In this regards, we would like to mention that audit report in case of Karma Falya Trust for AY 2018-19 was duly obtained by the appellant as on 31st October, 2018. Meaning thereby, it was very well obtained by appellant before the return filing (i.e. 31st December, 2018) but, it was filed late by the auditor (i.e. on 30th September, 2020).

Thus, from what has been stated above, it is apparent that exemption of Rs.15,37,255/- claimed u/s 11 is not allowed because the audit report of trust (i.e. Form 10B) is not filed along with the return of the income.

7. The Ld. AR relied upon the decision of Hon’ble Gujarat High Court in case of Association of Indian Panelboard Manufacturer vs. DCIT (2023) E10L-900-HC-Ahm-IT. The Ld. AR relied upon the following decisions:

- a) *JCIT vs. Gujarat Energy Development Agency (ITA No.209/Ahd/2022)*
- b) *Sarvodaya Charitable Trust vs. ITO (2021) 125 Taxmann.com 75 (Gujarat)*
- c) *Shree Charitable Trust vs. ITO (ITA No.172/Ahd/2022)*

8. The Ld. AR submitted that non-compliance as per the Audit Report under Section 12A of the Act is a procedural lacuna and thus when the Audit Report was filed, the same should have been taken on record. The Ld. AR further submitted that the Audit Report in case of the assessee for A.Y. 2018-19 was very well obtained by the assessee on or before the return filing i.e. 31.12.2019 but the same is filed late by the auditor i.e. 30.09.2020. The Audit Report is very well obtained by the assessee but not filed by the Auditor and as the same was referred in Form No.10B i.e. Audit Report for Trust and acknowledgement receipt for each which already attached by the assessee and the details were given before the CIT(A). The Ld. AR further submitted that the Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust (supra) clearly pronounced that the Audit Report is not filed with Income Tax Return but produced later on in front of the ITO or before the appellate authority then the same should be considered as proper compliance of the same under Section 11 of the Act should be granted.

9. The Ld. DR submitted that the assessee has filed the Audit Report beyond the mandatory date as given in the Income Tax Statute and, therefore, the CIT(A) has rightly rejected the same. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

10. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the observation of the CIT(A) that there was an additional ground appears to be not tenable. Besides this, the assessee after obtaining the Audit Report during the course of assessment proceedings has filed the Audit Report and non filing of the Audit Report by the Auditor cannot be termed as assessee's lacuna. The Hon'ble Gujarat High Court in the case of Association of Indian Panelboard Manufacturer (supra) has categorically mentioned that filing of Audit Report is held to be substantive requirement but not

the nodal stage of filing which is procedure once the Audit Report in Form 12B is filed to be available with the Assessing Officer before assessment proceedings take place, the requirement of law is satisfied. In the present case also, the assessee obtained the Audit Report dated 31.10.2018 from the Auditor but could not file the same on Income Tax Portal. Thus, the audit report was prepared well within the time. Thus, the CIT(A) should have taken cognisance of the same and the Assessing Officer should have also taken into account Audit Report for allowing the exemption under Section 11 of the Act to the assessee. Thus, appeal of the assessee is allowed.

11. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 5th January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 5th January, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad