

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
आयकर अपील सं/ITA No.225/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2018-2019)

AABAHANA, At: Malyabanta, Nachuni, Khurda-752028	Vs	ITO, Exemption Ward, Berhampur
PAN No. :AABTA 9704 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ambika Prasad Mohanty, CA
राजस्व की ओर से /Revenue by	:	Dr.Abani Kanta Nayak, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	28/11/2023
घोषणा की तारीख/ Date of Pronouncement	:	28/11/2023

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 20.04.2023, passed in ITBA/NFAC/S/250/2023-24/1052225643(1), for the assessment year 2018-2019.

2. It was submitted by the Id. AR that the original return of the assessee came to be filed on 27.09.2018 for the relevant assessment year. In the intimation u/s.143(1) of the Act, the exemption u/s.11 of the Act had been denied on the ground that there was delay in filing the form 10B. The assessee had filed rectification application u/s.154 of the Act and the CIT(E), Hyderabad had condoned the delay in filing of the Form 10B. The rectification application had been allowed and the assessee was granted the benefit of deduction u/s.11 of the Act. Subsequently, another

rectification order was passed by the AO on 09.08.2021, wherein the exemption had been again withdrawn on the ground that the CIT(E), Hyderabad had withdrawn the condonation of delay in e-filing of Form 10B and on account of the order of withdrawal of the condonation, the benefit of deduction u/s.11 of the Act had again been withdrawn. It was the submission that the fact that the delay was originally condoned by the Id. CIT(E) and subsequently withdrawn shows that the withdrawal itself is a debatable issue and the denial of the exemption u/s.11 of the Act is liable to be reversed.

3. In reply, Id. CIT-DR submitted that the denial of the condonation of delay in filing Form 10B by the Id. CIT(E), Hyderabad is not an issue which can be brought up as subject matter of an appeal before the Tribunal. It was the submission that as the appeal itself is against the withdrawal of the condonation of delay in filing of Form 10B, the appeal of the assessee is liable to be dismissed.

4. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the appeal has been filed by the assessee against the order passed u/s.154 of the Act by the AO on account of the withdrawal of the condonation of delay in e-filing of Form 10B. Thus, the appeal is against an order u/s.154 of the Act and admittedly the appeal is maintainable. *Prima facie*, a perusal of the order passed u/s.143(1) of the Act, where the exemption u/s.11 of the Act itself has been denied, shows that the same has been in violation of the proviso to Section 143(1) of the Act, insofar as the show cause notice as required

under the proviso to Section 143(1) of the Act, has not been issued to the assessee. Thus, on this ground itself, the intimation issued u/s.143(1) of the Act is liable to be quashed and we do so.

5. Further, the fact that the Id. CIT(E) has condoned the delay in filing the Form 10B originally on the petition filed by the assessee shows that the assessee did have a reasonable cause and the said reasonable cause was accepted by the Id. CIT(E), Hyderabad. On account of the condonation of delay, the assessee has been granted the benefit of exemption u/s.11 of the Act. Now, in the impugned order u/s.154 of the Act before the Id. CIT(A), the exemption u/s.11 of the Act has been withdrawn because the Id. CIT(E), Hyderabad has withdrawn the condonation of delay. Thus, it clearly shows that these are debatable issues, which admittedly is not something which can be done in an order passed u/s.154 of the Act. This being so, the impugned order u/s.154 of the Act being the order passed on 09.08.2021, which is the subject matter of the appeal before the Id. CIT(A) is held to be invalid. Consequently, the appeal of the assessee stands allowed.

6. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 28/11/2023.

Sd/-
(GIRISH AGRAWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 28/11/2023

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
AABAHANA,
At: Malyabanta, Nachuni,
Khurda-752028
2. प्रत्यर्थी / The Respondent-
ITO, Exemption Ward, Berhampur
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack