

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND SHRI
CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

ITA No.3072/Del/2022
Assessment Year: 2018-19

Arth Foundation, B-1/1691, Vasant Kunj, New Delhi-1100 70	Vs.	ITO, Ward-53(4), National Faceless Appeal Centre (NFAC) ,New Delhi
PAN :AAFTA7669A		
(Appellant)		(Respondent)

Department by	Shri Kanv Bali, Sr. DR
Assessee by	Shri VK Bindal, CA & Mrs. Rinki Sharma, ITP.

Date of hearing	16.11.2023
Date of pronouncement	14 .02.2024

ORDER

PER CHALLA NAGENDRA PRASAD: JUDICIAL MEMBER:

This appeal is filed by the assessee against the order of the learned Commissioner of Income-Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 02.11.2022 for the assessment

year 2018-19 in denying exemption under Section 11 of the Income-Tax Act,1961 on the ground that the assessee filed return belatedly.

2. The learned counsel for the assessee at the outset referring to the CBDT Clarification with regard to time allowed for filing return of income for the purpose of section 12A of the Act submits that for the assessment year 2018-19 in respect of belated return filed under Section 139(4) of the Act a clarification was issued by the CBDT stating that for a trust registered under Section 12AA of the Act to avail the benefit of exemption under Section 11 shall file its return of income within the time allowed under Section 139 of the Act. The learned counsel further submits that section 11 was denied to the assessee for the reason that the assessee filed return on 19.12.2018 being beyond the time prescribed under Section 139(4), though, the time to file a return under Section 139 of the Act was very much available till 31.03.2019. The learned counsel, therefore, submits that in view of the CBDT instructions, denial of exemption under Section 11 is not justified.

3. Heard rival submissions and perused the orders of the authorities below.

4. In this case, assessee filed return of income on 19.12.2018 which is beyond the time prescribed under Section 139(4) of the Act. The CBDT in its instructions in Circular F.No.173/193/2019-ITA-I dated 23.04.2019 has clarified that in case the trust registered under Section 12AA files return of income within the time allowed under Section 139 of the Act, the trust shall be entitled for exemption under Section 11 of the Act, the relevant circular is as under:

“ CBDT CIRCULAR ON DELAYED FILING OF INCOME TAX RETURN

*F.No. 173/193/2019-ITA-I Government of India
Ministry of Finance Department of Revenue
Central Board of Direct Taxes*

New Delhi, Dated: 23 April, 2019

*To,
The Pr. DGIT (Systems),
New Delhi.*

Subject : Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in subsection 1 of section 12A of the income – tax Act , 1961.

Sir,

Undersigned is directed to refer to the representation (s) received on above mentioned subject stating that while processing of ITR-7 for the A.Y. 2018- 19, in respect of the

belated returns filed u/ s 139(4) of the Income Tax Act, 1961 (Act), the following is being communicated u/s 143(1)(a) of the Act:-

“As per section 12A(1)(ba) of the Income -tax Act , 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise the exemption u/s-11 i.e. sr. no 4(i) and 4 viii in schedule Part BTI is not allowed.

” Based on this, exemption u/s 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

“as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under subsection (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/ s 139 of the Act or otherwise. In order to provide clarity in this regard , it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years.”

3. Additionally, an excerpt of circular 02/2018 dated 15.02.2018 “Explanatory Notes to the Provisions of the Finance Act, 2017” on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

“the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income -tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income -tax Act.”

3. Thus, for a trust registered U/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.

This issues with the approval of Chairman(CBDT).

(Vinay Sheel Gautam)
JCIT (OSD) (ITA-I) Telefax: 011-23093070
E-mail: vinaysheel.gautam@gov.in

Copy to:- The Pr. CCIT(Exemptions), New Delhi.”

5. In view of this Circular, since, the assessee filed return of income before the due date specified under Section 139 of the Act, the benefit of exemption under Section 11 cannot be denied. Thus,, we

direct the Assessing Officer to allow the exemption claimed under Section 11 of the Act.

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

Order pronounced in the open court on 14/02/2024.

Sd/-

**(G.S. PANNU)
VICE-PRESIDENT**

Sd/-

**(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER**

Dated: 14th February, 2024.

Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi