

**IN THE INCOME TAX APPELLATE TRIBUNAL  
SMC-'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>ITA No. 1088/Bang/2023</b>
<b>Assessment Year : 2016-17</b>

M/s. Shree Goverdhan Nathji Haveli Trust, No. 15, Nehrunagar, Seshadripuram, Bangalore – 560 020. <b>PAN: AACTS7617M</b>	<b>Vs.</b>	The Income Tax Officer, Exemptions, Ward – 3, Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Ravi Shankar, Advocate
Revenue by	:	Shri Ganesh R Ghale, Advocate Standing Counsel for Revenue

Date of Hearing	:	24-01-2024
Date of Pronouncement	:	31-01-2024

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal arises out of order dated 16/10/2023 passed by NFAC, Delhi for A.Y. 2016-17 on following grounds of appeal:

*“1. The order of the learned authorities below in so far as it is against the appellant is opposed to law, equity, facts, weight of evidence, probabilities and circumstances of the case.*

*2. The learned below authorities erred in concluding the assessment by disallowing exemption claimed u/s 11 for Rs. 42,85,977/- without considering the facts and circumstances of the case.*

3. The learned below authorities are not justified in disallowing the exemption claimed u/s 11 of Rs. 42,85,977/- holding that the Form 10B was not filed electronically without appreciating the facts and circumstances of the case.

4. The learned AO erred in passing a rectification order under sec 154 of the Income Tax Act, 1961 by adding a sum of Rs. 42,85,977 to the returned income of the appellant without considering the facts and circumstances of the case.

5. The learned AO failed to appreciate the fact that the audit report in Form 10B had been obtained by the appellant but had been omitted to be filed with the return of income electronically. The learned AO erred in understanding the intention of the Legislature, that the exemption under sec 11 should not be denied merely because the audit report was not filed with the return. We wish to rely on the parity of the judgment held by the Honorable High Court of Calcutta in the case of CIT Vs. Hardeodas Agarwalla Trust 198 ITR 511.

6. The learned AO failed to consider the fact that the appellant had filed the Form 10B electronically even before the rectification order under sect 154 was passed in the case of the appellant. The learned AO ought to have provided an opportunity of being heard before making any addition, the learned AO ignored the fact that the appellant had rectified the mistake apparent on record by e-filing the Audit Report in Form 10B and hence the addition made deserves to be deleted in full.

7. The learned authorities below erred in ignoring the fact that the even if form 10B is filed subsequently at the time of assessment or any other time, the same ought to be accepted and benefit of Section 11 and 12 should be allowed. We wish to rely on the parity of judgement in the case of Hari Gyan Pracharak Trust vs DCIT and Swajan Parivar Trust Vs Assistant Director of Income Tax.

8. The learned authorities below erred in not applying the CBDT Circular dated 22/05/2019, relating to delay in filing Form 10B on the facts and circumstances of the case.

9. The learned authorities below erred in dismissing the appeal without adjudicating on the merits of the case and passed the order by merely stating the CIT(A) is not an authority for condoning the delay in filing Form 10B.

10. Without prejudice, assuming for argument's sake without conceding, the learned AO has considered the gross receipts including the donations received as corpus and arrived at the tax liability. The appellant has collected Rs. 22,31,019 as contributions not forming part of corpus and

*spent a sum of Rs. 25,05,809 towards charitable activity. Hence, there is excess of expenditure over income hence the question of taxing the same does not arise.*

*11. The appellant craves leave to add, alter, amend, substitute, change and delete any of the grounds of appeal.*

*12. For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeals may be allowed and justice rendered.”*

## **2. Brief facts of the case are as follows:**

**2.1** The assessee is a religious trust carrying on the religious activities under the name of Shree Goverdhan Nathji Haveli Trust, having the registered office at No 15, Nehrunagar Seshadripuram, Bengaluru-560 020. The assessee filed its return of income on 29.07.2016 claiming exemption under sec 11 of the Act. An 143(1) intimation by CPC was issued disallowing the deduction claimed u/s. 11 on 14.05.2010. Subsequently, the assessee received rectification order under sec 154 dated 13.11.2018, on an application filed by the assessee on 10.07.2018, by determining total income at Rs. 42,85,977/-. The Ld.AO did not consider the fact that audit report in Form 10B had been obtained by the assessee but omitted to file along with the return of income electronically. He also did not consider that the assessee upon realising the mistake filed Form 10B before it preferred application u/s. 154. The Ld.AO however disallowed the exemption claimed u/s. 11.

**2.2** Aggrieved by the order of the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

**2.3** The Ld.CIT(A) did not condone the delay in filing Form 10B and dismissed the appeal filed by the assessee against the order of CPC.

**2.4** Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before this *Tribunal*.

**3.** In the present facts, the assessee filed the audit report in Form 10B electronically though omitted to file along with the return of income. It is also submitted by the Ld.AR that the Form 10B was electronically filed before the rectification order was passed u/s. 154 of the Act.

**3.1** It is also submitted that section 12A(1)(b) is merely directory in nature and therefore the deduction cannot be denied though the assessee has filed the form 10B belatedly. It is also submitted by the Ld.AR that the entire receipts of the assessee has been taxed without considering the expenditure which are not in conformity with the provisions of the Act.

**3.2** The Ld.AR further referred to the judicial pronouncements on the scope of and powers vested under section 143(1). He submitted that there are plethora of cases that held that even if form 10B is filed subsequently, at the time of assessment or any other time, the same ought to be accepted and benefit of Section 11 and 12 should be allowed. He submitted that the power to make an adjustment by disallowing a deduction or relief claimed in the return can be invoked only when the claim is prima facie

inadmissible as held in case of *Bank of America v DCIT* reported in 200 ITR 739.

**3.3** He submitted that any deduction claimed is to be made inadmissible on the face of the return based on the documents accompanying it as held in case of *Khatau Junker v Pathania* reported in 196 ITR 55, and *CIT v Sitaram Textiles* reported in 248 ITR 139. It was further submitted that a debatable issue cannot be decided under section 143(1)(a) as held in case of *Coates v DCIT* reported in 214 ITR 498, *CIT v Shikhar Chand Jain* reported in 263 ITR 221 and *CIT v Manubhai M Patel* reported in 296 ITR 143. He thus submitted that the scope of section 143(1) is restricted to adjustment of prima facie mistakes and omissions, which are apparent from what is available on record. The Ld.AR submitted that the assessing officer carrying out processing of return of income u/s 143(1) cannot initiate investigation into the facts of the case, nor presume the existence of facts and circumstances which are not brought by the records of the case.

**4.** The Ld.DR on the contrary relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

**5.** The Ld.AR submitted that, the scope of making adjustments under section 143(1), is somewhat similar to the power to rectify a mistake apparent from the record under section 154. Reliance was placed on the decision of *Hon'ble Bombay High Court* in case

of *Khatau Junker v Pathania* reported in [1992] 196 ITR 55, Bom.

The Hon'ble Court held as under:-

*"17. In fact, the wording of this provisions itself makes this very clear. Under clause (ii) of the proviso to section 143(1)(a), any loss carried forward, deduction, allowance or relief has to be allowed on the basis of the information available in such return or accounts or documents accompanying it. Similarly, under clause (iii) of the proviso, to disallow any deduction, allowance or relief claimed, such deduction, allowance or relief must be such as is, on the basis of the information available in the return, accounts or documents, prima facie inadmissible. The Income-tax Officer therefore, has no power to go beyond or behind the return, accounts or documents, either in allowing or in disallowing any such deduction, allowance or relief.*

*18. Under clause (iii) to the proviso, unless the return or the accompanying documents or accounts shows that the deduction claimed is prima facie inadmissible, such deduction cannot be disallowed at the intimation stage. If the Income-tax Officer is not satisfied with the claim for deduction, or if he requires any further information or any further evidence in that connection, he is bound to follow the procedure prescribed under section 143(2) of giving a notice to the assessee. It is not open to him to disallow such a claim under section 143(1)(a).*

*22. We are not here concerned with a case where, under any specific section of the Income-tax Act, a certain deduction or allowance cannot be granted unless certain specified documents are annexed to the return. In such a case, it may be possible to say that, in the absence of such a document, the deduction cannot be granted because the section of the Income-tax Act itself says so. We, however, have not examined this aspect of the matter as it does not arise in the cases which are before us. But, in any event, in the absence of any specific provision in the Income-tax Act which disallows a deduction because a specific document specified in that section is not annexed to the return, the Income-tax Officer cannot, under clause (iii) of the proviso to section 143(1)(a), disallow a claim or a deduction because, in his view, adequate evidence in support of such a claim or deduction is not before him. He can disallow a claim for deduction only if he is satisfied, on the basis of the material which is before*

*him, that the assessee is not entitled to such a deduction.*

*23. The use of the phrases "prima facie admissible" in clause (ii) to the proviso and "prima facie inadmissible" in clause (iii) to the proviso also lend support to this interpretation. In its literal sense, "prima facie" means on the face of it. Hence, on the face of the return and the documents and accounts accompanying it, the deduction claimed must be inadmissible. Only then, can it be disallowed under the proviso to section 143(1)(a). If any further enquiry is necessary, or if the Income-tax Officer feels that further proof is required in connection with the claim for deduction, he will have to issue a notice under sub-section (2) of section 143."*

**6.** Thus, the scope of section 143(1) is restricted to adjustment of prima facie mistakes and omissions, which are apparent from what is available on record. In such case record would be constituted by the return of income as well as other data such as brought forward losses etc. The assessing officer carrying out processing of a return of income u/s 143(1) cannot initiate investigation into the facts of the case, nor presume the existence of facts and circumstances which are not brought by the records of the case.

**7.** It was submitted that in the present case the adjustment made by the CPC Bengaluru, was on account of non-filing of Form 10 electronically. The record available before the CPC Bengaluru, was the return of income for assessment year under consideration and the tax audit report in Form 10B both of which had been filed by the assessee subsequently. We have noted in preceding paras that in present case Form 10B was furnished electronically and the assessee had preferred application u/s. 154.

**8.** The issue that thus needs to be addressed is that when electronically filed Form 10 was available on record, could the AO ignore such record to arrive at a finding that deduction claimed by the assessee u/s. 11 is not admissible and that the impugned adjustment could be made. As narrated in the discussion above, the assessee had filed Form 10 electronically before the application u/s. 154 was filed, which could have been considered by the Ld.AO u/s. 154 for necessary remedial action as per law. It is admitted fact that the CPC, Bengaluru made adjustment for non-filing of Form 10 along with original return of income. Subsequently, when the same was filed electronically, it could have considered the same u/s. 154 and was eligible for rectification.

**9.** We note that *Hon'ble Tribunal* at Mumbai has addressed similar issues in case of *Pane Hindu Devalaya Mandal Vs DCIT (ITAT Mumbai)*, order dated 04.03.2020 for AY 2015-16, wherein it was observed that, while processing the return of income filed by the assessee, the CPC denied assessee's claim of exemption under section 11(2) of the Act, as the declaration in Form no.10 was not filed electronically along with the return of income. That being the case, this *Tribunal* held that assessee's claim of exemption under section 11(2) of the Act cannot be rejected only for the reason that Form no.10 was not filed electronically. The issue was restored to the AO with a direction to verify Form no.10 filed by the assessee manually, as stated by the learned Counsel for the assessee

therein to consider the claim of exemption under section 11(2) of the Act.

**10.** In another case, *Hon'ble Tribunal* at Mumbai in *Shree Dadar Jain Paushadhshala Trust Vs. ITO (E) vide order dated 19.08.2019 for AY 2014-15*, wherein the assessee therein failed to submit Form 10B before filing of return u/s 139(1) of the Act and subsequently submitted Form 10B manually during the assessment proceedings and electronically submitted Form 10B during the appellate proceedings. The *Tribunal* on such facts observed that, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred u/s. 119(2)(b) of the Act, the Central Board of Direct Taxes authorized the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and Form No.10 are filed after the expiry of the time allowed under the relevant provisions of the Act.

**11.** Before us the decision of *Coordinate Bench of this Tribunal* in case of *M/s. Navodaya Education Trust vs. DCIT* in *ITA No. 49/Bang/2021* for A.Y. 2015-16 vide order dated 15.07.2021 was brought to the notice by the Ld.DR. We have perused the same. The facts this decision is factually distinguishable with that of present assessee. In case of *Navodaya Education Trust* (the assessee therein), had not filed Form 10B either electronically / manually or even sought to rectify the intimation u/s. 143(1) u/s.

154 as observed in para 30 of the decision. Under these facts, the view taken therein cannot be applied to the facts of the present case. We are therefore of the opinion that this decision does not support the action of authorities below in present case.

**12.** Based on the unopposed factual matrix and relying on the decisions of *Hon'ble Mumbai Tribunal* referred in paras 9 and 10 hereinabove, we are of the opinion that the issue needs to be remanded to the Ld.AO for necessary verification / consideration of Form 10B and to consider the claim of the assessee u/s. 11(2) in accordance with law. Needless to say that proper opportunity of being heard must be granted to the assessee.

**In the result, the appeal filed by the assessee stands partly allowed for statistical purposes.**

**Order pronounced in the open court on 31<sup>st</sup> January, 2024.**

**Sd/-**

(CHANDRA POOJARI)  
Accountant Member

**Sd/-**

(BEENA PILLAI)  
Judicial Member

Bangalore,

Dated, the 31<sup>st</sup> January, 2024.

/MS /

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|---------------|------------------------|
| 1. Appellant  | 2. Respondent          |
| 3. CIT        | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A)              |

By order

Assistant Registrar,  
ITAT, Bangalore