

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 133/Kol/2024
Assessment Year: 2020-21

Kedar Nath Saraf Charity Trust 49/1, Cotton Street Burra Bazar Kolkata - 700007 [PAN: AAATK4644C]	Vs	DDIT, CPC, Bengaluru
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri P.K. Sanghai, A/R
Revenue by :	Shri Manoj Tiwari, JCIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 04/04/2024
घोषणा की तारीख/Date of Pronouncement : 08/04/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the learned Commissioner of Income Tax (Appeals), Mumbai, [hereinafter the "Id. First Appellate Authority"] dt. 28/11/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2020-21.

2. Though the assessee has raised various grounds of appeal, the sole grievance is that the benefit of Section 11 of the Act has been denied on account of delay in filing of the audit report in Form 10B.

3. At the outset, the Id. Counsel for the assessee referring to the plethora of decisions of this Tribunal placed in the paper book, submitted that it has been consistently held that the filing of audit report is directory and not mandatory in nature and also delay in filing of Form

10B was attributable to technical glitches faced in furnishing the audit report. Attention drawn towards the Circular issued by the CBDT Circular No. 17/2022 dt. 19/07/2022 given in relation to condonation of delay u/s 119(2)(b) of the Act, directing the Pr. Chief Commissioner of Income-tax and Chief Commissioners of Income-tax to admit the application of condonation of delay which are beyond 365 days and maximum up to three years in filing Form 10B for Assessment Year 2018-19 or for any subsequent years.

On the other hand, the ld. D/R vehemently argued supporting the orders of the lower authorities.

4. We have heard rival contentions and perused the record placed before us. We observe that the assessee is a public charitable trust registered u/s 12AA of the Act and subsequently was granted fresh registration u/s 12AB of the Act from Assessment Year 2022-23 to Assessment Year 2026-27. Carrying out of the charitable activities as per the objects of the Trust are not in dispute. The assessee's claim of exemption u/s 11 of the Act in the Income-tax return for Assessment Year 2020-21 was declined solely on account of delay in furnishing of audit report in Form 10B. Admittedly, there is a delay of 28 days in obtaining and uploading Form 10B in terms of the amended requirements as per which the audit report has to be filed one month prior to the due date of furnishing of the income-tax return. The due date for filing of return by the 15/02/2022 and the assessee filed it within time limit on 14/02/2021. The audit report which was required to be uploaded up to 15/09/2021 was finally uploaded on 13/03/2021.

4.1. It is an admitted fact that from March, 2020 to March, 2022, country was passing through Covid Pandemic and there were various restriction on the movements of the citizens and carrying out of the normal official works was hindered. It is also an accepted fact that many changes have been brought into the Act regarding procedure of filing of income-tax return as well as audit reports and certain technical glitches have been faced time and again. Also on account of change of the utility of furnishing the reports, the forms and change in the due dates have given rise to delay in furnishing of details and documents with the revenue authorities. Considering these aspects, CBDT firstly came up with a Notification dt. 03/01/2020 authorising the Commissioners to admit applications of condonation of delay in filing Form No. 10B for Assessment Year 2018-19 and subsequent Assessment Years, where there is a delay of up to 365 days. Subsequently on 19/07/2022 i.e., after the end of the Covid Pandemic restrictions again a Circular 16/2022 was issued where the delays in filing of Form 10B beyond 365 days but upto three years were also directed to be considered for admitting the application for condonation of delay. This Circular in itself shows that the Income-tax Department was aware about the technical glitches and the problems faced by the tax-payers in furnishing various types of Forms including Form No. 10B is with regard to the furnishing of audit report in case of Trusts and Societies. In the instant case since, delay is merely 28 days, we find that the said delay deserves to be ignored in larger interest of justice. The assessee is thus entitled to claim exemption u/s 11 of the Act made in the Income-tax return e-filed by it. We further find support from the decisions of this Tribunal in the case of *Bangarh*

Educational Welfare Trust vs. ITO (Exemptions) in ITA No. 496/Kol/2021; Assessment Year 2018-19, order dt. 02/01/2022, wherein also similar issue was raised for Assessment Year 2018-19 and the return was filed within time limit prescribed u/s 139(1) of the Act but there was a delay in furnishing of the audit report on Form 10B and this Tribunal after considering the facts of the case as well as judicial precedents allowed the benefit of Section 11 & 12 of the Act to the assessee.

5. In view of the discussion (*supra*) and consistent with the view taken by this Tribunal in the case *Bangarh Educational Welfare Trust vs. ITO (Exemptions)*, we allow the benefit of Section 11 of the Act to the assessee as claimed in the income tax return. Accordingly, the effective grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 8th April, 2024 at Kolkata

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(DR. MANISH BORAD)
ACCOUNTANT MEMBER**

Kolkata, Dated 08/04/2024

**SC SpP*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata