

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.417/Bang/2024
Assessment Year:2020-21

The Bangalore Fruit Commission Agents Association No.9/10, 1 st Floor, Jaishri Market Sethurao Road Cross Bangalore 560 002 PAN NO :AABTT0247R	Vs.	ACIT CPC Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri R. Chandrashekar, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for revenue

Date of Hearing	:	08.04.2024
Date of Pronouncement	:	16.04.2024

O R D E R

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This is an appeal filed against the order passed by the NFAC u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2020-21 dated 8.2.2024 which has been filed against the assessment made u/s 143(1) of the Act by which an intimation was issued on 30.11.2021, wherein the deduction claimed u/s 11 & 12 of the Act were not allowed for the reason that the assessee had not filed

the statutory audit report in form 10B along with return of income filed u/s 139(1) of the Act.

2. The assessee is a company registered under the Companies Act and obtained registration u/s 12A of the Act. For the assessment year 2020-21, the assessee filed the return of income on 6.11.2020 and the audit report in form 10BB instead of in form 10B was filed along with return. The case of the assessee is that the auditor had filed form 10BB instead of filing form 10B. The assessee found out the mistake and rectified the same by filing the report in form 10B on 09.03.2023 and prayed to allow the deductions u/s 11 & 12 of the Act. The assessee also challenged the levy of interest u/s 234B of the Act for not paying the advance tax and the interest u/s 234C of the Act for the deferment of advance tax.

2.1. The appellate authority, NFAC in respect of deductions disallowed u/s 11 & 12 of the Act, had held that Form 10B is the statutory form and it is mandatory on the part of the assessee to file the report in form 10B along with return of income and following the order of ITAT Ahmedabad Bench reported in (2022) 143 taxmann.com 418 in the case of Association of Indian Panel Board Manufacturers Vs. DCIT had confirmed the rejection of deductions. Similarly, the Appellate Authority had confirmed the interest levied u/s 234B & 234C of the Act by observing that the same are consequential and mandatory in nature by relying on the judgement of Hon'ble Supreme Court in the case of M.H. Gaswalla reported in (2001) 252 ITR 1 (SC).

2.2. The assessee now challenged the above said order of Appellate Authority by contending that the assessee is eligible for deduction u/s 11 & 12 of the Act since there was an inadvertent mistake in filing the report in form 10B, which was also rectified later on. The assessee further contended that the order of the Ahmedabad Tribunal, relied on by the Appellate authority in rejecting the claim of deduction was reversed by the Hon'ble High Court of Gujarat in its judgement dated 21.3.2023 in Tax Appeal No.655 of 2022. The assessee also produced the copy of judgement of Gujarat High Court in support of his argument.

3. We have heard the rival submissions and perused the materials available on record. Admittedly, in this case, the report in form 10BB was inadvertently filed by the auditor of the assessee along with return of income, which was later on rectified on 09.08.2023 by filing the correct report in form 10B. Further, the ITAT Ahmedabad order relied on by the appellate authority was also reversed by the Hon'ble High court of Gujarat in Tax Appeal No.655 of 2022 on 21.3.2023 well before passing the Appeal order dated 08.02.2024 and therefore, the order of the appellate authority in respect of the issue relating to the disallowance of deduction u/s 11 & 12 of the Act is no longer valid and therefore, the dismissal of the appeal by the CIT(A) is not correct. However, we restore this issue to the file of AO for verification of Audit Report filed by the assessee in Form 10B. and allow the exemption u/s. 11 of the Act as per law.

4. Ground No.4 is only general in nature, which do not require any adjudication.

5. Ground Nos.5 & 6 are consequential in nature.

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

Order pronounced in the open court on 16th Apr, 2024

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 16 Apr, 2024.
Vms/vg

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.