

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH
HEARING THOROUGH: VIRTUAL MODE
श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA No. 428/Chd/2023
निर्धारण वर्ष / Assessment Year : 2022-23

Shri Sahib Dayal Ji Sulahkul Satsang Trust Vill: Laha, PO: Saha Dist: Ambala, Haryana	बनाम	The ITO Ward-2, Ambala
स्थायी लेखा सं. / PAN NO: AASTS4936M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None (Adj. Application)
राजस्व की ओर से / Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख / Date of Hearing : 08/04/2024
उद्घोषणा की तारीख / Date of Pronouncement : 09/04/2024

आदेश / Order

PER VIKRAM SINGH YADAV, AM

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC Delhi dt. 10/05/2023 pertaining to A.Y. 2022-23.

2. At the outset, it is noted that the Ld. AR, Shri Kewal Krishan Goyal, C.A. has moved an adjournment application requesting to adjourn the matter fixed for today by one month due to unavoidable circumstances. Nothing has been specified as to the reasons why the matter cannot be argued today and what are the unavoidable circumstances, therefore, the request so made cannot be acceded to.

3. Further, it is noted that the Ld. CIT(A) has decided the matter *ex-parte qua* the assessee and infact, in one of the ground of appeal, the assessee has submitted that the Ld. CIT(A), NFAC has decided the matter without considering the adjournment application submitted on 08/05/2023.

4. It is further noted that in terms of the impugned order, the assessee's claim for exemption under section 11 has been denied by CPC, Bangalore in terms of intimation under section 143(1) which has been confirmed by the Ld. CIT(A), NFAC, Delhi.

5. As per Ld. CIT(A), NFAC Delhi, the assessee has filed the return of income alongwith Form 10B on 22/10/2022 and it was stated that the audit report was filed by the assessee after the due date and hence there was a delay in filing the Form 10B and accordingly, the action of the AO/CPC under section 143(1) was upheld. The Ld. CIT(A), NFAC Delhi has referred to the CBDT Circular No. 19/2022 dt. 30/09/2022 wherein the due date for filing of the Audit Report for A.Y. 2022-23 has been extended upto 07/10/2022. Further, he has referred to the CBDT Circular No. 2/2020 dt. 03/01/2020 where the power of condonation for the delay in filing of Form No. 10B has been delegated to the CIT(Exemption) by the CBDT and in view of the aforesaid reasons, the appeal of the assessee was dismissed.

6. The Ld. DR was heard who has relied on the order of the lower authorities.

7. After hearing the Ld. DR and perusing the material available on the record, we find that the matter has been decided *ex-parte qua* the assessee and therefore it would be relevant that the assessee be heard and be allowed an opportunity to put forward its submission for the delay in filing of Audit Report in Form 10B before any view has taken in this regard.

8. Further, it is noted that the Ld. CIT(A), NFAC has referred to the CBDT Circular No. 19/2022 dt. 30/09/2022 and at the same time, there is another CBDT Circular No. 20/2022 dt. 26/10/2022 wherein the due date of filing of the return of income has been extended from 31/10/2022 to 07/11/2022. Therefore, the issue for consideration in the present case would be that where the assessee has filed the return of income alongwith Form 10B on 22/10/2022 which is within the

extended due date of 07/11/2022, whether the same would be treated as due compliance of the provisions of the Act and the assessee be eligible for exemption under section 11 of the Act or not. In the alternate, the assessee's application seeking condonation of delay, which has been filed before the Id CIT(A) as part of appeal documentation, needs to be considered by the competent authority as per law.

9. As per Id CIT(A), the competent authority to consider the condonation of delay is CIT(E). In view of the aforesaid discussions, I deem it appropriate that the whole of the matter be remitted to the file of the Ld. CIT(E) to decide the same on merits as per law after providing reasonable opportunity to the assessee.

10. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 09/04/2024)

Sd/-
विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य / ACCOUNTANT MEMBER

AG

Date: 09/04/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
 सहायक पंजीकार/ Assistant Registrar