

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.295/PUN./2024
Assessment Year 2017-2018

Chandi Karakhandar Association, Main Road, Hupari, Near Hira Theatre, Hatkanangale, Hupari, Dist.KOLHAPUR. PIN - 416 203. Maharashtra. PAN AABTC3771D	vs.	The Income Tax Officer, [Exemption], Aayakar Bhavan, 31, C/2, E-Ward, Tarabaipark, KOLHAPUR. Maharashtra. PIN - 416 003.
(Appellant)		(Respondent)

For Assessee :	Shri Kishor Phadke
For Revenue :	Shri Manish Mehta

Date of Hearing :	22.03.2024
Date of Pronouncement :	16.05.2024

ORDER

This assessee's appeal for assessment year 2017-18, arises against the Addl./JCIT(A)-4, Delhi, Delhi's Din and Order No.ITBA/APL/S/250/2023-24/1058853900(1), dated 18.12.2023, in proceedings u/s.143(1) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

- 1) *"The learned CIT(A) erred in confirming the addition of Rs.10,39,011/- disallowing the entire amount of expenses*

incurred for the purpose of the activities to be carried out by the Trust.

- 2) The learned CIT(A) erred has confirmed the addition on the basis that, Form 10B of the Trust for the year under consideration was not filled within time as laid down in the Act.*
- 3) The learned CIT(A) has completely ignored several case laws where in multiple High Courts have allowed Form 10B to be filed up to the completion of the assessment or during any proceedings.*
- 4) The appellant request your honour to kindly delete the addition made by the learned CIT(A) on account of non-filling of audit report in form 10B and allow the benefit of deduction u/s 11 of the Act and oblige.*
- 5) The appellant craves leave to add, alter, amend, or delete any of the above grounds of appeal.”*

3. Both the learned representatives next invited my attention to the impugned lower appellate discussion declining the assessee's appeal reads as under :

5.Decision:

5.1.Ground No. 1

5.1.1.I have carefully considered the facts of the case and reply furnished by the assessee. The only issue involved in this appeal that “whether the benefit of section 11 of the I.T. Act, 1961 can be denied in absence of non-furnishing of form 10B within the stipulated time.”

5.1.2. On perusal of the submission of the appellant, it is found that communication of proposed adjustment under section 143(1)(a) of the I.T. Act was issued and served on 24.09.2018 to the appellant under DIN CPC/1718/G22/1813580798. As the appellant has not responded to the proposed adjustment, therefore, the AO CPC has not allowed deduction under section 11 of the I.T. Act, amounting to Rs.12,23,527/- under section 143(1) on 09.03.2019.

5.1.3. Aggrieved with the intimation under section 143(1) of the I.T. Act, 1961, the appellant filed multiple rectification application to CPC on various dates which were duly rejected by the AO, CPC. The appellant has also filed rectification application manually before the JAO on 15.04.2019.

5.1.4. The Jurisdictional Assessing Officer, passed order under section 154 of the I.T. Act, 1961 and disposed off the rectification application of the appellant by holding that the assessee has failed to upload form No. 10B for the relevant financial year within the time allowed under section 139 of the I.T. Act, 1961 as well as time extended by CBDT vide circular no. 10/2019 dated 22.05.2019. Even though, the appellant has not filed form 10B at the time of proposed adjustment under section 143(1)(a) dated 24.09.2018.

5.1.5. The appellant has also not filed application under section 119(2)(b) of the I.T. Act, before the CIT for requesting to condone delay in submitting audit report in Form No. 10B as relaxation / benefits given by the CBDT vide circular No. 10/2019 dated 22.05.2019.

5.1.5. As, the appellant filed appeal against order under section 143(1) of the I.T. Act, 1961, therefore, no remarks needs to be drawn on rectification order under section 154 dated 23.11.2021. In view of the above facts, the, ground No. 1 is not allowed to the assessee and accordingly ground no 1 is dismissed.

5.2. Ground No. 2

5.2.1. Ground No. 2 is general in nature, therefore, requires not be adjudicated.

5.3. Without prejudice to the above, it is found that the appellant has filed appeal against the order under section 143(1) of the I.T. Act, on 15.12.2021.

The return was processed under section 143(1) of the I.T. Act, 1961 on 09.03.2019 and intimation was duly served to the assessee. However, the assessee has mentioned date of order as 23.11.2021 which is date of order under section 154 of the I. T. Act, 1961.

Therefore, the appeal of a delayed appeal per se & defective.

6. In the result, appeal is treated as dismissed.

4. Learned counsel vehemently argued during the course of hearing that the lower appellate authority herein has erred in law and on facts not only in refusing to condone delay in submission of form 10B/audit report and also, it's entire receipts have been added without giving credit of the corresponding expenditure incurred therein.

5. The Revenue on the other hand vehemently submitted that this is an instance of sec.143(1)intimation

wherein the learned lower appellate authority has even questioned the corresponding lower appellate order dated 09th March, 2019 vis-à-vis the one dated 23.11.2021 (supra).

6. I have given my thoughtful consideration to the foregoing vehement rival submissions and find no reason to accept either parties stand in entirety at this stage. This is for the precise reason that the learned lower authorities have not given due consideration to the relevant mitigating circumstances resulting in delay in submission of form 10B and they have also assessed it's entire receipts without computing the income, without prejudice to the foregoing first issue, on netting basis. Case law M/s. Social Security Scheme of GICEA vs. CIT(E) [2023] 147 taxmann.com 283 (Guj.) has already held the above form 10B conditions as not mandatory in nature for the purpose of claiming sec.11 exemption. Faced with this situation, I hereby restore the assessee's instant appeal back to learned Assessing Officer for his afresh appropriate adjudication within three effective opportunities of hearing in consequential proceedings at assessee's risk and responsibility. Ordered accordingly.

7. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 16.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 16th May, 2024
VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.