

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, 'SMC', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE MS. SUCHITRA R. KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No. 468/Ahd/2024
Assessment Year : 2016-17

Mahavir Kelavani Mandal, Antroli, C/o. Mahavir Kelavani Mandal, Nadiad, Gujarat - 387366 PAN: AACTM 6322 R	Vs	Deputy Commissioner of Income-tax, Bangalore
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Sunil Talati, AR
Revenue by :		Shri N.J. Vyas, Sr DR

सुनवाई की तारीख/Date of Hearing : 14/05/2024
घोषणा की तारीख /Date of Pronouncement : 27/05/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER:

Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-4, Bengaluru (hereinafter referred to as 'CIT(A)') dated 29.02.2024, in the matter of intimation issued u/s 143(1) issued by CPC, Bangalore on 01.03.2019.

2. Following are the grounds of appeal before us:—

"1. The Ld. CIT(A) has erred in upholding the disallowance made in the intimation order passed u/s 143(1) of the IT Act which was passed without giving any opportunity of being heard to your appellant. In the said intimation order, the claim of exemption u/s 11 of the IT Act is denied and a demand is raised. Such arbitrary disallowance of exemption is prayed to be deleted.

2. The Ld. CIT(A) has upheld the disallowance of exemption u/s 11 of the IT Act in the intimation order passed u/s 143(1) of the IT Act making an addition of Rs. 40,67,000/- on account of income chargeable u/s 12(2) of the

IT Act, merely because of a delay in filing the return of income and the Tax Audit Report to be furnished in Form 10B. It is submitted that furnishing of Tax Audit Report and filing of the return is a mere procedural aspect, a delay in filing of which cannot brush aside the substantial charitable activities and the valid registration of your appellant as a charitable trust. In view of the same, the exemption u/s 11 is prayed to be allowed as claimed in the return of income.

3. The Ld. CIT(A) has erred by misinterpreting the provisions of section 12A. As per section 12A of the IT Act, the condition of filing the return of income before the due date in order to claim exemption u/s 11 came into effect from AY 2018-19 only. In view of the same, the disallowance of exemption because of delay in filing of return is illegal and ultra vires."

4. Without prejudice to the above ground, in any case, if the exemption u/s 11 of the Act as claimed in the return of income is upheld to be denied, the application of funds of Rs. 41,27,181/- be allowed as an expense in the hands of your appellant and the balance be taxed as per the provisions of the IT Act.

5. The order passed by the learned CIT (Appeals) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.

6. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing."

Facts of the case:

3. The assessee-trust is a public charitable trust registered under section 12AA of the Act. The assessee is running a school and engaged in educational activities. The assessee filed its return of income for the A.Y. 2016-17 on 31.03.2018 declaring Nil income. The assessee also attached audited financial statements along the return of income and filed form 10B which is an audit report under section 12A(b) of the Act.

4. The assessee claimed an application of Rs. 41,27,181/- as amount applied to charitable or religious purposes in India in its return of income. While filing the return of income the assessee by mistake entered an amount of Rs. 40,66,996/- into column 10iv of the ITR-7 as Income chargeable under section 12(2) of the Act.

5. The CPC processed the return of income and passed the order u/s 143(1) of the Act on 01.03.2019 adding Rs.40,66,996/- as income chargeable under section 12(2) of the Act and a demand of Rs.16,97,540/-.
6. The assessee filed a rectification request correcting the data to be submitted online on 18.02.2021 but the CPC rejected the request stating the reason that the rectification rights are transferred to the jurisdictional AO. The assessee also filed an appeal before CIT(A) against such addition.
7. The CIT(A) while passing order u/s 250 of the Act concluded that the assessee had not filed return of income within the due date of filing return u/s 139(9) of the Act which was 17.10.2016. He also concluded that the due date of filing belated return was 31.03.2017 and dismissed the appeal upholding the disallowance as per intimation u/s 143(1) of the Act.
8. Aggrieved by the order of CIT(A), the assessee is appeal before us.

On merits

9. At the time of hearing the Counsel for the assessee explained and put forward following points for our consideration:
 - i. The due date of filing belated return of income was 31.03.2018 and not 31.03.2017 as stated by CIT(A) in his order. He also stated that the belated return of income is filed in time and CIT(A) should not have rejected the same.
 - ii. The CIT(A) has not considered the clerical mistake in erroneously mentioning an amount of Rs.40,66,990/- as addition u/s 12(2) of the Act in original return of income.
 - iii. While dealing with the conditions of applicability of provisions of section 143(1) (i)(a)(ii) of the Act, the CIT(A) has wrongfully concluded that the assessee has admitted the income u/s 12(2) but the

same is a clerical mistake at the time of filing return of income and the same can could have been verified from form 10B.

- iv. The CIT(A) has treated the return as *non-est* as the same was filed beyond the due date of filing return u/s 139(1). Whereas it is important to note that the CPC has processed the same return (treated as *non-est* by CIT(A)) and raised the demand.
- v. The delay in filing form 10B is procedural and if filed late the exemption u/s 11 can't be denied. CIT(A) in his order stated that the assessee is not eligible to claim exemption u/s 11 and 12. He placed reliance on the decision of co-ordinate bench in case of Gyandeeep Charitable Trust Vs ADIT CPC (ITA No.555/AHD/2023).

10. On the other hand, Ld. DR relied on the order of CIT(A).

11. Having heard rival submissions and after due consideration of orders of lower authorities, our adjudication would be as given in succeeding paragraphs. The assessee trust is duly registered u/s 12AA of the Act and is eligible to claim deduction as applicable to a charitable trust.

12. Prior to amendment made by the Finance Act, 2016, Section 139(4) provided that a person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. This amendment is with effect from 1.4.2017. Therefore, the contention of the counsel for the assessee, that the due date of filing belated return was 31.03.2018 and not 31.03.2017 is correct. CIT(A) is erred in considering the due date u/s 139(4) as 31.03.2017.

13. From the audited financial statements and form 10B submitted by the assessee it could be seen that there are no any amounts spent by the assessee trust for the benefit of persons referred to in section 13(3) of the act. Therefore, as contented by the counsel for the assessee, it is a mistake while filing the return of income to fill the amount of Rs. 40,66,996/- in the column relating to income chargeable under section 12(2) of the Act. As admitted by the assessee, it is mistake in filing the return of income.

14. After perusal of Form No.10B as placed on record, it could be seen that the assessee has applied an amount of Rs.40,66,996/- for the purpose of charitable objectives of the trust. Merely because there is mistake in filing the corresponding columns in the return of income, the same would not result into enhancement of the assessee's income.

15. Since the return of income filed by the assessee is valid and also processed by CPC Bengaluru u/s 143(1) of the Act, action of CIT(A) in treating the return of income *non-est* is unjust.

16. Now we deal with the question of allowability of exemption u/s 11 due to late filing of form 10B. The assessee filed the form 10B along with the return of income i.e. on 31.03.2018 which is beyond the due date.

17. The proviso to section 143(1)(a) of the Act specifically provides that no adjustment shall be made unless (as specified in clause (a) to section 143(1) of the Act) intimation is given to the assessee trust of such adjustment either in writing or in electronic mode and in case response is not received within 30 days the adjustment can be made. In the present case no such notice whatsoever has been given to the assessee.

18. The assessee has also placed reliance on the decision of the co-ordinate bench in which it is decided, after referring the judgement of

Hon'ble High Court of Gujarat, that non-filing of Audit Report is a procedural omission and cannot be impediment in law in claiming the exemption and condoned the delay in filing audit report in form 10B.

Respectfully following the order of the co-ordinate bench, we condone the delay in filing the form 10B.

19. In view of what has been discussed above, we are of the considered view that the order passed by the Ld. CIT(A) is not sustainable in the eyes of law, hence set aside the same after deleting the addition made on account of income u/s 12(2) and allowing the exemption u/s 11 of the Act to the assessee.

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

Order pronounced in the Open Court on 27th May, 2024 at Ahmedabad.

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER
Ahmedabad, Dated 27/05/2024

Sd/-

(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

*B.t.

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलार्डी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)
5. विभागीय प्रतिनिधि, □ धिकरण □ पीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशनुसरा/ BY ORDER,

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सहस्रक पंजीकर (Asstt. Registrar)
आयकर □ पीलीय □ धिकरण, ITAT, Ahmedabad