

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "A" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.Nos.167 & 168/PUN./2024  
Assessment Years 2016-2017 & 2017-2018

Al Ameen Education Society, 5883, B-Block, Gothan Galli, Miraj. PIN – 416 410. Maharashtra. PAN AAATA8544M	vs.	The Income Tax Officer, (Exemption), Aayakar Bhavan, 31-C/2, E-Ward, Tara Bai Park, KOLHAPUR – 416 003. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Smt. Deepa Khare
For Revenue :	Shri Ramnath P. Murkude

Date of Hearing :	05.06.2024
Date of Pronouncement :	07.06.2024

**ORDER**

**PER BENCH :**

These assessee's twin appeals for assessment years 2016-17 and 2017-18, arise against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's as many Din and Order Nos.ITBA/NFAC/S/250/2023-24/1058321521(1) and 1057520843(1), dated 29.11.2023 and dated 16.12.2021, involving proceedings u/s. 154 of the Income Tax Act, 1961 (in short "the Act"); respectively.

Heard both the parties. Case file perused.

2. The assessee in it's former "lead" appeal ITA.No.167/PUN./2024 pleads the following substantive grounds :

1. *“The Id CIT(A) erred in law and on facts in confirming assessed income at Rs.74,41,863/-/- without granting deduction u/s.11 of the Income Tax Act.*
2. *The Ld. CIT(A) erred on facts and in law in confirming Order u/s.154 and accepting the income as per intimation u/s.143(1)(a) of the Act without granting deduction of expenses of Rs.73,62,059/-.*
3. *The Ld. CIT(A) failed to appreciate that Form 10B was filed, though belatedly and the condonation application of the appellant was pending before CIT-(Exemption).*
4. *The exemption u/s.11 of the Act ought to have been granted to the appellant.*
5. *The appellant craves leave to add, alter, modify or substitute any ground of appeal.”*

3. Both the parties next invited our attention to the NFAC’s detailed discussion affirming the CPC’s action disallowing the assessee’s sec.11 exemption claim reading as under :

**5. Findings and Decision of the Appellate Authority:**

**5.1** The return of income was filed on 11.02.2018 declaring ‘nil’ income after claiming tax-exemption under section 11 of the Act. Subsequently, on 03.05.2018, an intimation under section 143(1) of the Act was issued in which the benefit of exemption under section 11 of the Act was disallowed due to non-filing of Form No. 10B Report. Thereafter, appellant sought rectification of 143(1) order by filing application under section 154 of the Act. The same was rejected by the Assessing Officer vide an order dated 23.11.2021. Being aggrieved, the appellant has filed this appeal.

5.2 The 143(1) order which caused prejudice to the appellant was passed by the CPC on 25.03.2019 while the Form No. 10B was electronically filed much later after disposal of the rectification application on 05.01.2022. Therefore, as no audit report was available that had been filed along with the return of income at the point of processing it, the CPC was correct in passing the 143(1) order by denying exemption benefit under section 11 of the Act. With effect from assessment year 2014-15, vide amendment in Rule 12(2) of Income-tax Rules, it has become mandatory to upload online audit report in Form 10B without which the claim under section 11 cannot be allowed.

5.3 Thereafter, while considering the application under section 154 of the Act, the Assessing Officer had to examine the error in 143(1) order which could have been rectified by him. There was no such error as CPC's order was as per the laid down protocol for processing of return, the Assessing Officer correctly rejected to consider the appellant's 10B Report which had been filed only belatedly. If Assessing Officer had considered the belated 10B Report and allowed appellant's claim that would have tantamounted to condonation of delay.

5.4 The power to condone the delay is specifically vested in the Central Board of Direct Taxes under section 119(2)(b) of the Act. The said power was exercised by the Board in cases of delay in filing form 10B Reports electronically vide various orders from time to time. There were different categories of cases depending upon the defaults that occurred in 10B compliance. The case of the appellant fell in category where the delay could have been condoned by the concerned jurisdictional Commissioner of Income-tax (Exemptions) till a particular point of time. Hence, Assessing Officer not being the designated authority for purpose of condonation of delay was correct in rejecting rectification of 143(1) order.

4. Both the parties next clarify that as against assessee having filed its Form-10B audit report post-facto sec.154 order herein; the very Form regarding the latter assessment year 2017-2018 had been placed on record during 154 proceedings itself. Keeping in mind this fine distinction, it transpires that the learned lower authorities have declined the assessee's impugned relevant claim on account of the fact that it failed to comply with the mandatory condition of Form-10B filing before CPC in sec.143(1) "processing". There is hardly any dispute that the assessee had duly filed its statutory audit report well with the corresponding returns in these

impugned assessment years. Faced with this situation, we quote case law CIT vs. Xavier Kelavani Mandal (P. ) Ltd., [2014] 41 taxmann.com 184 (Guj.); Social Security Scheme of GICEA vs. CIT (E) 147 taxmann.com 283 (Guj.); SMKR Vashi High School vs. ITO (Exemption) 157 taxmann.com 702 (Surat); Gyandeep Charitable Trust vs. ADIT, Ahmedabad ITA.No.55/AHD./2023; Kokan Kala Shikshan Vikaas Sanstha vs. DCIT ITA.No.645/PUN./2021; Sant Bhagwanbaba Shikshan Mandal vs. ITO (Exemption) ITA.No.554/PUN./2021; Shri Jain Shwetamber Murtipujak Sangh vs. ITO (Exemption), Raipur ITA.Nos.15 & 16/RPR./ 2022; Dr. Sukar Jurisdictional Magdum Foundation vs. ITO (Exemption) ITA.No.320/PUN./2023; Mahatma Phule Shikshan Prasarak Mandal vs. DCIT ITA.No.525/PUN./2023; Shri Namiyun Parswanath Jain Swetamber Manidhari Trust vs. ITO (Exemption) 155 taxmann.com 407 (Jabalpur) and Shree Bhairav Seva Samiti vs. ITO (Exemption) 101 ITR (T) 708 (Mum.), to hold that filing of such an audit report is not a mandatory condition which is very much curable by way of seeking sec.154 rectification. We accordingly accept the assessee's instant identical sole substantive grievance in principle and restore the matter to the jurisdictional Assessing Officer/CPC for necessary factual verification as per law within three effective opportunities of hearing in above terms. Ordered accordingly.

5. These assessee's twin appeals I.T.A.Nos.167 & 168/PUN./2024 are allowed for statistical purposes in above terms.

Order pronounced in the open Court on 07.06.2024.

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 07<sup>th</sup> June, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A), Pune-11, Pune.
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "A" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

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