

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.143/Nag./2021**  
(Assessment Year : 2017-18)

Satpuda Foundation  
1<sup>st</sup> Floor, Pratishtha, Bharat Nagar  
Akoli Road, Near Sai Nagar  
Amravati 444 607 PAN – AAFTS2788E

..... Appellant

v/s

Income Tax Officer  
Ward-2, Exemption, Nagpur

..... Respondent

Assessee by : Shri Manoj G. Moryani a/w  
Shri Bhavesh M. Moryani  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 03/06/2024

Date of Order – 03/06/2024

**ORDER**

**PER K.M. ROY, A.M.**

The instant appeal has been filed by the assessee challenging the impugned order dated 13/10/2021, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [“learned CIT(A)”], for the assessment year 2017-18.

2. The assessee has raised following grounds of appeal:-

- “1. The order passed U/s. 143(3) of the Income Tax Act, 1961 is illegal, invalid and bad in law.
2. On the facts and circumstances the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre erred in confirming addition of Rs.15,00,000/-; therefore order passed is unjustified, unwarranted and excessive.

3. *On the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals), National Faceless Appcal Centre erred in not accepting the contention of assessee and disallowing the claim of the assessee u/s 11(2) of the Income Tax; therefore order passed is unjustified, unwarranted and excessive.*
4. *On the facts and circumstances the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre erred in not considering the circular of CBDT which clearly states delay should be condoned; therefore without considering the circular order passed is unjustified, unwarranted and excessive.*
5. *The appellant denies liability of interest U/s. 234A, 234B and 234C of the income Tax Act, 1961, without prejudice the levy of interest is unjustified, unwarranted and excessive."*

3. Facts in Brief:- In the present case, the assessee Trust is registered under the Societies Act, 1985. The assessee Trust is also registered under the Bombay Public Trust Act, 1950. The trust is mainly formed for carrying out activities in the field of nature education, Forests & Wildlife Conservation, employment generation and research programs. The assessee filed its return of income on 19/03/2018, declaring net taxable income at ₹ 1,04,800. In the return of income, the assessee claimed exemption under section 11(2) of the Act amounting to ₹ 15 lakh. The assessee submitted Form no.10, and audit report in Form no.10B, for Charitable Trust for years prior to assessment to the assessment year 2018-19. The case was selected for scrutiny under CASS and notice under section 143(2) and 143 of the Act were issued and served upon the assessee. The Assessing Officer, however, did not consider the submissions / contentions of the assessee and made addition of ₹ 15 lakh by disallowing the claim under section 11(2) of the Act. Being aggrieved, the assessee carried the matter before the first appellate authority.

4. The learned CIT(A) dismissed the appeal of the assessee by observing as follows:-

*"Decision on Ground No.2, 3 & 4*

*The sum and substance of the above grounds of appeal is directed against an assessment order passed by the AO under Section 143(3) of the Act whereby, the claim of accumulation made by the Appellant in Form 10 with respect to an amount of Rs. 15,00,000/- made in Form 10 has been disregarded by the AO since these forms (i.e. Form no-10 being notice of accumulation to the AO and Form no. 10B being report of Audit by an accountant) could not be furnished by the Appellant, electronically, on or before the due date of filing its ITR as per Section 139(1) of the Act. The Appellant is statedly registered under Section 12A of the Act.*

*In this regard, the relevant observations of the AO as contained in the impugned order are being reproduced hereunder for reference:*

*"The basic requirement for claim of exemption u/s 11(2) is that the assessee trust has to file Form No.10 on or before due date of filing of return of income. The due date for furnishing the return of income for the A.Y. 2017-18 was extended upto 07.11.2017. Perusal of the record shows that the assessee trust has e-filed its return of income on 19.03.2018 and Form No.10 was e-filed on 10.11.2017. Thus, both the return of income as well as Form No.10 filed after due date i.e. 07.11.2017. In this case the conditions as provided by clause (c) of sub-sec. (2) of sec. 11 has not been met/complied with by the assessee trust and therefore, it loses the benefit of accumulations of amount of Rs.15,00,000/- as claimed in the return of income.*

*In connection with the above, vide this office's letter dt. 01.08.2019, the assessee trust was asked to show cause why deduction claimed u/s 11(2) should not be denied in its case. To this, the assessee trust submitted a reply pleading that return of income filed before 31.03.2018 were within the time specified in sub-section 4 of sec. 139 alongwith form 10 & 10B then that should be considered to have been filed within time. The assessee also cited case laws of Bombay HC & Delhi HC.*

*I have gone through the submissions of the assessee carefully. The case laws cited by the assesseees are not applicable in this case. Further, the assessee's plea that return of income filed u/s 139(4) of the I.T. Act, 1961 is also rejected. By virtue of sub-sec. 9 of sec. 13 of the I.T. Act, 1961, inserted and applicable w.e.f. A.Y. 2016-17, assessee is not entitled to claim exemption u/s 11(2) if the statement referred to in clause (a) of the sec. 11(2) is not furnished on or before the due date specified under sub-sec.(1) of sec. 139 for furnish the return of income for the previous year. Sec. 139(4A) stipulates that where a return of income is not furnished by due date u/s 139(1), then it must be furnished before the end of the assessment year. In other words, there is no any stipulation regarding furnishing of statement in Form No. 10*

as per sec. 139(4). Further, the circular no. 10/2019 vide F.No. 197/55/2018-ITA-1 as mentioned by the assessee stipulates condonation of delay in furnishing audit report in Form No.10B.

There is no condonation granted by this circular for delay in furnishing statement in Form No.10.

In view of the above, I hereby disallow the deemed application of income claimed u/s 11(2) amounting to Rs. 15,00,000/- as the assessee has failed to furnish the statement in Form No.10 by due date u/s 139(1) for the A.Y. 2017-18."

With respect to its above observations, the Appellant has referred to the CBDT circulars pertaining to the condonation of delay in filing Form-10 and Form 10. Be that as it may be, it is noted that the Appellant is seeking directions from the undersigned to the AO to condone the delay in submission of Form 10 and Form 10B. However, it is noted that the same is beyond the powers of the undersigned. In this regard, the relevant procedure has been prescribed as per CBDT Circular No. 10/2019 which circular is being reproduced hereunder:

"Circular No. 10/2019  
F.No. 197/55/2018-ITA-1  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
North Block, New Delhi the 22nd May, 2019

*Subject: Condonation of delay in filing of Form no. 10B for years prior to AY 2018-19-reg.*

*Under the provisions of section 12A of Income-tax Act, 1961 (hereafter 'Act') where the total income of a trust or institution as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have to be audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income is required to furnish along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.*

*2. As per Rule 17B of the Income-tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a trust or institution is to be furnished in Form no. 1013. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust from claiming exemption under sections 11 and 12 of the Act.*

3. Representations have been received by the Board/field authorities stating that Form no. 1013 could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form no. 108 may be condoned. Previously, vide instruction in F. No. 267/482/77-IT(part) dated 09.02.1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee.

4. Accordingly, in supersession of earlier Circular/ Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning the delay in filing Form no. 1013 and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:

(i) The delay in filing of Form no. 10B for AY 2016 17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.

(ii) In all other cases of belated applications in filing Form no.10B for years prior to AY 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay u/ s 119(2)(b) of the Act. The Commissioners will while entertaining such belated applications in filing Form no.10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time. Further, all such applications shall be disposed off by 30.09.2019."

Further, the CBDT had issued another circular on this issue which is as under:

Circular No. 6/2020- Condonation of delay u/s 119(2)(b) of the IT Act, 1961 in filing of Return of Income for AY 2016-17, 2017-18 and 2018-19 and Form No. 9A and Form No. 10-reg.

Circular No. 06/2020-Income Tax

F.No.197/55/2018-ITA-I

Government of India

INCOME Ministry of Finance Department of Revenue

Central Board of Direct Taxes

New Delhi, the 19th February, 2020

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Return of Income for A.Y 2016-17, 2017-18, and 2018-19 and Form No. 9A and Form No. 10. -Reg,

Representations have been received seeking condonation of delay in filing Return of Income by the Charitable Institutions for the Assessment Year 2016-17 onwards on the grounds of hardship. The Board has issued Circulars authorizing the Commissioners of Income

*Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay u/s 119(2)(b) of the Income-tax Act, 1961 (Act). However, in those cases where the Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in filing of Form 9A & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.c.f. 01.04.2016, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing Return of Income before the due date.*

*2. Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31st March of the respective assessment years i.e. Assessment Years 2016 - 17 2017-18 and - 19 the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.*

*3. For all other application for condonation of delay not mentioned above, the power of condonation of delay u/s 119(2)(b) of the Act will continue with the respective authorities as per the extant Rules and Practice."*

*A perusal of the above CBDT circular, it is clear that the case of the Appellant does not falls in para 4(i) because in the case of the Appellant, the relevant forms have been furnished after the date specified under Section 139 of the Act.*

*Thus, the only recourse left with the Appellant is to make out a case before the worthy Pr. CIT in accordance with the stipulations as provided in para 4(ii) supra.*

*Since, in this case, the appellant has neither brought out any case before the undersigned that it was prevented by reasonable cause from filing such application within the stipulated time and further considering the fact that the power to condone the delay has been entrusted by the CBDT with the worthy Pr. CIT and also in view of the fact that the CBDT Circulars are binding on Income Tax Authorities, the undersigned is constrained to dismiss the present appeal.*

*However, considering the fact that the CBDT had issued a specific circular after being versed with the difficulties faced in this regard, the undersigned hereby directs as under:*

*1. The Appellant shall file a detailed petition with the worthy Pr. CIT duly stating the reasons which prevented the Appellant by reasonable cause from filing such application for condonation of delay with the office of the worthy Pr. CIT and in all case at the earliest.*

*2. Till such time a decision is taken on the Application of the Appellant (as directed to be filed with the office of the worthy Pr. CIT), the AO shall not enforce any recovery of demand.*

*1. In case the worthy Pr. CIT condones the delay of the Appellant and passes an order in favour of the Appellant, the AO shall consider the fresh application of the Appellant for rectification of the assessment order passed by the AO, CPC.*

*Subject to these directions and considering the fact that a more effective and specific remedy is available to the Appellant, the present appeal is being dismissed subject to the above directions.”*

5. The learned Counsel for the assessee prayed for condonation of delay in filing Form no.10, and in support of his arguments, he relied upon various case laws, copies of which are placed on record.

6. On the other hand, the learned Departmental Representative pointed out that such condonation can only be made by the Commissioner of Income Tax (Exemp.).

7. We have meticulously perused all the relevant evidences and the extant Circulars in this regard. It is true that the power of condonation has been delegated to the Commissioner of Income Tax (Exemp.). We find that there is a delay of 03 days in filing Form no.10. During the hearing before us, the learned Counsel for the assessee argued that for the year under consideration, the assessee filed Form no.10 on 10/11/2017, i.e., before filing of return of income, as the due date of filing of return of income was extended upto 07/11/2017. He submitted that there was a delay of 03 days only in filing of Form no.10, due to some technical reason. The learned Counsel further submitted that in accordance with Clause-2 of Circular no.6/2020 dated 19/02/2020, which is reproduced by the learned CIT(A) in

his order at Page-8, the appeal of the assessee is covered by the said Circular no.6/2020 (supra), the relevant portion is reproduced below for reference:-

*"2. .... With the view to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing from 9A and Form 10 has been filed, and the return of income has been filed on or before 31<sup>st</sup> March of the respective assessment year i.e. Assessment Years 2016-17, 2017-2018 and 2018-19, the Commissioners of Income-tax (Exemptions) are authorised u/s. 119(2)(b) of the Act, to admit such belated application for condonation of delay in filing Return of Income and decide on merit."*

8. In view of the above, we find that the Board has already clarified this issue vide Circular no.6/2020 dated 19/02/2020, as stated above. We also find that under similar circumstances, the Tribunal, Chandigarh Bench, in The Institution of Civil Engineers of Society v/s ACIT(E), was sisin of similar matter, the relevant observations are highlighted below:-

*"17. We have considered the submissions of both the parties and perused the material available on the record. In the present case it is not in dispute that as per section 11(2) of the Act read with Rule 17 of the Income Tax Rules, as mandated with effect from A.Y. 2016-17 the assessee was required to e-file Form No. 10 by due date mentioned under section 139 of the Act. However, in the present case the assessee filed Form No. 10 on 17/11/2018 i.e; during-the course of assessment-proceedings. The A.O. denied the claim of the assessee since the Form No.10 was not furnished before filing the return of income under section 139 of the Act.*

*17.1 In this regard the CBDT has issued Circular No. 6/2020 dt. 19/02/2020 which read as under:*

*Circular No. 6/2020*

*F.NO.197/55/2018-ITA-1*

*Government of India, Ministry of Finance Department of Revenue  
Central Board of Direct Taxes*

*New Delhi, the 19 February, 2020*

*Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Return of Income for A.Y 2016-17,2017-18, and 2018-19 and Form No.9A and Form No. 10.- Reg.*

Representations have been received seeking condonation of delay in filing Return of Income by the Charitable institutions for the Assessment Year 2016-17 onwards on the grounds of hardship. The Board has issued Circulars authorizing the Commissioners of Income Tax to admit belated applications of Form 9A and Form 10 and to decide on merit the condonation of delay U/S 119(2)(b) of the Income-tax Act, 1961 (Act). However, in those cases where the Income Tax Returns have also been filed beyond the due date prescribed under section 139(1) of the Act, the condonation of delay in filing of Form SA & Form 10 by the Commissioners is not of any help to the assessee, as section 13(9) of the Act, inserted w.e.f. 01.04.2016, stipulates twin conditions of filing of Form 9A/Form 10 and also of filing Return of Income before the due date.

2. Accordingly, in continuation of earlier Circulars issued in this regard, with the view to prevent hardship to the assessee and in exercise of powers conferred under section 119(2)(b) of the Act, the CBDT has decided that where the application for condonation of delay in filing Form 9A and Form 10 has been filed, and the Return of Income has been filed on or before 31st March of the respective assessment years i.e. Assessment Years 2016-17, 2017-18 and 2018-19, the Commissioners of Income-tax (Exemptions) are authorised u/s 119(2)(b) of the Act, to admit such belated applications for condonation of delay in filing Return of Income and decide on merit.

3. For all other application for condonation of delay not mentioned above, the power of condonation of delay u/s 119(2)(b) of the Act will continue with the respective authorities as per the extant Rules and Practice.

17.2 Earlier also a Circular No. 7/2018 dt. 20/12/2018 was issued by the CBDT which read as under:

**SECTION 119 OF THE INCOME TAX ACT, 1961- CONDONATION OF DELAY UNDER SECTION 119(2)(b) OF THE INCOME-TAX ACT, 1961 IN FILING OF FORM NO. 10 AND FORM NO. 9A FOR AY 2016-17**

**CIRCULAR NO. 7/2018 [F.NO.197/55/2018-ITA-1], DATED 20-12-2018**

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter 'Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such Income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.

2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 1-4-2016 (A.Y. 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can

only be accumulated for a period not exceeding 5 years subject to the conditions, inter alia, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act.

3. Further, where the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of Income, such income shall be deemed to have been applied for charitable or religious purpose.

4. Representations have been received by the Board/field authorities stating that the Form No. SA and Form No. 10 could not be filled in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. SA and Form No.10 for AY 2016-17 may be condoned under section 119(2)(b) of the Act.

5. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No. 10 in respect of AY 2016-17 where such Form No. SA and Form No. 10 are filled after the expiry of the time allowed under the relevant provisions of the Act

. The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No. 10, satisfy themselves that the assessee was prevented by reasonable cause from filling of applications in Form No. 9A and Form No. 10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11 of the Act.

17.3 From the aforesaid Circular it would be clear that in the genuine case of belated application in Form No. 10, the delay may be condoned. In the present case the assessee furnished the Form No. 10 before completion of the assessment.

17.4 On a similar issue the Hon'ble Apex Court in the case of CIT Vs. Nagpur Hotel Owners' Association (supra) held as under:

"It is abundantly clear from the wordings of sub-section (2) of section 11 that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10. If during the assessment proceedings the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a

*matter of fact, the benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subject to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time it completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules, even then it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of the income, the assessing authority cannot entertain the claim of the assessee under section 11. Therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings."*

*17.5 Similarly their Lordships of the Hon'ble Bombay High Court in the case of CIT Vs. Sakal Relief Fund (supra) observed in para 13 as under:*

*"13. It is only with regard to the decision of the Apex Court in Nagpur Hotel Owners' Association (supra) that Mr. Tejveer Singh expressed reservation. According to him, the observations of the Apex Court that Form 10 has to be filed before completion of Assessment Proceedings were rendered in the context of fact that it was not filed during the Assessment Proceedings. Therefore, the fact situation being different, the observations therein cannot be applied to the present facts. In fact, we note that the Apex Court in the above case has observed that for the purposes of excluding an income of the trust from the net of taxation, the intimation in Form 10 has to be filed with the Assessing Officer before he completes the Assessment. In fact, it is the context of the above finding of the Apex Court, that it observed that Form 10 has to be filed before completion of Assessment Proceedings. In fact, the Delhi High Court in the case of Association of Corporation & Apex Societies of Handlooms (supra) has also relied upon and so understood the decisions of the Apex Court in Nagpur Hotel Owners' Association (supra). Therefore, we do not find any merit in the reservations expressed by Mr. Singh, learned Counsel for the Revenue on the applicability of the Supreme Court order in case of Nagpur Hotel Owners' Association (supra) to the present facts."*

*18. We therefore by considering the totality of the fact as discussed hereinabove and by keeping in view the ratio laid down by the Hon'ble Apex Court and the Hon'ble Bombay High Court in the aforesaid referred to cases, are of the view that the Form No. 10 furnished by the assessee during the course of assessment proceedings before completion of the assessment should have been considered by the A.O. while considering the claim for benefit under section 11(2) of the Act. We order accordingly."*

9. In view of the elaborate and erudite observations of the Tribunal, Chandigarh Bench, we deem it fit and appropriate to hereby condone the

delay in filing Form no.10. Since the assessee has otherwise fulfilled all the conditions of section 11(2) of the Act, the addition of ₹ 15 lakh, has no legs to stand. In effect, the entire addition made by the Assessing Officer and confirmed by the learned CIT(A) is hereby quashed. The grounds raised by the assessee in the present appeal are allowed.

10. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 03/06/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 03/06/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur