

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 465/Chd/2023
निर्धारण वर्ष / Assessment Year : 2022-23

Moonak Welfare Society Ward No. 08, Near Arora Dharamshala, Moonak Dist: Sangrur	बनाम	The ITO Ward Sunam Punjab
स्थायी लेखा सं. / PAN NO: AAHAM1951A		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Jaspal Sharma, Advocate
राजस्व की ओर से/ Revenue by : Shri Ved Parkash Kalia, JCIT, Sr. DR
सुनवाई की तारीख/ Date of Hearing : 11/06/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 13/06/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)/ NFAC Delhi dt. 30/05/2023 pertaining to assessment year 2022-23 wherein the assessee has challenged the sustenance of denial of exemption under Section 11 of the Act, by AO/CPC while processing the return of income under section 143(1) of the Act.

2. Briefly the facts of the case are that the assessee society is registered under Section 12A of the Act and it filed its return of income declaring total income of Rs. 1,15,900/- alongwith Form 10B on 31/12/2022 as against the due date of filing of the return on 31/10/2022. The return of income so filed was processed by CPC, Bangalore and in the intimation issued under section 143(1) dated 03/03/2023, total income was determined at Rs. 10,77,300/- by disallowing the exemption claimed by the assessee society under Section 11 of the Act.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A).

3.1 It was submitted during the appellate proceedings that the CPC, Bangalore while processing the return of income has disallowed the exemption on the ground that Tax Audit Report in Form 10B should have been filed one month prior to the filing

of the return of income. Hence, the exemption claimed is not allowable in accordance with provision of Section 12A(1)(b) of the Act.

3.2 It was submitted by the assessee that the benefit of exemption cannot be denied to the assessee society merely on account of lapse of the procedural requirement i.e; delay filing of the audit report and it was submitted that the various Courts and the Tribunals have held that the assessee cannot be denied the benefit for which it is entitled in the event of any procedural contravention specified under the Act and reliance was placed on the various authorities on the subject.

3.3 It was further submitted that the assessee has duly filed the audit report before processing of the return of income and the same was therefore available before the CPC, Bangalore before the return was processed and therefore there is no difficulty faced by the CPC to process details as provided in the return of income which was duly supported by the audit report. It was accordingly submitted that the assessee be allowed necessary exemption as so claimed.

3.4 The submissions so filed by the assessee were considered by the Id CIT(A). As per Ld. CIT(A), the contention of the assessee is limited to the fact that the exemption under section 11 was disallowed merely because it had failed to file Form No. 10B one month before the due date of filing of the return of income, however, the assessee society has not stated anything on the issue as to why it has not filed return of income within the due date of filing of the return of income.

3.5 It was held by the Ld. CIT(A) that the assessee has filed its return of income and Form 10B after the due date for filing the return of income under section 139(1) ie, on 31/12/2022 and accordingly it is not entitled to claim benefit of exemption under section 11 of the Act. It was further held by the Ld. CIT(A) that the judicial decisions relied upon by the assessee in its submissions are all on the issue of non filing of Form 10B/10BB/Audit Report along with the return of income and none of the judicial decisions relied upon by the assessee society support its case where it is entitled to claim exemption under section 11, even where the return of income has been filed after due date of filing of the return of income under section 139(1) of the Act.

3.6 Finally, the Ld. CIT(A) referred to the provisions of Sub Section (b) & (ba) of Section 12A as well as Section 139(4A) of the Act and it was held that where the assessee society has not filed return of income within the due date of filing of the

return of income under section 139(1), the claim of exemption under section 11 will not allowed even though the assessee society is registered under Section 12A of the Act and given that the assessee has not filed its return of income within the due date as so prescribed under section 139(1), the AO was justified in disallowing its claim of exemption under section 11 of the Act.

4. Against the said findings and directions of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that though CPC, Bangalore has initially denied the exemption under section 11 on account of fact that Form 10B has not been filed one month before the due date of filing of the return of income, however the Ld. CIT(A) has accepted the assessee's submission in this regard as far as the delayed filing of Form 10B being a curable defect and no adverse finding has been recorded by him. It was further submitted that the claim of exemption has been denied to the assessee society by the Ld CIT(A) for the reason that the return of income has been filed belatedly on 31/12/2022 whereas the due date was 31/10/2022 as per Section 139(1) of the Act and against which the assessee society is in appeal before us.

5.1 In this regard, it was submitted that the case of the assessee is squarely covered by the CBDT Circular F.No. 173/193/2019-ITA-I dt. 23/04/2019 and our reference was drawn to the contents thereof which read as under:

"Undersigned is directed to refer to the representation(s) received on above mentioned subject stating that while processing of ITR-7 for the A.Y. 2018-19, in respect of the belated returns filed under section 139(4) of the Income-tax Act, 1961 (Act), the following is being communicated under section 143(i)(o) of the Act:—

"As per section 12A(1)(ba) of the Income-tax Act, 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of subsection (4A) of section 139, within the time allowed under section 139 of the Act or otherwise. Otherwise the exemption under section 11 i.e. sl.no. 4(i) and 4(viii) in schedule Part BTI is not allowed."

Based on this, exemption under section 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. *In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:*

"as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed under section 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act. These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years."

3. Additionally, an excerpt of circular No. 2/2018 dated 15-2-2018 "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub-section (1) of section 12A is quoted as under:

"the entities registered under section 12AA are required to file return of income under subsection (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act."

3. Thus for a trust registered under section 12AA of the Act to avail the benefit of exemption under section 11 shall inter-alia file its return of income within the time allowed under section 139 of the Act. Accordingly, orders under section 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified. This issue with the approval of Chairman (CBDT)."

5.2 It was further submitted that the said Circular came up for consideration before the Coordinate Kolkata Benches in case of ITO (E) Vs. Debendra and Rohini Memorial Trust, (2023) 153 taxmann.com 687 wherein the Coordinate Bench has held as under:

"11. From perusal of the above referred circular, we find that in Para 3 of the said circular specifically states that a trust registered u/s 12AA of the Act, benefit of section 11 shall be available if the return of income is filed within the time allowed u/s 139 of the Act. It further states that orders u/s 143(1)(a) of the Act in those cases in which demand has been raised on this issue may please be rectified. From the circular, we note that an amendment was brought in by insertion of clause (ba) of section 12A(1) of the Act from 2018-19 onwards through which one of the requirements for claiming the benefit u/s 11 and 12 of the Act was to file the return of income within time allowed u/s 139(4A) of the Act. It seems that specially for A.Y 2018-19, when the Form ITR-7 was being processed and for such belated return, demand was raised, representations were received from various assesseees on this issue. Taking note of this issue, the said CBDT Circular has issued and while dealing with this issue, the returns filed within the time allowed u/s 139 of the Act have been directed to be accepted for the purpose of considering benefit of deduction u/s 11 of the Act. Now, since only section 139 of the Act has been mentioned and does not specify whether it is about u/s 139(1) of the Act or section 139(5) of the Act, the view beneficial to the assessee needs to be accepted and, since section 139(1) and section 139(5) are part of section 139 only and in this section 139 and sub-section (5) provides the mechanism to file a belated return, therefore, for A.Y 2018-19, even if the assessee files the return before the last date of filing of belated return the same should be treated as due compliance to section 12A(1)(ba) of the Act. For the year under appeal, the belated return could have been filed before 31-3-2019, and since the assessee has filed the return on 15-11-2018, therefore, considering the directions of CBDT Circular dated 23-4-2019, which are binding on the Revenue authorities, we are of the view that the assessee has fulfilled the conditions provided under sub-clause (ba) of section 12A(1) of the Act and has filed the return of income within the time allowed."

5.3 It was accordingly submitted that in light of the CBDT Circular as well as the decision of the Coordinate Benches, the assessee be allowed exemption as so claimed under section 11 of the Act.

6. Per contra, the Ld. DR has relied on the order of the Ld. CIT(A).

7. We have heard the rival contentions and pursued the material available on record. The entities registered under Section 12AA were required to file return of income u/s 139(4A) of the Act. By virtue of Finance Act, 2017, additional condition in terms of insertion of clause (ba) in sub-section (1) to Section 12A was provided

whereby the entities were required to furnish the return of income within time allowed under Section 139 of the Act. There is thus no requirement under the statute that the return is required to be filed within the due date as prescribed under sub-section (1) to section 139 of the Act and even a return filed under sub-section (4) to section 139 will be a valid return filed under section 139 of the Act. The language of the statute is clear and nothing more can be read or to be understood in this regard and even the CBDT has clarified the same in the aforesaid circular while explaining the insertion of provisions as per the Finance Act 2017. The Coordinate Bench in its decision referred supra has similarly held that only section 139 of the Act has been mentioned and it does not specify whether it is about u/s 139(1) of the Act or section 139(4) of the Act and even if the assessee files the return before the last date of filing of belated return, the same should be treated as due compliance to Section 12A(l)(ba) of the Act. In the instant case, it is not under dispute that the assessee has filed the return of income on 31/12/2022 which is within the time period allowed for filing the belated return of income under section 139(4) and therefore, the return so filed satisfied the condition as so specified and is thus, in compliance with the provisions of section 12A(l)(ba) of the Act read with the provisions of section 139(4A) of the Act and thus, there is no legal and justifiable basis to deny the exemption u/s 11 to the assessee society. In the result, we direct the AO to allow the exemption u/s 11 to the assessee society.

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

Order pronounced in the open Court on 13/06/2024

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

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

AG

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