

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" DELHI**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1177/Del/2024
Assessment Year 2020-21

Artistes Unlimited Charitable Trust 912 B, Indraprakash 21 Barakhamba Road New Delhi TAN/PAN: AABTA9531D (Appellant)	Vs.	ITO, Ward Exemption 1(1) Delhi (Respondent)
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Applicant by:	Shri Ashok Khandelwal, Chartered Accountant		
Respondent by:	Shri Om Prakash, Sr.DR		
Date of hearing:	18	06	2024
Date of pronouncement:	18	06	2024

ORDER

PER PRADIP KUMAR KEDIA - A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-2, Mumbai ('CIT(A)' in short) dated 26.02.2024 arising from the intimation dated 29.11.2021 passed by the Assessing Officer (AO) under Section 143(1) of the Income Tax Act, 1961 (the Act) concerning A.Y. 2020-21.

2. The grounds of appeal raised by the assessee read as under:

"1. Action of the CIT(A) in confirming the action of the A.O. in making an addition of Rs. 10,67,052/- in not allowing the exemption u/s. 11 of the I.T. Act 1961 to the appellant being public charitable trust duly registered u/s 12A, for minor delay in filing of Audit Report under section 12A(b) of the Income-Tax Act, 1961 on 09.02.2021 (due date 15.01.2021) due to outbreak of COVID-19 pandemic, a procedural omission and cannot be an impediment in law in claiming the exemption, when the return of income was filed in time on 09.02.2021 i.e. within the extended due date of 15.02.2021, is unjust, illegal, arbitrary and against the facts and circumstances of the cases.

2. *Action of the CIT (A) in confirming the action of the A.O. in making an addition / disallowance of Rs.10,67,052/-under Section 11 or other applicable provisions of the I.T. Act 1961 and assessing the trust on gross receipts without allowing any expenditure is unjust, illegal, arbitrary and against the facts and circumstances of the cases.”*

3. When the matter was called for hearing, the Id. counsel for the assessee submitted at the outset that assessee is a Public Charitable Trust registered under Section 12A of the Act. The return of income was filed by the assessee on 09.02.2021. The Audit Report in Form 10B as prescribed in Rule 17B of the Income Tax Rules, 1962 was also furnished on the same date, i.e., 09.02.2021. The CIT(A) however observed that the Assessee-Trust has filed the return of income under Section 139(4A) of the Act beyond due date of 31.10.2019. The CIT(A) held that the assessee did not file Audit Report in Form-10B before the due date of filing of return of income in violation of Rule 12A(1)(b) of the Act. The CIT(A) confirmed the action of the AO under Section 143(1) of the Act whereby exemption claimed under Sections 11 and 12 were denied on the ground that the Audit Report in prescribed Form 10B were not filed within the time prescribed under Section 12A(1)(b) of the Act.

4. In the matter, the Id. counsel referred to press release of Government of India, Ministry of Finance providing for extension of time limits for filing Income Tax Return dated 30th December, 2020. As per the press release, the due date for filing ROI for A.Y. 2020-21 has been extended to 15th February, 2021. The Id. counsel also pointed out that due to global outbreak of Covid-19 pandemic, lockdown was imposed throughout the country since 22nd March, 2020 and severe restrictions were placed on functioning and movement. Under such circumstances, the Hon'ble Supreme Court vide its order dated 10.01.2022 in Suo Motu Writ Petition No. 3 of 2020 clarified that in computing the period of limitation for any suit / appeal / application or proceedings, the period from 15.03.2020 till 28.12.2022 shall stand

excluded. The Id. counsel also submits that due to Covid-19 pandemic, the due date of filing of return of income was extended from time to time which was earlier extended upto 30th November, 2020 and was further extended to 31 January, 2021 and has been again extended to 15th February, 2021. However, the due date of filing of Audit Report was only extended upto 15th January, 2021. The Id. counsel submits that the Audit Report in requisite Form 10B had been obtained on 14.01.2021, i.e., within the due date but was filed within the return of income. The Audit Report was filed on 09.02.2021 against due date of 15.01.2021 with a minor delay of 25 days. This was only a technical or procedural default due to Covid-19 pandemic as the Trustees moved from Delhi during Covid-19 pandemic and could not complete the statutory formalities. The assessee has complied with obtaining the Audit Report but however delay in furnishing the Audit Report in Form 10B for 25 days thus requires to be seen in the light of the peculiar circumstances and should be condoned. As a consequence, the benefit available to the assessee trust under Sections 11 and other applicable provisions should not be denied on such technical ground.

4. In the background of the facts narrated on behalf of the assessee, it appears that failure to file Audit Report in Form 10B within due date is the only reason for the adjustment made to the return of income of the assessee and denial of exemption claimed under Section 11 of the Act.

4.1 To address the grievance, I may usefully refer to the judgment rendered by the Hon'ble Gujarat High court in the case of *Association of Indian Panelboard Manufacturer vs. DCIT; (2023) 157 taxmann.com 550 (Guj)* wherein it has been categorically held that filing of Audit Report in Form 10B along with return of income is only a procedural requirement and cannot be construed as mandatory requirement for the purposes of claiming exemption under Sections 11 and 12 of the Act.

The Hon'ble Gujarat High Court has thus held that assessee is entitled to exemption claimed which was denied solely due to belated filing of Form 10B. Similar view has been taken by the Co-ordinate Bench in *Shree Bhairav Seva Samiti Vs. ITO (Exemption) reported in [2023] 149 taxmann.com 478 (Mumbai Tribunal)* where the denial of exemption under Section 11 of the Act by CPC under Section 143(1) for non filing of Form 10B within prescribed due date was reversed in consonance with the judicial view available on the issue.

4.2 In the light of judicial dicta available, I have thus no hesitation to hold that the claims of exemption under Sections 11 and 12 of the Act by the assessee cannot be denied merely owing to so called delay in filing Audit Report in Form 10B as prescribed under Rule 17B of the Income Tax Rules. The basis for refusal of exemption thus does not survive.

5. The AO/CPC is accordingly directed to delete the adjustment made in intimation under Section 143(1) of the Act as attributable to such purported default in belated filing of Form 10B.

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

Order pronounced in the open Court on 18th June, 2024.

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: June, 2024
Prabhat