

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 375/Hyd/2024
(निर्धारण वर्ष / Assessment Year: 2022-23)

MANTHAN FOUNDATION Hyderabad [PAN No. AACTM1527G)	Vs. Dy. CIT (Exemption) Circle 1(1) Hyderabad
अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: A.V.Sai Sudha,CA
राजस्व द्वारा/Revenue by: Shri B Naveen Kumar, DR

सुनवाई की तारीख/Date of hearing: 13/06/2024
घोषणा की तारीख/Pronouncement on: 05/07/2024

आदेश / ORDER

Aggrieved by the order dated 24/03/2024 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Manthan Foundation ("the assessee") for the assessment year 2022-23, assessee preferred this appeal.

2. Assessee is a trust. Its case is that while filing the return of income for the assessment year 2021-22, inadvertently it failed to file Form 10, which it filed the same belatedly, but before the assessment was finalised. Because of such lapse, CPC while processing the return, issued an intimation under section 143(1) of the Income Tax Act, 1961 (for short "the Act") disallowing exemption claimed by the trust under section 11 (2) of the Act. Assessee preferred appeal before the Ld. CIT(A), but the Ld. CIT(A) by way of impugned order held that the AO-CPC rightly disallowed the assessee's claim of exemption under section 11/12 of the Act in the absence of audit report filed after due date prescribed under section 139(1) of the Act, and accordingly dismissed the appeal of the assessee.

3. Hence the assessee filed this appeal contending that the requirement of filing Form 10/10B is merely directory in nature and failure to furnish the same before the due date

prescribed in section 139(1) of the Act cannot be so fatal as to deny the claim of exemption under section 11 (2) of the Act, especially when such Form was available on record when the intimation was processed by CPC under section 143(1) of the Act. She placed reliance on various decisions including the one in the case of ITO vs. Ramji mandir religious and charitable trust (2024) 158 Taxmann.com 114 (Ahmedabad-Trib) in support of her contention.

4. Ld. DR submitted that as rightly pointed out by the Ld. CIT(A), in terms of the CBDT Circular No. 2/2020 dated 3/1/2020 the assessee has to file condonation application under section 119 (2) of the act before the concerned CIT with the reasons for belated filing of the audit report and it is only on such condonation of the delay, the issue will be decided on merits by the Commissioner of Income Tax (Appeals). Ld. DR submitted that the assessee did not resort to such a procedure contemplated under the Circular and therefore, the CPC rightly disallowed the exemption claimed by the trust under section 11(2) of the Act.

5. I have gone through the record in the light of the submissions made on either side. As a matter of fact, this issue is no longer res integra and decided by the coordinate Bench of the Ahmadabad Tribunal in the case of Ramji Mandir Religious and Charitable Trust (supra) wherein, after reviewing the entire case law on this aspect, in unequivocal terms, it was held that the requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before the due date prescribed under section 139(1) of the Act cannot be so fatal as to deny the claim of exemption under section 11(2) of the Act, especially when Form 10/10B was available on record when the intimation was passed by CPC under section 143(1) of the Act. In reaching such a conclusion the Bench considered the binding precedents rendered by the Hon'ble Gujarat High Court and other high courts and also the Hon'ble Supreme Court. Respectfully following the same I hold that since the Form 10 was available when the CPC passed the intimation in this case, disallowance of the claim of the assessee under section 11(2) of the Act is not proper. Learned Assessing Officer is, therefore, is directed to consider Form 10 available on record and to pass appropriate orders.

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

Order pronounced in the open court on this day the 5th July, 2024.

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,

Dated: 05 /07/2024

Pvv/SPS

Copy forwarded to:

- 1. Manthan Foundation C/o Gandhi & Gandhi C.A 1002, Paigah Plaza, Basheerbagh, Hyderabad
500063*
- 2. ACIT Circle 1(1) (Exemption), 2nd Floor, Aayakar Bhavan, Basheerbagh, Hyderabad*
- 3. PCIT (Exemption) Hyderabad*
- 4. DT, ITAT Hyderabad Benches*
- 5. Guard File*