

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.796/Del/2023  
(ASSESSMENT YEAR 2018-19)**

Ram Chameli Chadha Vishwas Girls College Society C-22, Meerut Road Ghaziabad Uttar Pradesh-201002 PAN:AAATR8501R	Vs.	ACIT Circle Exemption Ghaziabad
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	None
Respondent by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	21/05/2024
Date of Pronouncement	18/07/2024

**ORDER**

**PER S.RIFAUH RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A)", for short], dated 17/01/2023 for Assessment Year 2018-19.

**2.** None appeared on behalf of the assessee when the appeal was called for and from the record, we observed that the assessee has filed present appeal on 23/03/2023 and since then three occasions the notices were issued for hearing, none appeared on behalf of the assessee, therefore, we proceeded to dispose of this appeal with the assistance of Ld. DR.

**3.** The brief facts of the case are, assessee is a society engaged in the providing education to girls and running educational institutions. The assessee is registered u/s 12A/12AA of the Income Tax Act, 1961 ('the Act' for short). The assessee filed its return of income on 31/10/2018. The assessee has filed its return of income and it has obtained the statutory tax audit report on 31/10/2018 as on the specified date but could not file it within time owing to omission in the office of the counsel of the assessee. The relevant report was filed on 02/12/2019. Since, the assessee has not filed audit report along with return, the exemption claimed by the assessee u/s 11 & 12 of the Act were rejected by the CPC vide intimation u/s 143(1) of the Act by bringing to tax the gross receipt of the assessee at Rs.5,45,40,959/-. Subsequently, the

assessee filed rectification application u/s 154 of the Act and the CPC has rejected the same as well.

**4.** Aggrieved with the above order, the assessee preferred an appeal before the Ld. CIT(A), NFAC, Delhi.

**5.** After considering the submissions of the assessee, the Ld. CIT(A) dismissed the appeal filed by the assessee with the observation that entire exemption depend upon the timely filing of the statutory report. He observed that he does not look probably the assessee even though got the report prepared within time and failed to file the same within time. He observed that all the while report was lying with its Counsel office. The balance of probabilities is clear and not in favour of the assessee. Accordingly, he dismissed the same.

**6.** Aggrieved with the above order, the assessee is in appeal before us raising the following grounds of appeal:-

*“1. Because CPC Bangalore, in making:- (i) Disallowance of claim for application of income on revenue account of Rs.3,07,07,033; (ii) disallowance of claim for application of income on capital account of Rs.8,63,497; (iii) Disallowance of claim for accumulation of income u/s 11(2) of Rs. 1,50,00,000; (iv) Disallowance of claim for accumulation/set apart of income upto 15% for Rs.79,70,429; erred both in law and on facts.*

*2. Because under the facts and circumstances of the case at best the return of income could be treated as defective u/s 139(9) and CPC erred in processing the return u/s 143(1).*

*3. Because the CPC Bangalore erred both in law and on facts in not issuing notice U/s 139(9) depriving the assessee an opportunity to rectify the defect which remedy is available under the Act.*

*4. Because the Commissioner appeals has erred in law and on facts 0 in disallowing the appeal and confirming the intimation u/s 143(1) of the Income Tax Act, 1961.*

*5. Because the order(s) appealed against are contrary to facts, law and principle of natural justice.*

*6. The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the appeal.”*

**7.** The Ld. DR brought to our notice the facts involved in this case and submitted that assessee has failed to follow the statutory proceedings by filing the Form No.10B within the time limit prescribed by the Act, therefore, he relied on the findings of the lower authorities.

**8.** Considered the rival submissions of the Ld. DR and material placed on record, we observed that the assessee has filed its return of income within the extended period allowed u/s 139(1) of the Act and also obtained the audit report in Form No.10B on 31/10/2018 and it shows that assessee had the audit report at the time of filing the return of income. Due to omission at the office of the assessee's counsel the same was filed on 02/12/2019. As per the provisions of section 12A(1)(ba) in order to avail the benefit of u/s 11 & 12 the assessee has to obtain the audit report in the prescribed form duly

signed and verified by the accountant and setting forth such particulars as may be prescribed. As per provisions of section 12A(1)(ba) it is the duty of the assessee to obtain a audit report from the auditor in the prescribed form. In this case, we observed that the assessee has submitted the return of income on 31/10/2018 and also obtained the audit report in Form 10B on 31/10/2018. It is direction to obtain the report in prescribed form as per the provisions of section 12A(1)(ba) and it is enough the same is made available to the Assessing Officer as when it is called for. We observed that in various occasions CBDT itself has allowed the filing of the audit report along with the return of income or during the assessment proceedings. In our view it is relevant that assessee to obtain the audit report before filing the return of income and if it is made available to the Assessing Officer on demand either during assessment proceedings or subsequently, it is compliance to the provisions of section 12A(1)(ba). Mere non filing of the audit report along with the ROI does not prejudice the Revenue as long as assessee follows the method of accounting and furnishes the return of income on time and made available the relevant audit report on demand, it is proper compliance. Merely

because there is omission on the part of the counsel of the assessee on compliance, the actual functioning and carrying out the activities in line with the objects of the trust does not become otiose. Therefore, with the above observations, we are inclined to allow the grounds raised by the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 18<sup>th</sup> July, 2024.

Sd/-

**(SUDHIR PAREEK)**  
**JUDICIAL MEMBER**

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 18/07/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI