

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA.No.2225/Mum./2024  
Assessment Year 2022-2023

Snehasadan, Vinayalaya, Amrut Nagar, Chakala, Behind Holy Family Church, Andheri (East), Mumbai. PIN – 400 093 PAN AAATS2756H	vs.	The Income Tax Officer, Exemption, Ward-2(3), 6 <sup>th</sup> Floor, MTNL TE Bldg., Pedar Road, Mumbai. PIN – 400 026.
(Appellant)		(Respondent)

For Assessee :	Ms. Vasanti Patel
For Revenue :	Dr. Kishor Dhule, CIT-DR

Date of Hearing :	23.07.2024
Date of Pronouncement :	24.07.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M.**

This assessee's appeal, for assessment year 2022-2023 arises against the order of the Addl/JCIT(A)-3, Bengaluru, Bengaluru's DIN & order no.ITBA/APL/S/250/2023-24/1061553887(1), dated 27.02.2024, in

proceedings u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. It emerges at the outset that the assessee’s sole substantive grievance raised in the instant appeal challenges correctness of both the learned lower authorities action disallowing sec.11 exemption on account of it’s failure in uploading the relevant audit report in Form-10B in the course of CPC “processing” dated 08.03.2022 as upheld in the Addl/JCIT’s lower appellate discussion as under :

*“5. Appellant Order:*

*On thorough perusal of the grounds of appeal raised and the submissions made by the appellant, in response to intimation u/s 143(1)(a), it is observed the appellant has filed the return of income on 07/11/2022 declaring the income of Rs.2.31,302/- and claimed the exemption u/s 11 of the IT Act. The AO CPC has passed*

*the intimation order on 08/03/2023 after denying the exemption u/s 11 of the IT Act and assessed the income to Rs.4,29,69,701/- as the appellant failed to file the form 10B one month prior to the filing of return of income.*

*The appellant has filed the form 10B electronically on 07.11.2022 whereas the due date of filing of form 10B was 07.10.2022. For Any charitable organization registered u/s.12A(1)(b) of the IT Act, 1961, it is mandatory to file form 10B one month prior to the date of filing of return as per rule 17B of the IT Rules 1962. It is the duty of the appellant to follow the rule and procedure that is prescribed in the Income Tax Act and Income Tax Rules. The appellant has stated that an application of condonation of delay is filed before the Commissioner of Income Tax (Exemption), Mumbai. The appellate authority does not have the jurisdiction to condone the delay of filing of filing form 10B. The condonation u/s 119(2)(b) is to be condoned only by CIT(Exemption), Pr.CIT & CIT etc.*

*The appellate authority relied on the decision of ITAT Ahmedabad in the case of Ambica Sarvajnik Trust Anklav Vs DCIT CPC in ITA No. 355 & 356/Ahd/2021.*

*Where Hon'ble ITAT has held that -*

*"We have given our thoughtful consideration and perused the material available on record. The grounds of appeal raised by the assessee is very general in nature without substantiating its claim how, the Ld. CIT(A) erred in not granting exemption u/s. 11 & 12 of the Act. The Id. CIT(A) has held that Form No. 10B was filed manually on 03/03/2020 during the appellate proceedings but no evidence of the Form 10B when was uploaded electronically by the assessee which is mandatory as per Section 12A(1)(b) of the Act read with Rule 17B of the Income Tax Rules. However, the Id. CIT(A) has observed that the assessee is free to file the said Form 10B online and/or approach the CIT-(Exemption), Ahmedabad after filing Form 10B electronically and to condone the delay in*

*accordance with the delegated powers vested u/s.119(2)(b) of the Act. Such a power u/s.119(2)(b) is not vested with Id. CIT(A). Therefore, the Id. CIT(A) dismiss the appeal filed by the assessee. Now before the Tribunal, the assessee has not produced only details of filing Form 108 electronically with condone delay petition. In absence of the same, We do not find any infirmity in the order passed by the Id. CIT(A) and therefore we have no hesitation in confirming the order passed by the Id. CIT(A).*

*8. For the above reasons, the grounds raised by the assessee are hereby rejected and the additional grounds raised by the assessee is found not relevant to the facts and circumstances of the case, therefore the same is also rejected."*

*As the appellant has already pursued the case before the concerned Commissioner of Income Tax (Exemption), Mumbai, for condonation of delay u/s. 119(2)(b).*

*Accordingly, the appellate authority does not have the rights for passing orders as, the competent authority for condoning the delay in filing the appropriate form (10B), lies within the ambit of the respective CIT(E) and accordingly the case cannot be adjudicated within the range of this office. The prerogative to condone the delay u/s.119(2)(b) exclusively lies with the CIT(E). The Appellant can directly approach the AO for the Give effect of the Condonation order u/s.119(2)(b) i.e is to be passed by the CIT(E), Mumbai. The appeal filed on all the grounds is dismissed.*

*6. In the result, the appeal is Dismissed.”*

3. Suffice to say, both the parties vehemently reiterated their respective stands before us. Learned counsel submits case law M/s. Social Security Scheme of GICEA vs. CIT(E) [2023] 147 taxmann.com 283 (Guj.) in light of the admitted factual position that the assessee had filed it's return on 07.11.2022 than within the “due date” on 07.10.2022. And that the said return filed was also

accompanied by Form-10B as it is clear from the lower appellate discussion. It is accordingly claimed that the foregoing return was well within the due date once the CBDT had extended time limitation in the impugned assessment year. It is lastly stated be that as it may, various judicial precedents; more particularly, in case of M/s. Social Security Scheme of GICEA vs. CIT(E) (supra) already settle the issue that such a compliance of uploading Form 10B is only a directory than a mandatory provision.

4. Learned DR has drawn strong support from the above extracted lower appellate discussion forming the CPC's "processing" denying sec.11 exemption to the assessee.

5. We find force in assessee's foregoing sole substantive grievance in principle. This is for the precise reason that not only there is no denial from the Revenue side that the due date of filing return had been extended [or the assessee's return itself is not time barred] but also the relevant Form-10B audit report stood uploaded well with

the return and indeed during the course of processing itself. We accordingly conclude in light of the foregoing judicial precedent that the assessee could not have been declined the impugned exemption for this precise reason in othewords. We accordingly deem it appropriate to accept the assessee's instant sole substantive grievance and direct the learned Addl./JCIT(A)-3, Bengaluru to examine it's case on merits afresh as per law. Ordered accordingly.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 24.07.2024

Sd/-  
[OMKARESHWAR CHIDARA]  
ACCOUNTANT MEMBER  
Mumbai, Dated 24<sup>th</sup> July, 2024  
VBP/-  
Copy to

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "G" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,  
Mumbai.