

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.39/Ind/2024
Assessment Year : 2018-19

Shri Vishwamitra Shikshan Samiti, 104, J. B. Complex, Race Course Road, Indore	<u>बनाम/</u> Vs.	Income-tax Officer, 5(1), Indore.
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AAJTS1473J		
Assessee by	Shri Ashish Goyal and Shri N. D. Patwa, ARs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.07.2024	
Date of Pronouncement	26.07.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 12.12.2023 passed by learned Commissioner of Income-tax (Appeal)-Addl./JCIT(A)-12, Mumbai ["CIT(A)"] which in turn arises out of intimation dated 17.10.2019 passed by CPC, Bangalore ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the assessee has filed this appeal on various grounds as mentioned in Appeal Memo (Form No. 36).

2. Heard the learned Representatives of both sides at length and case-records perused.

3. The exact controversy involved in present case is : Whether or not the assessee was entitled to exemption u/s 11/12 as claimed in the return of income when the audit-report (Form No. 10B) was not filed before filing of return but subsequently filed before filing of first-appeal?

4. The precise facts are such that assessee is a charitable society engaged in imparting education. It is registered u/s 12A of the Income-tax Act, 1961 by Income-tax Department from 01.04.2010. Accordingly, it is entitled for exemption u/s 11/12. For AY 2018-19 under consideration, the assessee filed original return u/s 139(1) on 23.09.2018 declaring total income at Rs. 3,97,310/- after claiming exemption of Rs. 4,83,95,673/- u/s 11/12. The AO processed intimation u/s 143(1) wherein he denied assessee's exemption u/s 11/12 for non-filing of audit report in Form No. 10B which is required for exemption u/s 11/12. Aggrieved by AO's action, the assessee carried matter in first-appeal to CIT(A) but did not get any success. Now, the assessee has come in next appeal before us.

5. Ld. AR for assessee drew our attention to the order of first-appeal passed by CIT(A) and submitted that the CIT(A) has rejected assessee's claim for two-fold reasons, namely (i) Filing of audit report (Form No. 10B) before filing of return is mandatory to claim the benefit of exemption u/s 11/12 and (ii) In Circular No. 16/2022 dated 19.07.2022, a power has been given

to the CIT for condoning the delay in filing audit report (Form No. 10B) but the assessee has not filed any condonation application to CIT. In coming to his conclusion, the CIT(A) has also relied upon decision of Hon'ble Supreme Court in ***Checkmate Services (P) Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)*** wherein it was held that the taxing statutes are to be constructed strictly and the deductions are to be granted only when the conditions which govern them are strictly complied with.

6. Then, Ld. AR submitted that the assessee is engaged in charitable activities and the registration granted to it by tax authorities u/s 12A was in force. The assessee filed original return of income on 23.09.2018 and prior to filing of return, the accounts were duly audited and the audit report was also issued in Form No. 10B on 24.08.2018 by M/s Laxmi Tripti & Associates, Chartered Accountants; copy of Form No. 10B is filed at Page 33-39 of Paper-Book. However, the assessee missed to file report in Form No. 10B which has led to denial of exemption u/s 11/12. Ld. AR submitted that the entire mis-happening was due to inadvertence and without any bad intention but the assessee has already filed report on 06.02.2020 before filing first-appeal. Ld. AR submitted that the mistake committed by assessee was a procedural lapse only and except such procedural lapse, there is no other reason to deny the benefit of section 11/12 to assessee. Ld. AR submitted that the procedural lapse was also due to an inadvertent human error and the assessee should not be denied the legitimate exemption when the assessee is genuinely doing charitable activities for the welfare of public

and satisfying all conditions prescribed in income-tax law for being entitled to exemption. Ld. AR submitted that if the audit report in Form No. 10B filed by assessee belatedly on 06.02.2020 is accepted, the assessee would be entitled to the benefit of exemption. Ld. AR submitted that it is now well-settled by numerous decisions of High Courts and ITAT Benches that the requirement of filing audit-report alongwith return is one of the conditions for claiming benefit of exemption u/s 11/12 but it is a procedural-cum-directory requirement and even if the report is subsequently filed to AO, the exemption u/s 11/12 can't be denied. There are several decisions holding such a proposition:

- (a) ITAT, Indore - Indore Contract Bridge Association Vs. CPC, Bangalore in ITA No. 403/Ind/2022 order dated 18.04.2023
- (b) ITAT, Indore - Navratna Sukrat Foundation Vs. CPC, Bangalore, ITA No. 390/Ind/2022 dated 21.04.2023
- (c) ITAT, Indore - DCIT Vs. Shri Vaishnav Polytechnic College, Indore ITA No. 469/Ind/2018 order dated 06.11.2020
- (d) ITAT, Jodhpur - ITO, Exemption Ward Vs. Society for Education Conscietisation Awareness & Training, ITA No. 461/Jodh/2018 dated 06.05.2019
- (e) ITAT, Ahmedabad - Puravanchal Lokhit Mandal Vs. ITO, Exemption Ward, Vadodara, ITA No. 966/Ahd/2019, dated 30.11.2022
- (f) ITAT, Ahmedabad - Hari Gyan Pracharak Trust Vs. DCIT, CPC, Bangalore in ITA No. 245/Ahd/2021 order dated 16.06.2023

- (g) Hon'ble Gujrat High Court - Sarvodaya Charitable Trust Vs. ITO, Exemption (2021) 125 taxmann.com 75 (Gujrat)
- (h) Hon'ble Gujrat High Court - Indian Panel Board Manufacturer Vs. DCIT Tax Appeal No. 655 of 2022 dated 21.03.2023.

7. Per contra, Ld. DR vehemently defended the orders of lower-authorities and submitted that furnishing of audit-report alongwith return of income is a pre-condition for allowability of exemption u/s 11/12. Since the assessee has not fulfilled such condition, the lower-authorities have rightly denied assessee's claim of exemption u/s 11/12 and there is no infirmity in the action of lower-authorities. Ld. DR further emphasized the very reasoning given by CIT(A) that the CBDT has, by Circular, already given power to condone delay in filing audit-report to CIT but the assessee has not availed the remedy. Therefore, it is a fault of assessee only. With these submissions, Ld. DR prayed to uphold the AO's order.

8. We have heard rival contentions of both sides and examined the present case in the light of judicial decisions. After a careful consideration, we have following analysis and adjudication:

- (i) So far as allowability of exemption u/s 11/12 in a situation where the assessee has not filed audit-report before filing return of income or even upto the processing of intimation u/s 143(1) but filed subsequently during first-appeal, the issue is settled in favour of assessee by ITAT, Indore in ***Indore Contract Bridge Association Vs. CPC, Bangalore in ITA No.***

403/Ind/2022 order dated 18.04.2023. The relevant paras of the order of ITAT are re-produced below:

“8. The exact controversy involved in these grounds is whether or not the assessee was entitled for exemption u/s 11/12 as claimed in the return of income, when the audit-report (Form No. 10B) was filed belatedly after processing of return u/s 143(1)?

9. *Apropos to this issue, the precise facts are: The assessee is a charitable society registered u/s 12A of the Income-tax Act, 1961 and entitled for exemption u/s 11/12; accordingly it claimed exemption u/s 11/12 in the return of income. But when the AO processed return u/s 143(1) vide intimation dated 09.03.2019, he did not allow exemption u/s 11/12 for the reason that the audit report (Form No. 10B) was not filed by assessee with return of income. **Subsequently after processing of return, the Form No. 10B was e-filed/uploaded on 03.04.2019 / 04.05.2019 before filing of first-appeal.***

10. *Ld. AR submitted that the assessee was engaged in charitable activities; that the registration granted to it by tax authorities u/s 12A was in force; that the assessee had been granted benefit of section 11/12 in preceding assessment-years as well as subsequent assessment-years. He further submitted that the assessee filed return of income on 03.08.2017 and prior to such filing, the accounts of assessee were duly audited on 08.06.2017, a copy of the audited-accounts is placed in the Paper-Book. However, the auditors of assessee failed to upload the audit-report alongwith the return of income. But, post-processing of return u/s 143(1) and before filing of first-appeal, the assessee arranged to get the audit-report e-filed/uploaded on 03.04.2019 / 04.05.2019. Ld. AR submitted that the CIT(A) has, without appreciating these facts, dismissed the appeal of assessee merely on a technical defect that the audit-report was not filed alongwith the return of income. Ld. AR submitted that except such technical defect, there is no other reason to deny the benefit of section 11/12 to assessee. Ld. AR submitted that the e-filing/uploading of audit-report is done by auditors and not by assessee; therefore the defect is not per se attributable to assessee. Ld. AR submitted that in any case, the defect is due to an inadvertent human error and the assessee should not be denied the legitimate exemption, when the assessee is genuinely doing charitable activities for the welfare of public and satisfying all conditions prescribed in income-tax law for being entitled to exemption. Ld. AR submitted that if the audit-report obtained by assessee on 08.06.2017 but filed on 03.04.2019 / 04.05.2019 is accepted, the assessee would be entitled to the benefit of exemption. Ld. AR placed a heavy reliance on the latest decision of **ITAT in Savitri Foundation Vs. ITO, ITA No. 1925/Mum/2021 (AY 2018-19) order dated 01.08.2022** wherein the AO made processing of return u/s 143(1) denying exemption u/s 11 to assessee for the very same reason of non-uploading of audit report before filing of return but subsequently the assessee uploaded audit-report during the course of first-appeal; when the matter reached ITAT, the Mumbai Bench has allowed exemption to assessee.*

Ld. AR submitted that the decision taken by ITAT is directly applicable to assessee. Ld. AR also submitted that the decision of **Hon'ble Supreme Court in Wipro Ltd. 446 ITR 1** relied upon by Ld. CIT(A) is quite distinguishable for the reasons that (i) the said decision involved deduction u/s section 10B whereas the present-appeal is concerned with exemption u/s 11/12; and (ii) the said decision involved interpretation of sub-section (8) of section 10B which is a negative provision i.e. it provides that if the assessee did not want to apply section 10B, then the assessee had to file a declaration but this is not a case in section 11/12.

11. Per contra, Ld. DR vehemently defended the orders of lower-authorities and submitted that furnishing of audit-report alongwith return of income is a pre-condition for allowability of exemption u/s 11. Since the assessee has not fulfilled such condition, the lower-authorities have rightly denied the assessee's claim of exemption u/s 11 and there is no infirmity in the action of lower-authorities.

12. We have heard rival contentions of both sides and examined the present controversy in the light of judicial decisions. At first, we are convinced that the controversy is directly settled in favour of assessee by decision in **Savitri Foundation (supra)** where the Hon'ble Mumbai ITAT, following the decision of **Hon'ble Mumbai High Court in CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee 378 ITR 103** has observed and held thus:

*"4. Submissions made by rival sides heard, orders of authorities below examined and the case law on which the Id. Authorized Representative of the assessee placed reliance considered. The assessee is a charitable trust registered under section 12AA of the Act and has been purportedly enjoying the benefits of section 11 since 2011. In the impugned assessment year, the benefit of exemption under section 11 of the Act has been denied to the assessee for the reason that assessee has failed to furnish audit report along with return of income. The contention of the Id. Authorized Representative of the assessee is that the audit report was available with the assessee at the time of filing of return of income however due to inadvertent error the assessee failed to upload Audit Report in Form 10B along with e-filing of return of income. Non-filing of Audit Report is a bonafide error. The assessee has placed on record Audit Report dated 19/10/2018 in the prescribed Form 10B at page 15 of the Paper Book. **The assessee after receiving the intimation under section 143(1) of the Act uploaded the Audit Report on 18/04/2020 in First Appellate proceedings.***

5. In my considered view non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same.

6. The Hon'ble Bombay High Court in the case of **CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee (supra)** has held that late filing of required documents would not disentitle the assessee from availing benefit of section 11 of the Act. Thus, in the facts of the case and in the light of decision of Hon'ble Bombay High Court, I deem it appropriate to restore the file back to Assessing Officer for de novo assessment after considering the audit report filed by the assessee, in accordance with law.

7. In the result, impugned order is set aside and appeal by assessee is allowed for statistical purposes."

13. We also gainfully refer another recent decision of **ITAT, Ahmedabad Bench** in the case of **M/s Shardaben Education Trust, Gandhinagar Vs. ITO, Ahmedabad, ITA No. 2312/Ahd/2018, order dated 16.11.2022** where a similar controversy has been decided in favour of assessee, after following the decisions of **Hon'ble Gujrat High Court in CIT vs. Gujarat Oil & Allied Industries reported in 201 ITR 325 and CIT vs. Mayur Foundation reported in 274 ITR 562**. The relevant paragraphs of the order of ITAT are as under:

"12. We have heard the rival contentions of both the parties and perused the materials available on record. As per the provisions of section 12A(1)(b) of the Act, it is necessary for the assessee in order to claim exemption under section 11 of the Act to get the accounts audited as well as obtain the audit report in the prescribed form from the qualified chartered accountant which is to be filed along with the return of income. **Admittedly, in the case on hand the assessee has not filed form 10B being the audit report along with the return of income and the same was also not filed till the completion of the assessment order as well as appellate order by the learned CIT-A. As such the order of the learned CIT(A) was passed dated 30th November 2017 whereas the Form 10B of the audit report was filed/uploaded dated 25th December 2017 which evidences that the audit report in Form 10B was filed subsequent to the appellate order by the learned CIT-A.** At this juncture it is also pertinent to note that the audit report in the prescribed form was prepared and signed by the qualified chartered accountant dated 5th September 2014 much before the date of filing the return of income by the assessee. Thus, it appears that report for the audit in the prescribed form was prepared well in time but it was filed belatedly.

12.1 Now the controversy arises whether the assessee can claim the benefit of exemption under section 11 of the Act in a situation where the audit report in the prescribed form was not filed along with return of income. In this context we note that act of the assessee to file the audit report duly signed by the qualified chartered accountant is a procedural requirement and the courts 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 provisions of the Act. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High

Court in case of **CIT vs. Gujarat Oil & Allied Industries reported in 201 ITR 325**, the relevant extract of the judgment is reproduced as under:

“In our view, the aforesaid reasoning of the Allahabad High Court and the Patna High Court would squarely apply to the facts of the present case. The provision about furnishing of the auditors' report along with the return has to be treated as a procedural provision, directory in nature, and its substantial compliance should suffice, meaning thereby that such report should be made available by the assessee to the Assessing Officer latest when the question of framing of assessment is taken up by the Income-tax Officer and when he applies his mind to the claim of the assessee and if by that time, the assessee has put his house in order and has furnished the report of the auditor for supporting the return, he can be said to have satisfied the requirement of section 80J(6A) of the Act.”

12.2 In view of the above we hold that the assessee cannot be denied the benefit of exemption for which it is entitled merely on the lapse of procedural requirement i.e. delay in filing the audit report in the prescribed form. In the judgment cited above, it was provided that the audit report was filed by the assessee before the completion of the assessment. In other words, the compliance of the law was made by the assessee when the assessment proceedings was pending before the AO whereas in the case on hand the assessee complied the requirement at the stage of appellate proceeding before tribunal. Thus, a question arises before us whether the principles laid down in the judgment cited above can be applied in the given facts and circumstances. In this context we note that, in the judgment cited above it was observed that procedural requirement for filing the audit report was fulfilled by the assessee before the completion of the assessment. But the facts of the case on hand are different in so far the audit report was filed by the assessee after the completion of the assessment framed under section 143(3) of the Act. In this regard we note that the assessment remains pending if any appeal is pending before the higher forum. In other words, if any appeal is pending either before the Id. CIT-A or before the ITAT which transpires the fact that the assessment is pending. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in case of **CIT vs. Mayur Foundation reported in 274 ITR 562**, wherein it was held as under:

“Thus, the proceedings before the Tribunal are meant to correctly assess the tax liability of an assessee: If this be so, it follows that the assessment proceeding cannot be said to be complete and is pending till the appeal is heard and disposed of by the Tribunal and the order of the Tribunal is given effect to by the assessing authority by computing the correct tax liability of an assessee. In other words, whether an assessee is required to pay tax or becomes entitled to a refund, would be ascertained by

the assessing authority after giving effect to the order of the Tribunal."

*12.3 Admittedly, the appeal was pending before the ITAT at the time when the audit report in form 10B was filed which transpires that the assessment has not reached to the finality and therefore principle laid down by the Hon'ble High Court of Gujarat in the case of **CIT vs. Gujarat Oil & Allied Industries (Supra)**, that the requirement for filing the audit report is a procedural requirement, can be applied in the given facts and circumstances. Therefore, the benefit for which the assessee is entitled cannot be denied."*

14. Respectfully following these decisions, we are of the view that in the present case, the assessee can't be denied the benefit of exemption u/s 11 as claimed in the return of income for mere delay in filing of audit-report. We, therefore, deem it fit to remand this matter back to the file of AO for a fresh assessment after considering the audit-report filed by assessee, in accordance with law. These grounds are accordingly allowed."

Other decisions cited above have also taken a view that non-filing of audit report with the return of income is a mere procedural irregularity for which the exemption u/s 11/12 cannot be denied.

(ii) The second point taken into account by CIT(A) is such that the CBDT Circular empowers the CIT to condoning delay in the matter of filing audit report (Form No. 10B) but the assessee has not availed that remedy. This point is also rejected by Hon'ble Gujrat High Court in Para 5.6 of their judgement in **Indian Panel Board Manufacturer Vs. DCIT Tax Appeal No. 655 of 2022 dated 21.03.2023**. For clarity, we may mention that the Circular referred in the judgement is 7/18 dated 20.12.2018 which was a previous circular but it will not make any difference. The relevant para of the judgement is as under:

"5.6 The tribunal further committed an error in appreciating the import of Section 119(2)(b) of the Act in as much as the application contemplated

thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to, by the assessee. The circular No. 7/18 dated 20.12.2018 issued u/s 119 of the Act could not be, therefore, said to have taken away the appellate remedy."

9. The decision of **Checkmate (supra)** relied by Ld. CIT(A) was concerned with the disallowance of employees' contribution to PF/ESI collected by assessee from employees but not paid to the relevant funds upto due date for making payments specified in PF/ESI laws. The disallowance was on account of violation of a substantive condition imposed u/s 36(1)(va). In the present case, there is a lapse in complying with procedural requirement of filing Form No. 10B in time only but there is no allegation of violation of any of the substantive conditions for availing exemption u/s 11/12. Therefore, the CIT(A)'s reliance upon **Checkmate (supra)** is mis-placed.

10. In view of above discussion, we find that in present case, the assessee cannot be denied benefit of exemption u/s 11/12 as claimed in return for mere delay in filing of audit report in Form No. 10B. Hence, we deem it fit to remand this matter back to the file of AO for a fresh assessment after considering the audit-report (Form No. 10B) filed by assessee, in accordance with law.

11. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced in the open court on 26.07.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 26.07.2024

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*