

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

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

**ITA Nos.2141 & 2142/M/2024
Assessment Years: 2018-19 & 2020-21**

M/s. Shikshan Prasarak Mandal Koloshi Hadpid, 1/105 Jay Ambe Sadan, S.N, Path Lower Parel, Mumbai - 400 013 PAN: AADTS8783M	Vs.	Asst. Director of Income Tax, Centralized Processing Centre, Bangalore, Commissioner of Income Tax (Exem)-2(3), 6th Floor, MTNL Building, Cumballa Hills, Pedder Road, Mumbai-400026
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vishal D. Shah, A.R.
Revenue by : Shri Manish Ajudiya, Sr. AR.

Date of Hearing : 15 . 07 . 2024

Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

These assessee's twin appeals ITA No.2141 & 2142/M/2024, for assessment years 2018-19 & 2020-21 arise against the National Faceless Appeal Centre(NFAC) Delhi's as many DIN & order No.ITBA/NFAC/S/250/2023-24/1061508127(1)&No.ITBA/NFAC/S/250/2023-24/1061590959(1) dated 26.02.2024 & 27.02.2024 respectively, in proceedings under section 154 of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case files perused.

3. The assessee pleads the following substantive grounds in the instant lead case ITA No.2141/M/2024:-

ITA No.2141/M/2024:

1. a. *On the facts and under the circumstances of the case and in law, The Ld. CIT(A) NFAC, failed to appreciate the fact the covid-19 pandemic came from 24.03.2020, the day when complete lockdown was declared and the order u/s 154 was also dated 17.03.2020 which is just a week prior to lockdown. The Ld. CIT(A) NFAC, failed to appreciate the fact that even though the lockdown was for brief period, the Appellant Trust which runs on honorary basis by trustees were not aware of such order after the lockdown, and when they came to know about the demand and order, they immediately filed an appeal. Non condonation of such delay is against The Principal of Natural Justice hence bad in law*

b. *On the facts and under the circumstances of the case and in law, The Ld. CIT(A) NFAC, erred in not considering the fact that the Appellant Trust is an Educational Trust originally registered u/s 12A on 25.04.1997 and is performing Educational Activities for over a period of 26 years. The Ld. CIT(A) NFAC failed to appreciate the fact that Appellant Trust is not a tech-savvy trust and that it was never an intention to purposely delay the filing of the appeal.*

c. *On the facts and under the circumstances of the case and in law, The Ld. CIT(A) NFAC erred in not considering the fact that covid-19 was an unavoidable circumstance and constituted the same as insufficient cause for the delay in filing the appeal and without considering the genuineness of the case and sufficient cause of delay, disallowing the appeal only on the basis that the appeal is time bared is bad in law and against the principal of natural justice.*

Without Prejudice

2. *On the facts and under the circumstances of the case and in law, The Ld. CIT(A) NFAC erred in confirming the order of the CPC in rejecting the exemption and benefits claimed by the Appellant Trust u/s 11 of the I.T Act despite the fact the Trust is registered u/s 12A.*

3. *On the facts and under the circumstances of the case and in law, The Ld. CIT(A) NFAC erred in confirming the order of the CPC in Computation of Income to Rs. 65,44,739/- without considering the fact that the revenue & capital expenditure incurred by Trust towards its object, amounts to Rs 63,81,181/- and denying the same merely on the basis of delay in filing of the Audit Report Form-10B is bad in law.*

4. *On the facts and under the circumstances of the case and in law, The Ld. CIT(A) NFAC erred in confirming the order of the CPC in not considering the fact that the filing of the Audit report in Form 10B was delayed by one day due to a technical error. Once the error was resolved the Appellant Trust immediately filed the Audit Report. Therefore, denying the exemption u/s 11 merely on account of one day delay in furnishing the Audit report despite the fact that the Appellant Trust had filed Form 108 before the assessment/intimation u/s 143(1) is bad in law.”*

4. The assessee's latter appeal ITA No.2142/M/2024 raises almost identical substantive grounds as under:-

"ITA No.2142/M/2024:

1. *On the facts and under the circumstances of the case and in the CITIAN passing the order u/s 250 without considering the fact that the Appellant Trust had made an application for Condonation of delay in submission of the Audit Report and the order is yet passed by the authority which is bad in law*

2 a. *On the facts and under the circumstances of the case and in law, the Id CIT(A) NFAC, erred in computing the Income at Rs. 96,92,526/- without considering the revenue expenditure incurred by the trust towards its objects as claimed by the Appellant Trust amounting to Rs 3143,676/ and disallowed the same, which the trust is otherwise entitled to and denying merely on the basis of delay in filing of the Audit Report Form-108 is bad in law and not considering the fact that in all the previous years the trust has been regularly filing its Audit report without any default. Therefore, the disallowance merely on the basis of procedural delay in filing of Audit Report is bad in law.*

b. *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) NFAC, erred in rejecting the exemption benefits claimed by the Appellant Trust u/s 11 of the IT Act amounting to Rs. 5,48,850/- despite the fact the Trust is registered u/s 12A*

c. *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) NFAC, erred in not considering the fact that the Appellant is an Educational Trust originally registered u/s 12A on 25.04.1997 and is performing Educational Activities for over a period of 26 years. The Ld. CIT(A) NFAC failed to appreciate the fact that Appellant Trust is not a tech-savvy trust and that it was never an intention to purposely delay the filing of Audit Report Form-108 electronically. Therefore, the disallowance merely on the basis of procedural delay in filing of Audit Report is bad in law.*

3 *On the facts and under the circumstances of the case and in law, the Ld. CIT(A) NFAC, erred in not deciding the case by condoning the delay in filing of form 108 by the appellant*

Without prejudice to the above,

On the facts and under the circumstances of the case and in law, the LD CIT(A) NFAC, ought to have remanded back the matter to the AO directing him to pass order after the receipt of order for condonation of delay by Principal CIT (Exemption).

The appellant craves leave to add, to alter or to delete the above ground of appeal, if necessary, before the disposal of appeal."

5. It emerges at the outset with the able assistance coming from both the parties that the CIT(A)/NFAC's impugned order for the former assessment year 2018-19 appeal ITA No.2141/M/2024 has dismissed the tax payer's lower appeal as time barred since suffering from delay of two years and three months. The assessee had admittedly instituted the said lower appeal on 25.06.2022 against the CPCs section 154 rectification dated 17.03.2020. Hon'ble Apex Court's landmark direction In Re Cognizance for Extension of Limitation (2022) 441 ITR 722 (SC) have already directed exclusion of the period from 15.03.2020 to 28.02.2022 from all the prescribed limitations. Their lordships further made clear that a further limitation window of 90 days shall be applicable in all such cases. Meaning thereby that the learned CIT(A) has failed to consider the same while referring to refusing to condone the assessee's delay which never arose as per by their lordships' directions. We thus restore the assessee's instant former appeal ITA No.2141/M/2024 for learned CIT(A)/NFAC's afresh adjudication as per law. Ordered accordingly.

6. Next comes the assessee's latter appeal ITA No.2142/M/2024 for A.Y. 2020-21 wherein the learned lower authorities have rejected its section 11 exemption claim for want of filing of its audit report form 10B within the prescribed time. Learned counsel inter-alia submits that the assessee had filed the said prescribed audit report with the return which was filed within the "due" date as per the Board's circular in light of the covid pandemic outbreak period. He further submits that even otherwise also, filing of such an audit report is only a directory provision than a mandatory one as per various judicial precedents coming from very hon'ble higher forums.

7. We note in this factual backdrop and in light of the rival submissions that the foregoing sole issue of filing of form 10B audit report also forms subject matter of adjudication in the assessee's

preceding appeal ITA No.2141/M/2024 hereinabove which stands restored back to the CIT(A)/NFAC. Coupled with this, the assessee submits that the assessee has filed for extension of the time limitation before the Ld. CIT(E) which is pending till date. Faced with this situation, we deem it appropriate to restore the assessee's instant latter appeal ITA No.2142/M/2024 as well back to the CIT(A)/NFAC for afresh appropriate adjudication in very above terms. Ordered accordingly.

8. These assessee's twin appeals are allowed for statistical purposes in above terms. A copy of this common order be placed in his respective case files.

Order pronounced in the open court on 24.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.