

IN THE INCOME TAX APPELLATE TRIBUNAL "H (SMC)"BENCH
MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SMT RENU JAUHRI, ACCOUNTANT MEMBER

ITA No.2733/MUM/2024
(A.Y.2022-23)

The National Sodality Centre, 1, Seva Niketan Sir, JJ Road, Byculla, Mumbai.	Vs.	ITO – Ward 2(4) 6 th Floor, MTNL TE Bldg, Pedder Road, Mumbai.
PAN/GIR No. AAATT0571B		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Smt. Vasanti Patel a/w Shri M.A Gohel
Respondent by	Ms.Jancy Elizabeth Rani. Sr.DR

सुनवाई की तारीख/Date of Hearing	25.07.2024
घोषणा की तारीख/Date of Pronouncement	26.07.2024

ORDER

PER RENU JAUHRI, AM:

The appeal is filed by the assessee against the order of Addl. Commissioner of Income Tax (Appeals)-2, Lucknow (in short "Addl. CIT(A)") passed u/s 143(1) of the Income Tax Act, 1961 (in short "the Act"). The assessee has raised the following grounds of appeal:

The Appellant prays that the additions made to the Income may kindly be deleted as the same is unwarranted, unjustified and

contrary to the principles of Natural Justice and the benefits of Section 11 be restored.

The Appellant hereby craves the leave to add to, alter or amplify the aforesaid grounds of appeal, which are independent of each other, as and when the need arises at the time of hearing.

I, Fr. George Rosario, the Trustee of The National Sodality Centre, the Appellant hereby declare that what is stated hereinabove is true to the best of my information and belief.

2. The brief facts are that the assessee had filed return declaring income of Rs. 3,11,481/- for the A.Y 2022-23 on 07.11.2022. The Dy. Director of Income Tax (DDIT), Central Processing Centre (in short "CPC"), Bengaluru processed the return u/s 143(1) of the Act and made addition of Rs. 28,90,892/- by disallowing the entire expenditure claimed as deduction u/s 11 of the Act on the ground that Form No. 10B had not been filed before the due date. The Ld. Addl. CIT(A), Lucknow dismissed the appeal on the ground that the AO as well as Appellate authorities do not have the power to grant condonation of delay in filing Form No. 10B.

3. Before us, the Ld. AR submitted that the audit report in Form No. 10B had been filed on 07.11.2022 along with the return of income. The return had been filed within the extended due date as per the CBDT circular No. 20/2022 dated 26.10.2022 vide which the due date had been extended from 31.10.2022 to 07.11.2022. The intimation

u/s 143(1) of the Act was issued on 03.03.2023 as such the audit report was on record much before the processing of return. In this regard, the Ld. AR cited several decisions of the ITAT as well as Hon'ble High court of Gujarat in its favour. Specifically reliance was placed on the latest order of coordinate Bench in the case of **Snehasadan Vs. ITO in ITA No. 2225/Mum/2024** dated 24.07.2024, where in a similar situation it has been held as under:

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 other words. 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.

4. After considering the facts circumstances and judicial pronouncements on this issue, and respectfully following the decision of the coordinate Bench, we hereby direct the AO to consider the claim of exemption u/s 11 of the Act as per law after taking into account the audit report filed in Form No. 10B on 07.11.2022.

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

Order pronounced in the open court on 26.07.2024.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai, Dated:26/07/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai