

[IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 3873/DEL/2023 [A.Y 2016-17]

The I.T.O [Exemptions]
Ward - 1
School
Delhi

Vs. Aryawart Welfare Society
Sector - C, Ryan International
Pocket - B, Vasant Kunj, New Delhi

PAN: AAATA 4965 G

(Applicant)

(Respondent)

Assessee By : Shri Rajiv Khandelwal, CA
Shri Gagan Khandelwal, Adv
Shri Jaind Kumar Jaiswal, Adv

Department By : Shri Amit Katoch, Sr. DR

Date of Hearing : 03.07.2024

Date of Pronouncement : 26.07.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order
of the NFAC, Delhi pertaining to A.Y 2016-17.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in accepting the submission of the assessee as additional evidence without verifying the details from those filed in the Income tax return, without appreciating the reasons of disallowing the exemption u/s 11 of the Income-tax Act, 1961 [the Act, for short] and the Id. CIT(A) has erred in accepting the fact the assessee has not filed revised return in stipulated time period.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Brief facts of the case are that the assessee is a society, registered with the Registrar of Societies, as well as u/s 12A of the Act and also approved in terms of section 80G(5)(vi) of the Act with the sole object of educational purposes and not for the purposes of profit. The assessee runs a primary school under the name of Ryan International School at Rohini, New Delhi duly recognized by the Government of Delhi. Exemption u/s11 has been allowed to the assessee society in the preceding as well as in the succeeding previous years.

5. The return of income was filed on 14-10-2016 electronically showing total Income of Rs. NIL after claiming exemption of Rs. 6,67,90,834/- u/s 11 of the Act. The assessee submitted Statement of total income, audited Statement of accounts, Statement of income and its application on the objects of the assessee trust and Acknowledgement with ITR-7.

6. The return of income was processed u/s.143(1) by the Dy. Director of Income Tax, CPC, Bengaluru on 17-3-2018 making adjustments of Rs. 6,67,90,834/- by way of denying the claim for exemption u/s 11.

7. Thereafter, the assessee submitted an application for rectification u/s 154 of the Act on 08.05.2019 against the intimation u/s 143(1) of the Act. The ADIT reprocessed the return of income vide order u/s 154 dated 12.07.2019 and computed total income u/s 143(1) of the Act at Rs. 6,67,90,830/- denying the claim of exemption u/s 11 of the Act on the ground that Form 10B was e filed after the date of filing the return of income and that the assessee's application for condonation of delay is pending.

9. Aggrieved the assessee went in appeal before the Id. CIT(A) who directed the AO to give exemption u/s 11 as per law if the delay in filing Form 10 is condoned by the CIT(Exemptions). The Revenue is now aggrieved and is before us.

10. Before us, the Id. counsel for the assessee as well as the Id. DR reiterated what has been stated before the lower authorities.

11. We have heard the rival submissions and have perused the relevant material on record. The only bone of contention is the delay in filing the Form 10B after the date of filing the return of income. It is the say of the Id. counsel for the assessee that the Audit Report in Form 10B was obtained online before filing the return of income. However, due to technical snag on the income tax portal, the Form could not be e-verified by the trustee. There is a delay of 1 day in e-verification of the Form No. 10B dated 14.12.2016.

12. The CBDT Circular No. 2/2020 deals with automatic condonation in those cases where audit report in Form 10B was obtained before the filing of the return of income but filed after the filing of the return of income. The relevant extract reads as under:

"2. As per Rule 17B of the Income-tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust or institution from claiming exemption under sections 11 and 12 of the Act. 3. Representations have been received by the Board/field authorities stating that Form No. 10B could not be filed along with the return of income for A.Y. 2016-17 and A.Y. 2017-18. It has been requested that the delay in filing of Form No. 10B may be condoned. Previously, vide instruction in F.No. 267/482/77-IT(part) dated 9-2-1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee. 4. Accordingly, the CBDT issued Circular No. 10/2019 circulated through F.No. 197/55/2018-ITA-I in supersession of earlier circular/Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trust or institution for condoning the delay in filing Form No. 10B and in the exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes vide Circular No. 10/2019 dated 23rd May, 2019 and Circular No. 28/2019 dated 27th September, 2019 both issued vide F.No. 197/55/2018-ITA-I has directed that :— (i) The delay in filing of Form No. 10B for A.Y. 2016-17 and A.Y. 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been

furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned. (ii) In all other cases of belated applications in filing Form No. 10B for years prior to AY. 2018-19, The commissioner of Income-tax are authorized to admit and dispose off by 31-3-2020 such applications for condonation of delay u/s 119(2)(b) of the Act. The Commissioner will while entertaining such belated applications in filing Form No. 10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time."

13. We find that in the instant case, the year involved is AY 2016-17. We also note that the assessee has obtained the Audit Report in Form 10B online before filing the return of income which was not controverted by the Id DR of the Revenue. The Form 10B could not be e-verified by the trustee due to technical snag on the income tax portal and there was a delay of 1 day in e- verification of the Form No. 10B dated 14.12.2016. The CBDT Circular No. 2/2020 in such facts and circumstances automatically condones the delay. In view of the above, we are of the considered view that the decision of the CIT(A) needs no interference. The appeal of the Revenue is dismissed.

14. In the result, the appeal of the Revenue in ITA No. 3873/DEL/2023 is dismissed.

The order is pronounced in the open court on 26.07.2024.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 26th JULY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	