

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

**ITA No.197/Ahd/2024
Assessment Year: 2018-19**

New English School Kelvani Trust, B/h. Rly Station, New English School, R.T. Patel Marg Station Road, Gujarat – 387 002. [PAN – AAATN 6282 D]	Vs.	The Income Tax Officer, Ward Exemption, Vadodara.
(Appellant)		(Respondent)
Assessee by	Shri Chirag Shah, AR	
Revenue by	Shri Arvind Kumar, CIT-DR	
Date of Hearing	03.06.2024	
Date of Pronouncement	01.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the Assessee against order dated 27.12.2023 passed by the CIT(A), Delhi for the Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal :-

- “1. The assessment order passed under Section 143(1) of Income Tax Act by the Assessing Officer and confirmed by the first appellate authority under Section 250 is bad in law and deserved to be uncalled for.*
- 2. The Assessing Officer as well as first appellate authority has erred in law and on facts in making and confirming respectively the disallowance of expenditure of Rs.8,91,38,001/-. The same deserves to be deleted.”*

3. The assessee filed return of income on 29.10.2018 declaring total income at Rs.8,91,38,001/- after claiming the expenditure of Rs.8,66,28,665/-. The return of the assessee was processed at CPC, Bengaluru in which claim of expenditure was

rejected by the Department. The tax was calculated on the basis of maximum marginal rate @ 30.9%. Thus, the benefit of deduction of expenditure as per the assessee was not given.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee filed its return of income on 29.10.2018 declaring total income of Rs. nil after claiming expenditure of Rs.8,66,28,665/-. However, ignoring all these aspects, the CPC while processing the return under Section 143(1) of the Income Tax Act, 1961 had disallowed the claim of expenditure amounting to Rs.8,66,28,665/-. The Ld. AR submitted that the assessee has no reason to believe that why the CPC has disallowed the expenditure because the assessee has already shown the amount of expenditure in ITR 7 and also 12A/AA registration number was also provided. Report in Form No.10B was also duly filed by the assessee. The claim of the same expenditure was made in the Profit & Loss Account filed in the return. However, ignoring all these facts on record, the CPC while processing the return under Section 143(1) of the Act had disallowed the claim of expenditure though it was shown separately in the statement of income. The Ld. AR submitted that no addition can be made in the intimation unless there is some arithmetical error. The claim of expenditure from the current year income cannot be denied by way of intimation under Section 143(1) of the Act. This view is upheld by the Hon'ble Gujarat High Court in the case of CIT vs Maheshkumar Rathod, 296 ITR 146, decision of Delhi Bench of the Tribunal in the case of Anshul Singhal vs. ACIT, 125 ITD 175 as well as decision of Ahmedabad Bench of the Tribunal in the case of Ambivijay Steel Suppliers Pvt. Ltd. vs. ITO (ITA No.2715/Ahd/2012). The Ld. AR submitted that the Assessing Officer has to assess the correct figure of the income and even if there is some calculation mistake from the side of the assessee, the same can be rectified by the Assessing Officer through exercising powers under Section 154 of the Act. The Ld. AR relied upon the decision of the Tribunal in the case of Chhotubhai Vitthalbhai Patel vs. DCIT (2022) 97 ITR (Tribunal) 265. The Ld. AR further submitted that even if registration under Section 12A of the Act is not obtained, tax should be on the net taxable income calculated after claiming expenses and not

on gross receipts. The Ld. AR relied upon the judgement of Hon'ble Delhi High Court in case of DCIT vs Petroleum Sports Promotion Board (ITA Nos.262, 264 & 265/2013).

6. The Ld. DR relied upon the Assessment Order and the order of the CIT(A). The Ld. DR further submitted that the provisions of Section 80AC of the Act are duly applicable in assessee's case as the provisions of Section 80AC of the Act are applicable in all cases where the Assessment Year is commencing on or after 01.04.2018 and the case of the assessee is pertaining to A.Y. 2018-19. Therefore, we hold that the action of the Assessing Officer, CPC is correct in not allowing the deduction in respect of expenses incurred against the income referred to Section 10(23) of the Act. The Ld. DR specifically pointed out paragraph no.5.6 of the order of the CIT(A) thereby stating that neither the assessee has filed ITR on or before the due date as per the requirement under Section 139(4)A of the Act nor filed Audited Report in the prescribed Form 10B at least 30 days prior to the due date under Section 139(1) of the Act as prescribed.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee's Auditors have prepared the Audit Report on 21.09.2018 and the date of filing original return as per the intimation availed by the assessee is on 29.10.2018. If the assessee has not complied with the statutory requirements, the same can be taken into account while passing the intimation. But the exemption under Sections 11 & 12 of the Act cannot be denied merely on account of delay in furnishing the Audit Report and it cannot be sufficient compliance if the Id. AR furnish the same at a later stage i.e. before the assessment proceedings or during the assessment proceedings as well as before the CIT(A). Thus, if the assessee failed to furnish the Audited Report, in the circumstance the present case, the Assessing Officer or the CIT(A) cannot simply deny the deduction/exemption claimed under Section 12 of the Act if the assessee is a registered Trust. The CBDT vide order under Section 119 dated 08.10.2018 in F.No.225/358/2018/ITA-11 had extended the due date for filing the return of income as well as the audit report for the A.Y. 2018-19 till 31st October, 2018. The assessee had filed its return of income for A.Y. 2018-19 as well as the audit report in Form 10B on 29.10.2018, which was within the extended time limit. Under the circumstances, CPC was not correct in disallowing the exemption

and the expenses claimed under Section 10(23) of the Act. As the return and Form 10B was filed within the extended time limit, the adjustment as made by the CPC while processing the return under Section 143(1)(a) was not proper. Thus, appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 1st August, 2024.

Sd/-
(NARENDRA PRASAD SINHA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 1st August, 2024
PBN/*

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

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad