

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND
SHRI S.R.RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 1435/Chny/2024

निर्धारण वर्ष / Assessment Year: 2018-19

Sri Lakshminarayan
Educational Trust,
14/1, Bye Pass Road
Dharmapuri,
Dharmapuri – 636 701.

[PAN: AAHTS-0652-B]

(अपीलार्थी/Appellant)

Assistant Commissioner of
Income Tax (Exemptions),
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. H. Yeshwanth Kumar, CA

प्रत्यर्थी की ओर से/Respondent by

: Smt. M.S. Deeptha, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.08.2024

घोषणा की तारीख/Date of Pronouncement

: 09.08.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), Addl/JCIT(A), Panchkula, for the assessment year 2018-19 dated 20.03.2024.

2. The only ground raised by the Assessee is the Id.CIT(A) erred in dismissing the appeal by upholding the action of the

CPC in denial of exemption claimed u/s. 11 of the Act due to delay in filing the audit report in Form 10B.

3. The brief facts of the case are that, the assessee is registered trust U/s.12AA of the Act. The assessee filed its original return of Income for the A.Y. 2018-19 on 16/03/2019 declaring total Income at Rs.NIL, after claiming exemption U/s.11 of the Act. The return of Income was processed under section 143 (1) on 17/10/2019 by CPC, Bengaluru and arrived the total income of the assessee at Rs.4,29,09,168/- by disallowing exemption claimed U/s. 11 of the Act and considering the entire gross receipts of the trust of Rs.4,29,09,168/- without allowing any expenditure claimed in the return, for the reason that the appellant trust had not filed the audit report in Form 10B before filing the return of income. The Assessee has submitted form 10 BB in advertently instead of form 10B on 16/3/2019. Later the Assessee filed corrected form 10B on 17/3/2020 along with the petition U/s.119 of the Act, before the Jurisdictional CIT for condonation of delay in filing the audit report in Form 10B. Further, aggrieved by the intimation U/s.143(1) issued by the CPC, Bangalore, the assessee preferred an appeal before the Ld.CIT(A). However,

the Ld. CIT(A) confirmed the addition by passing an order on 20/3/2024 by holding as under :

"6. Decision:

6.1 The submissions of the appellant along with necessary documentary evidences along with statement of facts, grounds of appeal, and the order appealed against, have been thoroughly examined. The ROI for Assessment Year 2018-19 filed by the appellant was processed by the Centralized Processing Centre (CPC) and an order u/s.143(1) of the Act was sent on 17.10.2019 wherein the entire gross receipts for this year amounting to Rs.4,29,09,168/- was held to be the total taxable income of the appellant. The central issue for adjudication among all the grounds of appeal raised pertains to the sole issue of denying the benefit of deduction Section 11 of Income Tax Act amounting to Rs.4,29,09,168/-for the reason of not filing Return of Income within due date and has not filed Audit Report in Form 10 B on or before filing the Return of Income

6.2 For this year, the appellant filed its Return of Income (ITR-7) for Assessment Acknowledgement no vide 16.03.2019 Year 2018-19 belatedly on 435129970160319 as against the due date of 31.10.2018 showing gross receipts of Rs.4,29,09, 168/- and declaring NIL income after claiming exemption u/s.11 of the Act. Appellant has submitted that Form 10 BB was inadvertently filed instead of 10 B applicable on 16.03.2019. According to the submission of appellant and documentary evidence submitted, corrected Form 10 B has been filed on 17.03.2020 vide Acknowledgement no 324141181170320 and the condonation application for delay in filing Form 10 B is pending before Jurisdictional Commissioner of Income Tax FOR DISPOSAL.

6.3 Further, Section 119 empowers the Board to issue orders and guidelines regarding the condonation of delay in compliance with any provision of the Act. Section 119(2) reads as follows:

Section 119(2)

(a)

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorize any income-tax authority, not being a Joint Commissioner (Appeals) or a

Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

6.4 In this context, the Central Board of Direct Taxes (CBDT) Issued Circular 3/2020 dated 03-01-2020 and Circular No. 16/2022 dated 19th July, 2022. The relevant excerpts from Circular No. 16/2022 dated 19th July, 2022 are as follows:

Condonation of delay under Section 119(2)(b) of the Income-tax Act, 1961 in filing of Form No. 10B for Assessment Year 2018-19 and subsequent years Reg.

In exercise of the powers conferred under section 119(2) of the Income-tax Act, 1961 (hereinafter referred to as 'Act), the Central Board of Direct Taxes (CBDT) by Circular No.2/2020 [F.No. 197/55/2018-/TA-1] dated 03.01.2020 authorized the Commissioners of Income-tax to admit applications of condonation of delay in filing Form No. 10B for AY 2018-19 or for any subsequent Assessment Years where there is delay of upto 365 days and decide on merits.

2. Further to the powers delegated to Commissioners of Income-tax as discussed above, the CBDT hereby directs that where there is delay of beyond 365 days upto three years in filing Form No. 10B for Assessment Year 2018-19 or for any subsequent Assessment Years, the Pr. Chief Commissioners of Income-tax / Chief Commissioners of Income-tax are authorized to admit such applications of condonation of delay under section 119(2) of the Act and decide on merits.

3. The Pr. Chief Commissioner / Chief Commissioner or Commissioners of Income- tax, as the case may be, while entertaining such applications for condonation of delay in filing Form No. 10B, shall satisfy themselves that the applicant was prevented by reasonable cause from filing such Form within the stipulated time.

4. Further, the Pr. Chief Commissioner / Chief Commissioner of Income-tax, as the case may be, shall preferably dispose the application within three months of receipt of the application.

6.5 It is evident from the CBDT Circulars and Section 119(2)(b) that the Assessing Officer (AO), Joint Commissioner of Income Tax (Appeals) JCIT(A)), and Commissioner of Income Tax (Appeals) [CIT(A)] do not have the authority under Section 119(2)(b) of the Act to grant condonation for the delay in filing Form 10B. The

JCIT(Appeals) when finalizing the appeal, are NOT empowered by the statute to entertain the appellant's condonation application for Form 10B.

6.6 The appellant has the option to approach the jurisdictional Commissioner of Income Tax, Chief Commissioner of Income Tax, or Principal Chief Commissioner of Income Tax for the condonation of the delay in filing Form 10B and to claim the benefits of Sections 11 and 12 of the Act. According to the appellant's submission, they have already submitted the application for condonation, which is pending before the Ld. Commissioner of Income Tax (Exemption).

7. Hence, I find no merit in the current appeal and, as a result, dismiss the appeal."

5. The Ld.AR of the assessee argued that the Ld.Addl. CIT(A) has erred in dismissing the appeal without considering the facts and circumstances of the assessee. The Ld.AR stated while the assessee's application for condonation of delay in filing the return of Income before the Jurisdictional CIT, is pending for disposal and the Ld.Addl.CIT(A) has dismissed the appeal in hurried manner and hence prayed for allowing the appeal by setting aside the order of the Ld.CIT(A).

6. Per contra, the Ld.DR stated that the return was processed by the CPC, Bengaluru U/s.143(1) of the Act on 17/10/2019 denying the claim of exemption U/s.11 of the Act for the reason that the assessee has not filed the return of income within the due date as prescribed U/s.139(1) of the

Act. The same has been rightly confirmed by the Ld.Addl. CIT(A), as the assessee has claimed the deduction U/s.11 without filing the return of income within the due date U/s.139(1) of the Act. Hence, prayed before us to dismiss the appeal of the assessee.

7. We have heard the rival contentions and gone through the intimation U/s.143(1) and order of the Ld.Addl. CIT(A). It is noted that, the Ld.CIT(A) has dismissed the appeal before the disposal of the assessee's petition for condonation of delay by the Jurisdictional CIT U/s.119 of the Act. On perusal it is also noted that, the both the intimation from CPC, Bengaluru and the order of the Ld.CIT(A) have not allowed any of the expenditure claimed by the assessee in the return of income and computed the total income considering the entire receipts of the trust as Income i.e. Rs.4,29,09,168/-. Considering the facts and circumstances of the case, we are inclined to set aside the impugned order of the Ld.Addl. CIT(A) and remit the file back to the JAO to decide the issue in accordance to the decision of the Jurisdictional CIT on condonation petition filed by the assessee. We direct the JAO that, in case the delay of filing Form 10B of the assessee is not condoned by the

Jurisdictional CIT, then allow the expenditure claimed by the assessee after verification against the gross receipts shown to compute the total income.

9. In the result the appeal of the assessee is allowed for the statistical purposes.

Order pronounced in the Open court on 09th August, 2024 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष/Vice President

Sd/-
(एस. आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 09th August, 2024

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF