

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2857/MUM/2024
Assessment Year: 2017-18**

EDUCO
25A, Belvedere Court,
Sane Guruji Marg, Mahalaxmi,
Mumbai-400011.

PAN NO. AAATE 3280 G
Appellant

NFAC Exem. Ward 1(2),
Piramal Chamber Lalbaug,
Parel,
Mumbai-400001.

Vs.

Respondent

Assessee by : Mr. Srinivasan
Revenue by : Mr. Asif Karmali, Sr. DR

Date of Hearing : 01/08/2024
Date of pronouncement : 19/08/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 21.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals)- National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2017-18, raising following ground:

- 1. The Ld. NFAC Officer erred in confirming addition of donation of INR 33 lakh received on 31 March 2017 even*



though the revised/corrected Form 10 accumulating the amount of INR 35 Lakh was duly submitted to the Ld. CIT along with request for condonation of delay which is still pending.

2. Briefly stated facts of the case are that the assessee-trust is registered with the Director of Income-tax (Exemption), Mumbai u/s 12A of the Income-tax Act, 1961 (in short 'the Act') vide Registration No. 42655 and u/s 80G of the Act. The Trust is also registered with the Charity Commissioner, Mumbai. The main object of the Trust is to advance education to the children in improvised areas by building and funding and or managing of educational institutions and/or facilities in India and to promote and/or establish and/or conduct higher secondary and university education in different faculties. The assessee-Trust filed its original return of income on 29.10.2017 declaring total income of Rs.2,17,030/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. The Assessing Officer noticed that the assessee received an amount of Rs.33 lakhs during the year as donation which was not considered as income of the Trust but instead , the same was taken directly to the audited balance sheet as unutilized grant. The Assessing Officer noted that as per the provisions of section 2(24) of the Act the grants received by charitable trust are in the nature of its income. According to the Ld. Assessing Officer if the said donation was to be taken as deemed application as per Explanation-2 to section 11(1) of the Act,



then the assessee was required to file prescribed form for accumulation of income mandatorily. However, assessee has filed the prescribed Form No. 10 for the purpose of accumulation of income u/s 11(2) of the Act only on 31.10.2017. Accordingly, The AO held the amount of Rs.33 lakhs received by the Trust as income of the assessee.

3. Before the Ld. CIT(A), the assessee sought adjournment for the various notices issued. Therefore, the Ld. CIT(A) dismissed the appeal of the assessee for default on the part of the assessee without deciding the issue on merit.

4. Before us, the Ld. counsel for the assessee submitted that for delay in filing the Form No. 10, the assessee filed an application before the Ld. Commissioner of Income-tax(Exemption)[in short 'the ld CIT(E)'] under relevant circular No. 3/2020 dated 03.01.2020 issued by the Central Board of Direct Taxes (CBDT) and the ld CIT(E) has condoned the said delay in filing the form no 10 vide his order dated 26/06/2024. Before us, the Ld. counsel for the assessee has filed a copy of the said order condoning the delay in filing the Form No. 10 by the assessee. We are of the opinion that once, the Ld. CIT(E) has condoned the delay in filing the form no. 10, the Assessing Officer has to take into account the Form No. 10 filed by the assessee and consider the claim of the assessee for exemption u/s 11 of the Act in accordance with law. We accordingly



restore the issue in dispute to the file of the assessing Officer for deciding in accordance with law. The sole ground raised by the assessee is accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 19/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 19/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai