

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.3320/MUM/2024
(Assessment Year: 2020-21)**

Smt. Hiraben Dhamji Valji Velani Foundation

B-1, Prashanth Darshan, Premier Road,
Near Skyline Oasis Complex,
Vidhyavihar (West),
Mumbai - 400086
[PAN: AAITS6235M]

..... **Appellant**

Income Tax Officer Ward 2(3),
Cumballa Hill, Mumbai-400 026

Vs
..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Chandrakant Dhalpe
For the Respondent/Department : Shri Manoj Kumar

Date

Conclusion of hearing : 13.08.2024
Pronouncement of order : 28.08.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order dated 29/04/2024, passed by the Learned Commissioner of Income Tax, Appeal, Addl/JCIT(A)-4 Delhi, [hereinafter referred to as the '**CIT(A)**'] whereby the Ld. CIT(A) had dismissed the appeal against Intimation Order, dated 30/11/2021, passed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The appellant has raised following grounds of appeal :

"1. *On the facts and in the circumstances of the case and in law, the learned ADDL/JCIT(A)-4, Delhi, erred in dismissing the appeal filed under section 246A.*

2. *On the facts and in the circumstances of the case and in law, the learned ADDL/JCIT(A)-4, Delhi, erred in dismissing the appeal filed under section 246A, without taking cognizance of the order of the CIT(Exemption), Mumbai, dated 26/02/2024 (condoning the delay in filing of Form 10B for assessment year 2020-21), furnished by the assessee vide E-filing Ack No.164321051020424 on 02/04/2024.*
 3. *On the facts and in the circumstances of the case and in law, the learned ADDL/JCIT(A)-4, Delhi erred in not condoning the delay in filing of appeal and dismissing the appeal filed under section 246A.*
 4. *On the facts and in the circumstances of the case and in law, the learned ADDL/JCIT(A)-4, Delhi erred in upholding the intimation assessment year 2020-21 issued under section 143(1)".*
3. When the appeal was taken up for hearing, the Learned Authorised Representative for the Appellant submitted that vide, intimation order, dated 30/12/2021, issued under Section 143(1) of the Act the income tax return filed by the Appellant for the Assessment Year 2021-2022 was processed and the exemption claimed by the Appellant under Section 11 of the Act was denied on the ground that the Appellant had failed to file Form 10B within the prescribed time along with the return of income. The aforesaid intimation order, dated 30/11/2021, issued under Section 143(1)(a) the Act was placed in the hands of the accountant to follow up with the tax consultant and take the necessary steps. However, the accountant failed to appreciate and follow the aforesaid instruction inadvertently. The trustees, not being conversant with the tax laws, were completely dependent upon the accountant, and were under a bonafide belief that necessary steps had been taken by the accountant. Subsequently, on going through the Income Tax Portal it was discovered that demand for the relevant assessment year was outstanding. Therefore, the trustees reached out to the tax consultant who advised for filing the appeal. Thus, the appeal got to be filed before the CIT(A)

belatedly. It was submitted that the delay in filing occurred on account of inadvertent mistake committed by the employee/accountant who failed to appreciate the issue/instructions. It was pointed out that the Appellant has been carrying out charitable activities since 2009 and had applied income as per the objects of the trust and therefore, the claim of the complainant should have been considered on merits by the CIT(A). The Learned Authorised Representative further submitted that the Appellant has good case on merits as approval, dated 26/02/2024, had been granted by Commissioner Income Tax (Exemptions) Mumbai, whereby the delay in Form 10B was condoned by the CIT(A) in exercise of authority granted under Section 119(2)(b) of the Act. However, the CIT(A) had failed to take same into consideration while dismissing the appeal preferred by the Appellant.

4. The Departmental Representative supported the order passed by the CIT(A) whereby the CIT(A) had declined to condone the delay in filing appeal before the CIT(A). However, the Learned Departmental Representative could not controvert the factual averments made by the Learned Authorised Representative for the Appellant in relation to approval having been granted by the Commission of Income Tax (Exemptions), Mumbai, condoning delay in filing Form 10B.
5. We have considered the rival submissions and perused the material on record. Copy of the approval, dated 26/02/2024, granted by Commissioner Income Tax (Exemptions) Mumbai has been placed on record by the Appellant whereby the delay in filing Form 10B for the Assessment 2020–2021 has been condoned. Thus, the sole reason on the basis of which exemption claimed by the Appellant under Section 11 of the Act was denied no longer survives. Given the merits of the claim and the explanation given

by the Learned Authorised Representative of the Appellant regarding delay in filing the appeal before CIT(A), we hold that the Appellant was prevented by reasonable cause in filing appeal before the CIT(A). Therefore, taking into consideration the totality of facts and circumstances leading upto the filing of appeal before CIT(A), we hold that the CIT(A) was not correct in dismissing the appeal as being barred by limitation and ought to have condoned the delay in filing the appeal. We further note that despite holding that the appeal was barred by limitation, the CIT(A) had also adjudicated the grounds raised by the Appellant on merits. On perusal of the findings returned by the CIT(A) we find that the CIT(A) had failed to take into consideration the approval, dated 26/02/2024, granted by the Commission of Income Tax (Exemptions). We agree with the Learned Authorised Representative for the Appellant that since the delay in filing Form 10B stands condoned, the exemption claimed by the Appellant under Section 11 of the Act can no longer be denied. In view of the aforesaid, the order, dated 29/04/2024, passed by the CIT(A) is set aside, and the Assessing Officer is directed to grant exemption of INR 8,21,871/- as claimed by the Appellant under Section 11 of the Act. Accordingly, Ground No. 1 to 3 raised by the Appellant are allowed while Ground No. 4 is dismissed as being infructuous.

6. In result, in terms of paragraph 5 above, the present appeal preferred by the Assessee is partly allowed.

Order pronounced on 28 .08.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.08.2024
Patil, Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai