

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 2807/MUM/2024
Assessment Year: 2022-23**

Sha Hurgowan Anandji Desai
Charities,
18, Bhaskar Lane, Bhuleshwar,
Mumbai-400002.

Vs.

Dy. Director of Income-tax, CPC
Bengaluru,
Income Tax Officer Exemption
Ward 2(3),
6th floor, MTNL TE Building
Pedder Road,
Mumbai-400026.

**PAN NO. AAATS 0405 R
Appellant**

Respondent

Assessee by : Ms. Vasanti Patel, &
Mr. M.A. Gohel
Revenue by : Mr. Ashok Kumar Ambastha, Sr. DR

Date of Hearing : 24/07/2024
Date of pronouncement : 30/08/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the assessee against order dated 28.03.2024 passed by the Ld. Additional Commissioner of



Income-tax (Appeals) – Panchkula [in short ‘the Ld. CIT(A)’] for assessment year 2022-23, raising following grounds:

1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) [CIT(Appeals)] erred in confirming the denial! of benefits of Section 11 to the Appellant by the Deputy Director of Income Tax, Centralized Processing Centre, Bangalore (herein after referred to as the AO) on the grounds that the Appellant did not furnish Audit Report in Form 10-B within the prescribed time.*
2. *2. The learned CIT(Appeals) failed to appreciate that mere delayed filing of the Audit Report in Form 10-B cannot be fatal in as much as the benefits of Section 11 cannot be denied on this solitary ground. The learned CIT(Appeals) failed to appreciate the ratio of various judicial pronouncements in this behalf.*
3. *The learned CIT(Appeals) failed to appreciate that the requirement prescribed is merely procedural in nature. It is submitted that the Appellant has complied with the relevant provisions by furnishing the Return of Income and the Audit Report on 07.11.2022 i.e. within the extended due date. Accordingly, the benefits of Section 11 of the Act cannot be denied for alleged delay in filing the said Audit Report. Alternatively, such small! delay may kindly be condoned and the benefits of Section 11 be granted to the Appellant.*
4. *4. Without prejudice to the above, it is submitted that on the facts and in the circumstances of the case and in law, the learned CIT(Appeals) erred in confirming the adjustments resorted to by the learned AO while processing the Return of Income under Section 143(1) of the Act.*
5. *5. The learned AO erred in making huge adjustments aggregating to Rs.1,50,13,607/- under the Intimation issued under Section 143(1) of the Act resulting into a huge tax demand of Rs.74,10140/- without giving any opportunity of being heard to the Appellant Trust and thereby violating the principles of Natural Justice.*

2. Briefly stated facts of the case are that the assessee trust e-filed return of income for the assessment year under consideration on 07.02.2022 declaring total income at Rs.99,67,321/-. The return of income filed by the assessee was processed by the Ld. Dy. Director of Income-tax Centralized Processing Centre (CPC) Bangalore on 08.03.2023 under an intimation u/s 143(1) of the Income-tax Act, 1961 (in short ‘the Act’) and assessed the total



income at Rs.2,49,80,928/- by way of disallowing expenditure incurred/amount set aside and claimed as deduction u/s 11 of the Act amounting to Rs.78,13,607/- and also by adding Rs.72,00,000/- being amount accumulated/set aside u/s 11(2) of the Act on the ground that the assessee had not e-filed form No. 10B being audit report u/s 12A(1)(b) of the Act within the due date as specified. The extended due date of e-filing of Form No. 10B being audit report u/s 12A(1)(b) of the Act for the assessment year 2022-23 was 07.10.2022 and the assessee had e-filed Form No. 10B issued by the Chartered Accountant as on 07.11.2022, which is delayed by 31 days.

3. On further appeal, the Ld. CIT(A) has mainly upheld the disallowance for the reason that neither the Assessing Officer nor the Ld. CIT(A) was having any authority to condone the delay in filing the Form No. 10B. The Ld. CIT(A) has referred that under the Circular No. 03/2020 dated 03.01.2020 and Circular No. 16/2022 dated 19.07.2022 the power for condoning the delay has been delegated by the Central Board of Direct Taxes (CBDT) to the concerned Pr. Chief Commissioner/Chief Commissioner or Commissioner of Income-tax only.

4. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.



5. The Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 43. Before us, the Ld. counsel for the assessee has relied on the following decisions:

- i. **Association of Indian Panelboard Manufacture v. Dy. CIT [2023] 157 taxmann.com 550 (Gujarat)**
- ii. **Shree Bhairav Seva Samiti v. ITO (Exemption) [2023] 149 taxmann.com 478 (Mumbai-Trib.)**
- iii. **Gyandeep Charitable Trust v. A.D.I.T. in ITA No. 555/Ahd/2023 for assessment year 2021-22**
- iv. **A1 Jamia Mohammediyah Education Society Writ Petition No. 1689 of 2024**

6. We have heard rival submission of the parties and perused the relevant material on record. We find that the Assessing Officer CPC has made adjustment for the amount of expenditure claimed, amount accumulated and set apart for exemption u/s 11(2) of the Act for the sole reason that the Assessing Officer did not file the audit report prescribed in Form No. 10B of the Act on or before the due date. The said due date in the case of the assessee under the provisions of section 12A(1)(b) of the Act was 07.10.2022 however, the assessee has e-filed the said Form No. 10B on 07.11.2022 and thus , there was a delay of 31 days in filing such form on the Income-tax Portal. Therefore, the issue is merely for the condonation of the delay of the 31 days. We find that the Ld. CIT(A) has referred to Circular No. 16/2022 dated 19.07.2022 issued by the CBDT, wherein the CBDT invoking powers u/s 119(2)(b) of the Act delegated the power for condoning the delay to the Pr. Chief Commissioner/Chief Commissioner or Commissioner of Income-tax as the case may be. The relevant circular is reproduced as under:



"7.2 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-ITA-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."

6.2 The assessee stated that application for condonation of delay in filing Form No. 10B for the year under consideration was filed before the Commissioner of Income-tax (Exemption), Mumbai on 16.03.2023 and said application is still pending for disposal till date. However, we find that under the CBDT circular (supra) the concerned Commissioner of Income-tax is preferably required to dispose off the application within the three month of receipt of this application. Before us, the Ld. counsel for the assessee expressed



ignorance regarding disposal of the application of the assessee. In the facts and circumstances of the case, we feel it appropriate to set aside the order of lower authorities and restore the matter back to the file of the Assessing Officer for deciding afresh with directions to him to find out the status of application of the assessee for condonation of the delay filing form no. 10B. If the application of the assessee is not disposed, then, we also direct the concerned Commissioner of Income-tax (Exemption)/Director of income-tax (Exemption) to dispose off such application at earliest so that grievance of the assessee can be disposed off.

6.3 The Ld. Assessing Officer is directed to consider the claim of the assessee for exemption u/s 11 of the Act after taking into consideration decision of the concerned Commissioner of Income-tax (Exemption) on the application of the assessee for condonation of delay in filing the Form No. 10. It is needless to mention that the assessee shall provided adequate opportunity of being heard. The grounds raised by the assessee are accordingly allowed for statistical purposes.

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

Order pronounced in the open Court on 30/08/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER



Mumbai;
Dated: 30/08/2024
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