

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

श्री महावीरसिंह, उपाध्यक्ष एवं श्री एस.आर.रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI S.R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1095/CHNY/2024

निर्धारण वर्ष/Assessment Year:2018-19

M/s. Susila Educational Trust,
No.6, Nepal Street,
Kallakurichi H.O.,
Kallakurichi,
Villupuram – 606 202.

The Income Tax Officer
Vs. (Exemptions),
Ward 1,
Chennai.

PAN: AAETS 8733L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Ms. Pavithra Mucherla, CA

प्रत्यर्थी की ओर से/Respondent by

: Ms. R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 22.08.2024

घोषणा की तारीख/Date of Pronouncement

: 30.08.2024

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi in Order No. ITBA/NFAC/S/250/2023-24/1061342157 (1) dated 22.02.2024. The assessment was framed by the Assessing Officer, National e-Assessment Centre, Delhi for the assessment year

2018-19 u/s.143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 22.04.2021.

2. The only issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC confirming the action of AO in disallowing the claim of exemption u/s.11 of the Act while framing assessment u/s.143(3) r.w.s. 144B of the Act, for the reason that the return of income filed by the assessee is beyond the time limit prescribed u/s.139(1) of the Act. For this, assessee has raised various grounds which are factual, argumentative and hence, need not be reproduced.

3. Brief facts of the case are that the assessee filed e-return of income on 09.02.2019 for the relevant assessment year 2018-19 in Form No. 7 ITR declaring total income at 'nil' after claiming exemption u/s.11 of the Act. The return of income was processed u/s.143(1) of the Act and the accounts of the assessee are audited u/s.12A(b) of the Act and claim was made in audit report in Form No.10B. Subsequently, the assessee's case was selected for scrutiny assessment through CASS for verification of expenditure for charitable/religious purposes and accordingly, notice u/s.143(2) of the Act was issued on 22.09.2019. The assessee submitted details,

documents in respect to notice issued u/s.142(1) of the Act. The AO after verification from the details and documents uploaded by the assessee trust, noted that the assessee trust has declared income from aggregate receipts excluding voluntary contribution of Rs.79,92,658/- and after application of income of Rs.68,60,701/-, balance of Rs.79,92,658/- was claimed as exempt u/s.11, resultant total income was declared at 'nil'. The AO noted that the return of income for the relevant assessment year 2018-19 was filed on 09.02.2019 i.e., beyond the time limit prescribed u/s.139(1) of the Act and hence, according to AO, the assessee is not eligible for claim of exemption u/s.11 of the Act. The AO noted his reasoning in para 6 as under:-

“6. The reply of the assessee is duly considered. The assessee having services of professional such as Chartered Accountant to do the ITR & Audit Work. The assessee if was not unable to do work with his hand, he could take the help of other accountants or professional to complete the work. The trustee should have given the details to chartered accountant who in turn could file the ITR. It was not necessary that the ITR could be filed only when the trustee himself do this. The ITR must be filed within the due dates as decided by the Hon'ble Parliament of India. Thus, the assessee failed to justify not filing the ITR within stipulated time limits as per law. The reason that there was pain in the right hand of the trustee and due to that the ITR could not be filed within stipulated time is not tenable. The time limit to file the ITR as per S.139(4A) is same as per S.139(1) of the Act. Thus the assessee failed to file the ITR within the time stipulated u/s 139(1) of the Act for A Y 2018-19. The ITR was filed beyond the time allowed u/s 139(1) as required u/s. 12(A)(ba) of the Act. In view of the provisions aforementioned, the assessee trust is not eligible for exemption u/s.11 & 12 of the IT Act 1961 as the ITR was not e-filed on or before due dates. Accordingly, the income of Rs.79,92,658/- added back to the total

income as computed and disallowed the claim of exemption under section 11 and 12 of the Income-tax Act 1961 for failure to adhere to the provision of Section 12(A)(1)(b) of the Income-tax Act 1961 for the AY 2018-19. I am also satisfied that this is a fit case for imposition of penalty u/s 270A of the Income Tax Act, 1961 because assessee has under reported income within the meaning of Section 270A(2)(a) of Income-tax Act, 1961.”

Accordingly, the AO disallowed the claim of exemption u/s.11 of the Act. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, assessee came in appeal before the Tribunal.

4. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.AR for the assessee Ms.Pavithra Mucherla, Chartered Accountant, made argument that the only reason for disallowance of claim of exemption u/s.11 of the Act was that return of income was filed belatedly but within the time stipulated u/s.139(4) of the Act. She admitted that this return was not filed within the prescribed time u/s.139(1) of the Act. She stated that the relevant assessment year involved is 2018-19 and the return of income was filed as e-return on 09.02.2019 along with audit report in Form No.10B as required u/s.12A(b) of the Act. She stated that the entire details for claim of exemption u/s.11 of the Act was filed before the AO. She further stated that the CIT(A) has relied on the Finance Act, 2017 wherein the provisions of section 12A

& 12AA of the Act was amended and according to CIT(A), the Finance Act, 2017 has put two more additional conditions which provides for mandatory filing of return within the time allowed as third condition u/s.12 of the Act. The CIT(A) reproduced the amended provision which are applicable from 01.04.2018 i.e. for and from AY 2018-19 and the relevant reads as under:-

“ The Amended Provisions

1.3.1 The relevant provision as proposed to be inserted is as follows :“ In section 12A of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2018 - (i) After clause (aa), the following clause shall be inserted, namely:

“(ab)”, the person in receipt of the income has made an application for registration of the trust or institution, in a case where a trust or an institution has been granted registration under section 12AA or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No. 2) Act, 1996], and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and such trust or institution is registered under section 12AA.”

4.1 The Id.AR further stated that the CIT(A) interpreted the provision of section 12A(1)(b)(ii) that the assessee for claiming exemption u/s.11 has to furnish return of income u/s.139(4A) of the Act and the CIT(A) referred the relevant provision as under:-

“(ii) After clause (b), the following clause shall be inserted, namely: - (ba) the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section.”

4.2 The Id.AR narrated that the CIT(A) simpliciter relied on the above provision. She also narrated that the CIT(A) has gone through the provisions of section 139(4A) of the Act and the relevant provision reads as under:-

Provisions of Section 139(4A) read as under:

"(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1),"

4.3 The Id.AR argued that the CIT(A) failed to consider Circular No.2/2018 issued vide F.No.370142/15/2017-TPL dated 15.02.2018 explaining Finance Act, 2017 and the explanatory notes to the provisions of the Finance Act, 2017 and subsequent clarification issues by CBDT in F.No.173/193/2019-ITA-I dated 23.04.2019 with reference to time allowed for filing of return of income, subsequent to insertion of clause (ba) in sub-section 1 of section 12A of the Act. She produced the relevant copy of Circular No.2/2018, wherein the Explanatory notes to the provisions of Finance Act, 2017 was explained as under:-

“15.4 Further, as per the provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there was no clarity as to whether the said return of income was to be filed within time allowed under section 139 or otherwise.

15.5 In order to provide clarity in this regard, further amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act.”

In view of the above excerpts of Finance Act, 2017 explaining the provisions of Finance Act, 2017 by the CBDT, clarified that amendment to section 12A of the Act was made so as to provide additional condition that the person in respect of income chargeable to income-tax claiming exemption shall furnish return of income within the time allowed u/s.139 of the Act. She stated that the assessee's case is squarely covered by the CBDT Circular No.2/2018 dated 15.02.2018.

5. We noted that even in regard to representation received by CBDT for the applicability of amended provisions of section 12AA of the Act for filing of return required u/s.139(4A) of the Act, CBDT referring the Finance Bill, 2017 has clarified vide F.No.173/193/2019-ITA-1 dated 23.04.2019 as under:-

*F.No. 173/193/2019-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, 23 April, 2019

*To,
The Pr. DGIT (Systems),
New Delhi.*

Subject : Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in sub-section 1 of section 12A of the income-tax Act , 1961.

Sir,

Undersigned is directed to refer to the representation(s) received on above mentioned subject stating that while processing of ITR-7 for the A.Y. 2018-19, in respect of the belated returns filed u/ s 139(4) of the Income Tax Act, 1961 (Act), the following is being communicated u/s 143(1)(a) of the Act:-

“As per section 12A(1)(ba) of the Income -tax Act , 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise the exemption u/s-11 i.e. sr. no 4(i) and 4 viii in schedule Part BTI is not allowed.”

Based on this, exemption u/s 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

“as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/ s 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so

as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 201 8-19 and subsequent years.”

3. Additionally, an excerpt of circular 02/2018 dated 15.02.2018 “Explanatory Notes to the Provisions of the Finance Act, 2017” on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

“the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income -tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income -tax Act.”

3. Thus, for a trust registered u/s 12AA of the Act to avail the benefit of exemption u/s 11 shall inter-alia file its return of income within the time allowed u/s 139 of the Act. Accordingly, orders u/s 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified.

This issues with the approval of Chairman(CBDT).

(Vinay Sheel Gautam)

JCIT (OSD) (ITA-I)

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Copy to:-

The Pr. CCIT(Exemptions), New Delhi.

5.1 From the above communication, it is clear that CBDT has taken a conscious decision and finally agreed for the position that trust registered u/s.12AA of the Act, in order to avail the benefit of exemption u/s.11 of the Act shall inter-alia files its return of income within the time allowed u/s.139(1) of the Act. The CBDT has categorically directed the Assessing Officers and this clarification was issued to the Pr.DGIT(Systems), New Delhi that the orders issued u/s.143(1A) of the Act in the case where already disallowance were carried out, those may be rectified. Hence, the CBDT itself accepted the position that even returns filed u/s.139 is to be accepted. It means that it has enlarged its scope of section 139 of the Act, which includes provisions of section 139(4) also. Here provision of section 139(4) w.e.f. 01.04.2017 lays down that any person who has not furnished return of income within the time allowed u/s.139(1) of the Act, may furnish the return for any previous year at any time before the end of the relevant financial year or before the completion of assessment whichever is earlier. Here, in the present case, the assessee has filed return of income for the relevant assessment year 2018-19 on 09.02.2019 and here assessment year ends on 31.03.2019. It means, this return is filed within the provision of section 139(4) of the Act. In term of section 139(4) of the Act, a return filed at a belated stage but upon complying with the

requirement of such provision, has to be treated as return of income. In the present case, the CBDT has already clarified vide F.No.173/193/2019-ITA-I dated 23.04.2019, which is reproduced above that the assessee is entitled for exemption u/s.11 of the Act, if such return of income is filed within the time allowed u/s.139 of the Act. It means that it covers all the provisions of section 139 of the Act and it is not limited to section 139(1) of the Act. Hence, we allow the appeal of assessee and direct the AO to allow exemption u/s.11 of the Act in this case of the assessee.

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

Order pronounced in the open court on 30th August, 2024 at Chennai.

Sd/-

(एस.आर. रघुनाथा)

(S.R. RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 30th August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT