

| आयकरअपीलीयअधिकरणन्यायपीठ,मुंबई|
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No.1142/Mum/2024
(Assessment Year:2017-18)

Suresh Shroff Memorial Trust, 4 th Floor, 41/42, Lloyds Centre Point, Appa Saheb Marathe Marg Prabhadevi, Mumbai-400025 [PAN: AADTS7750E]	Vs	ITO Exem. Ward2(3), Mumbai
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Paras Savla
Revenue by :	Shri Ashok Kumar Ambastha

सुनवाई की तारीख/Date of Hearing : 12.09.2024
घोषणा की तारीख /Date of Pronouncement: 17.09.2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM

This appeal by the assessee is preferred against the order of Addl./JCIT(A)-1, Vadodara dated 23.01.2024 pertaining to Assessment Year 2017-18.

2. The grievance of the assessee reads as under:-

"1. That CIT(Appeals) erred on facts and in law in confirming the action of the Central Processing Centre (CPC) in passing the intimation dated 26.03.2019 under Section 143(1) of the Income tax Act, 1961 (the Act') for the relevant AY 2017-18 whereby income of the Appellant has been computed at Rs. 98,45,058/- as against NIL income returned by the Appellant.

1.1 That CIT(Appeals) erred on facts and in law in passing the order in undue hurry and in gross violation of principles of natural justice since no proper opportunity of being heard, much less for personal hearing, was provided to the Appellant.

2. That CIT(Appeals) erred on facts and in law in upholding the adjustment made by CPC in denying complete exemption of Rs 98,45,058/- claimed by the Appellant under Section 11 of the Act on the ground that the prescribed Form No. 10 was not furnished before the due date of furnishing return of income under Section 139(1) of the Act.

2.1 That the CIT(Appeals) erred on facts and in law in not appreciating that the Appellant's claim of exemption could not have been denied since such claim was admittedly made in the revised return filed under Section 139(5) of the Act, which substitutes the original return of income under Section 139(1) of the Act.

2.2 Without prejudice, the CIT(Appeals) failed to appreciate that no adjustment was warranted in the present case as the issue of denying exemption under Section 11 of the Act in case of procedural lapse of delay in filing of Form-10 by way of revised return was clearly debatable in nature and hence, beyond the jurisdiction vested with CPC under Section 143(1) of the Act.

2.3 Without prejudice, the CIT(Appeals) further failed consider that there were sufficient bonafide reasons which led to such delay in filing of Form-10, and the Appellant had already filed necessary condonation application with CIT(Exemption), wherein delay is expected to be condoned as similar delay has been condoned in respect of filing of Form-10B for the same AY 2017-18."

3. Having heard the rival submissions, we have carefully perused the orders of the authorities below. The reasons for denying the claim of exemption is that Form 10 was not filed on or before the due date of filing of return u/s.139(1) of the Act alongwith audit report.

4. While filing the appeal before the CIT(A), the assessee also filed application for condonation of delay in filing Form 10B before the CIT(Exemption) as the CIT had powers to condone the delay u/s.119(2)(b) of the Act.

5. The assessment was confirmed by the CIT(A) and thereafter, the assessee received the orders condoning the delay in filing Form 10 which is placed before us.

6. We have carefully gone through the orders of the CIT(Exemption) dated 05/03/2021 and 08/08/2024. We find that by the impugned orders the CIT(Exemption) has condoned the delay, therefore, we deem it fit to restore the issues to the files of the AO with a direction to

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decide the issues afresh after considering the orders of the CIT(Exemption) condoning the delay.

7. Appeal is allowed for statistical purposes.

Order pronounced in the Court on 17th September, 2024 at Mumbai.

Sd/-

**(RAHUL CHAUDHARY)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated: 17/09/2024
Karuna, Sr. Ps.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीयप्रतिनिधि , आयकरअपीलीयअधिकरण, मुंबई/DR,ITAT, Mumbai,
6. गार्ड फाई/Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai