

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 177/Ind/2024
Assessment Year: 2018-19

Dy. CIT(Exemption), Bhopal	<u>बनाम/</u> Vs.	Indus Education and Research Institute, Govind Dham, Civil Lines, Raipur, Chhatisgarh
(Assessee/Appellant)		(Revenue/Respondent)
PAN: AAATI4168H		
Assessee by	Shri Sunil Agrawal, AR	
Revenue by	Shri Ram Kumar Yadav, CIT DR	
Date of Hearing	10.09.2024	
Date of Pronouncement	24.09.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 02.01.2024 passed by learned Commissioner of Income-Tax (Appeals)-Addl/JCIT(A)-12, Mumbai ["CIT(A)"] which in turn arises out of intimation of assessment dated 10.11.2019 passed by CPC, Bangalore ["AO"] u/s 143(1) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2018-19, the revenue has filed this appeal on following grounds:

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- "1. Whether on the facts and in the circumstances of the case and in law, the Ld. Addl/Jt. CIT(A) has erred in allowing the delayed filing of Audit Report in Form 10B by the assessee when Section 12A(1)(b) of the Income-tax Act, 1961, explicitly directs that the Audit Reports shall be filed along with ITR. In the instant case, the ITR was filed on 28.09.2018 and Form 10B was filed on 29.10.2018.
2. Whether on the facts and in the circumstances of the case and in law, the Ld. Addl/ Jt. CIT(A) has erred in interpreting the timeline extension done by CBDT from 18.10.2018 to 31.10.2018, as even though the dates for filing of ITR and Audit Reports had been extended, the Audit Report was to be filed before or alongwith the ITR as per Section 12A(1)(b) of the Income-tax Act, 1961.

2. The background facts leading to present appeal are such that the assessee, a charitable institution, filed return of income on 28.09.2018 declaring total income of Rs. Nil after claiming exemption u/s 11. Thereafter, the assessee filed audit report in Form No. 10B on 05.10.2018. The assessee's return was processed by AO vide intimation dated 10.11.2019 u/s 143(1) wherein the exemption claimed by assessee u/s 11 was denied on account of non-filing of auditor's report before filing return of income and accordingly total income was determined at Rs. 21,70,45,973/-. Aggrieved, the assessee carried matter in first-appeal.

3. During first-appeal, the CIT(A) passed following order granting relief to assessee:

"Decision and Reasons –

3. Ground no. 1 & 2 – The sole ground taken by the appellant is that the AO has erred in denying exemption of Rs. 21,70,45,973/- u/s 11 on account of late filing

of audit report in form 10B.

3.1. It may not be out of place mentioned that the appellant is **also in appeal before the Ld. CIT (NFAC), Delhi and several grounds have been taken by the appellant before the Ld. CIT(A).**

3.2. However, the **ground taken before the undersigned** is regarding denial of exemption u/s 11 on account of late filing of audit report in form 10B and this ground has not been taken before the **CIT (A) NAFC, Delhi.**

3.3. The appellant was requested to confirm whether appeal has been **disposed** of by the learned CIT(A) and submit reply on or before 16.10.2023 failing which orders in appeal before the undersigned will be disposed of on merits.

3.4. However, the appellant has not **bothered to either reply or inform** whether CIT(A) NFAC, Delhi has disposed of the appeal before him.

3.5. Since the ground taken by the appellant before the undersigned is **only** regarding denial of exemption u/s 11, the matter is being disposed of on merits.

3.6. The order of the CPC dated 10.11.2019 was perused and it was seen that CPC had denied claim of exemption to the appellant due to **late filing audit report in form 10B.**

3.7. In the relevant A.Y. form 10B had to be filed before one month prior to the date of filing return u/s 139(1). However, the CBDT had further extended the date of filing ITR and audit reports for the A.Y. 2018-19 from **15th October to 31st October 2018 as under:**

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(ANADI DIXIT)
Dy. Commissioner of Income Tax (Exemption)
BHOPAL

AAATN168F: INDUS EDUCATION AND RESEARCH INSTITUTE
A.Y. 2018-19
ITSA/APUS/260/2023-24/1059274063(1)

New Delhi, 8th October, 2018

PRESS RELEASE

CBDT further extends date for filing Income Tax Returns and Audit Reports

The due date for filing of Income Tax Returns and Audit Reports for Assessment Year 2018-19 is 30th September, 2018 for certain categories of taxpayers. Central Board of Direct Taxes (CBDT) had earlier extended the date for filing of Income Tax Returns and various reports of Audit to 15th October, 2018. Upon consideration of representations from various stakeholders, CBDT further extends the 'due date' for filing of Income Tax Returns as well as reports of Audit (which were required to be filed by the said specified date) from 15th October, 2018 to **31st October, 2018** in respect of the said categories of taxpayers. However, as specified in earlier order dated 24.09.2018, assessee filing their return of income within the extended due date shall be liable for levy of interest as per provisions of section 234A of the Income-tax Act, 1961.

(Surabhi Ahluwalia)
Commissioner of Income Tax
(Media & Technical Policy)
Official Spokesperson, CBDT.

3.8. The appellant had filed the 10B on 29.10.2018 which is well within the extended time granted by the CBDT by the above Press Release.

3.9. Therefore, the appellant is entitled to claim exemption u/s 11 and the order u/s 143(1) of CPC deserves to be amended to this extent.

3.10. Again, at the cost of repetition it is mentioned that 143(3) orders have been passed by the NFAC, Delhi and the appellant is before CIT(A) NFAC on various grounds. The income assessed u/s 143(3) prevails over the income determined/ processed u/s 143(1) as 143(3) is a scrutiny assessment while 143(1) is a summary assessment without calling the appellant.

3.11. The matter of late filing of audit report was laid to rest by Press Release dated 08.10.2018 and therefore, the appeal is allowed for statistical purposes as 143(3) r.w.s. 144B has already been passed in case of the appellant.

4. In the result, the appeal of the appellant is allowed for statistical purposes.

TRUE COPY

(ANAD MEXIT)
Dy. Commissioner of Income Tax (Exemption)

4. Aggrieved by order of CIT(A), the revenue has come in this appeal.

5. We have heard learned Representatives of both sides and carefully perused the above order passed by CIT(A). We find that the CIT(A) has granted relief to assessee on following reasonings which is very much valid:

(i) The first reasoning given by CIT(A) in Para No. 3.7 to 3.9 of his order is such that the audit report in Form No. 10B filed by assessee on 29.10.2018 (correct date is 05.10.2018) was well within extended time as per Press Release dated 08.10.2018 issued by CBDT. This apart, we may also mention here that the ITAT, Indore has consistently held in several decisions that the requirement of filing audit-report alongwith return of income is one of the conditions for claiming benefit of exemption u/s 11/12 but it is a procedural-cum-directory requirement and even if the report is subsequently filed to AO, the exemption u/s 11 can't be denied. Some of the decisions are:

(a) ITAT, Indore - Indore Contract Bridge Association Vs. CPC, Bangalore in ITA No. 403/Ind/2022 order dated 18.04.2023

(b) ITAT, Indore - Navratna Sukrat Foundation Vs. CPC, Bangalore, ITA No. 390/Ind/2022 dated 21.04.2023

(c) ITAT, Indore - DCIT Vs. Shri Vaishnav Polytechnic College, Indore ITA No. 469/Ind/2018 order dated 06.11.2020

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- (d) ITAT, Jodhpur - ITO, Exemption Ward Vs. Society for Education Conscientisation Awareness & Training, ITA No. 461/Jodh/2018 dated 06.05.2019
- (e) ITAT, Ahmedabad - Puravanchal Lokhit Mandal Vs. ITO, Exemption Ward, Vadodara, ITA No. 966/Ahd/2019, dated 30.11.2022
- (f) ITAT, Ahmedabad - Hari Gyan Pracharak Trust Vs. DCIT, CPC, Bangalore in ITA No. 245/Ahd/2021 order dated 16.06.2023
- (g) Hon'ble Gujrat High Court - Sarvodaya Charitable Trust Vs. ITO, Exemption (2021) 125 taxmann.com 75 (Gujrat)
- (h) Hon'ble Gujrat High Court - Indian Panel Board Manufacturer Vs. DCIT Tax Appeal No. 655 of 2022 dated 21.03.2023.
- (ii) The second reasoning given by CIT(A) in Para No. 3.10 of his order is such that after passing intimation u/s 143(1), the department has passed scrutiny assessment-order u/s 143(3) and the income assessed in scrutiny-assessment prevails over the income assessed u/s 143(1). We may mention here that the assessee has filed copy of scrutiny assessment-order dated 26.04.2021 passed by AO u/s 143(3) wherein the AO has himself allowed exemption u/s 11 claimed by assessee taking into account the very same Form No. 10B filed by assessee with the only modification that a disallowance/addition of Rs. 2,68,20,000/- has been made on account of violation of section 13(3).

6. Therefore, we do not find any infirmity or error in the order passed by CIT(A). Consequently, the same is hereby upheld and the revenue's appeal is dismissed being devoid of any merit.

7. Resultantly, this appeal is dismissed.

Order pronounced in open court on 24.09.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 24.09.2024
CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore