

IN THE INCOME TAX APPELLATE TRIBUNAL, "E" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
ITA No. 4067/MUM/2024
(A.Y.2022-23)

St. Thomas High School, 1 Church Road, Goregaon (E), Mumbai.-400063	Vs.	ITO- ward-2(3), 6 th Floor, MTNL TE Bldg, Pedder Road, Dr. Gopalrao Deshmukh Marg, Cumballa Hill Mumbai-400026.
PAN/GIR No. AABTS9310C		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Johnson Paucose.AR
Revenue by	Shri Biswanath Das.CIT DR

सुनवाई की तारीख/Date of Hearing	25.09.2024
घोषणा की तारीख/Date of Pronouncement	27.09.2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the assessee against the order of National Faceless Appeal Centre(NFAC) Delhi / CIT(A) passed u/sec 143(1) and u/sec 250 of the Act. The assessee has raised the following grounds of appeal:

I. DENIAL OF BENEFITS OF SECTION 11 OF THE ACT:

1.1.] On the facts and in the circumstances of the case and in law, the Learned Additional/Joint Commissioner of Income-tax (Appeals), Mysore (hereinafter referred to as 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

1.2.] 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.

1.3.] 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 audit report in Form No. 10B on 05.11.2022 along with the return of income. The return had been filed on 05.11.2022 i.e. within the extended due date as per the CBDT circular No. 20/2022 dated 26.10.2022 vide which the due date had been extended from 31.10.2022 to 07.11.2022 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.

II. ADJUSTMENT MADE UNDER SECTION 143(1) OF THE ACT IS INVALID:

2.1.] 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.

2.2 The Ld. AO erred in making huge adjustments aggregating to Rs. 10,51,29,597/- under the intimation issued u/s 143(1) of the Act resulting into a huge tax demand of Rs. 5,21,55,860/- (including interest) after adjusting the Tax Refund of Rs. 5,81,925/- without giving any opportunity of being heard to the appellant Trust and thereby violating the principles of Natural justice.

The appellant prays that the additions made to the income may kindly be deleted as the same is unwarranted, unjustified and contrary to the principles of natural justices and the benefits of Sec. 11 be restored.

The appellant thereby craves the leave to add to, alter or amplified the aforesaid grounds of appeal, which are independent of each other, as and when the need arised at the time of hearing.

2. The brief facts of the case are that, the assessee is a public trust registered under the Maharashtra Public Trust Act, 1950 and also registered u/sec 12AB of the Income Tax Act. The assessee has filed the return of income for the A.Y 2022-23 on 07.11.2022 disclosing a total income of Rs.2,07,551/- after claiming exemption u/sec 11 of the Act and the return of income was processed u/sec 143(1) of the Act on 08.03.2023 determining the total income of Rs.10,53,37,148/- by disallowing the claim of exemption u/sec 11 & u/sec11(2) of the Act.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee and findings of the AO and observed that the assessee has filed the return of income claiming exemption u/s 11 of the Act, whereas the Form 10B was filed on 5.11.2022 beyond the extended due date of 7.10.2022 for A.Y. 2022-23. Since there is a delay of 29 days in filing the audit report in Form 10B by the assessee, a petition for condonation of delay in filling Form.No.10B was filed with the office of

CIT(Exemptions) on 16.03.2023 for adjudication. Therefore the CIT(A) considering these facts and circumstances has dismissed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time hearing, the Ld.AR submitted that the CIT(A) has erred in not considering the facts on merits and submissions on the delay. Whereas the assessee has applied for condonation of delay in filing the Form.No 10B under section 119(2)(b) of the Act with the CIT(E) and there is a delay of 29 days in filling the Form.NO.10B and the Ld.AR prayed for allowing the assessee appeal. Per Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material on record. The sole grievance of the assessee that the CIT(A) has erred in not considering the facts on the delay in filling the Audit report in Form,No,10B and confirming the action of the A.O. The Ld.AR submitted that the assessee has applied for condonation of delay in filing the Form. No 10B under section 119(2)(b) of the Act with the office of CIT(Exemptions) on 16.03.2023. Whereas the assessee has filed Form. No. 10B on 5.11.2022 beyond the extended due date of 7.10.2022 for A.Y. 2022-23. We considering the facts, circumstances and the principles of natural justice set aside the order of the CIT(A) and restore the entire disputed issues to the file of the Assessing Officer to consider the outcome of condonation of delay

application filed by the assessee with the CIT(Exemptions) and adjudicate afresh on merits and the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and we allow the grounds of appeal of the assessee for statistical purposes.

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

Order pronounced in the open court on 27.09.2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER
Mumbai, Dated: 27/09/2024

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai.