

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.1423/Bang/2024
Assessment Years : 2016-17

M/s SSSS and SPAS Punyakshetra Temple Trust, #1, Neelathalli, Kothagere Hobli, Kunigal, Tumkuar – 572 130. PAN – AASTS 3825 P	Vs.	The Income Tax Officer, Exemptions, Ward – 3, Bengaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaiana Bhatia, C.A
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	10.09.2024
Date of Pronouncement	:	19.09.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the Addl/JCIT (A)-5, Mumbai dated 28/08/2024 in DIN No. ITBA/APL/S/250/2024-25/1066171446(1) for the assessment year 2021-22.

2. In the present case, the assessee filed return of income dated 15/3/2022 along with audit report in Form 10B which was supposed to be filed prior to one month to the date of return filing i.e. 15/02/2022. Therefore, the exemption claimed by the assessee u/s 11 of the Act in

the absence of audit report was denied in the intimation generated u/s 143(1) of the Act. On appeal, the Id. CIT(A) also confirmed the same.

3. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

4. The Id. AR before us contended that filing of the audit report on Form 10B is directory in nature and not mandatory. Furthermore, the audit report was filed along with the return of income much before the date of intimation processed u/s 143(1) of the Act, therefore, the assessee should be allowed exemption u/s 11 of the Act.

5. On the other hand, the Id. DR vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that this Tribunal in the identical facts and circumstances in the case of Gopala Gowda Shanthaveri Memorial Hospital Trust in ITA number 921/Bang/2024 has condoned the delay in filing Form 10B prescribed under the Act. The relevant extract of the order cited above is reproduced as under:

5. After considering the rival submission we observe that CBDT vide its circular no-19/2021 has delegated the power to condone the filing of audit reports with the concerned CIT(E). In the case at hand the assessee has duly filed an application praying to condone the delay, but remain unsuccessful. Now the issues which require consideration is a) whether non filing of any of Form 10B, would vitiate the entitlement of assessee for the benefits of section 11 and 12 b) whether AO can tax the entire receipts in such a situation. In respect of first issue, we find that recently the Ahmadabad Bench of the ITAT in the case of Gagan Deep Charitable Trust in ITA Number 555/Ahd/ 2023 has held that filing of Form 10B report is a mere a procedural lapse. We are conscious that decision of Gagan Deep is rendered by SMC Bench. However the SMC

Bench in turn has followed the decisions of Division Benches of the Ahmadabad in the cases of Hari Gyan Parcharak Trust ITA No 252/Ahd/2021 & Shir Visha Oswal Jain Sewa ITA no 59/Ahd/2022.

6. We think it appropriate to quote the observation made by Ahmadabad ITAT in the case of Hari Gyan Pracharak(Supra).

“7. We have carefully considered the order passed by the authorities below and the judgment passed by the Hon'ble Jurisdictional High Court in case of Association of Indian Panelboard Manufacturer (supra) on the issue involved. While passing order in favour of the assessee, the Hon'ble Jurisdictional High Court has been pleased to observe as follows:

“5.6 The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy. 5.7 The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.

6. The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.

6.1 The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report along with return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.

6.2 Accordingly the substantial questions of law have to be decided in favor of the appellant.

7. They are accordingly decided. The appeal is allowed.”

8. In view of the ratio laid down by the Hon'ble Jurisdictional High Court holding that non filing of Audit Report along with return of income is a procedural omission and cannot be an impediment in law in claiming the exemption, we allow this appeal condoning the delay in filing the Audit Report in Form No. 10B. However, we also upon condoning the delay, restore the matter to the file of the Ld. CIT(A) to pass order in regard to the exemption claimed by the assessee strictly in accordance with law”

7. Perusal of the above decision would show that coordinate Bench of Ahmedabad in the case of Hari Gyan Prachark has followed the verdict of Hon'ble Gujrata High Court, in the case of Association of Indian Panelboard Manufacturer Tax Appeal No. 655 of 2022. No contrary decisions has been brought to the notice of Bench by the Ld DR. Hence, respectfully following the above view we hereby condone the delay for filing Form 10B in the impugned case.

8. With respect to the issue of taxing of entire receipt, due to procedural lapse it is worthy to note that the coordinate bench in the case of HVM Educational Cultural & Social Trust v. ITO – ITA No. 9/Bang/2023 has held that only income portion net-off all the expenses is to be taxed not the entire receipt.

9. In view of the above, we hereby condone the delay in respect of filing the Form 10B and restored the matter to CIT(A) to allow the benefits of section 11 in accordance with law.

7.1 Respectfully, following the order of the Tribunal cited above, we condone the delay in filing the Form 10B by the assessee and accordingly hold that the assessee is eligible for exemption under section 11 of the Act subject to the compliance of the provisions contained therein. As such we note that, the authorities below have not verified the relevant form 10B filed by the assessee belatedly. Accordingly, we set aside the finding of the Id. CIT-A and direct the AO to allow the benefit of exemption to the assessee after necessary verification as per the provisions of law. Hence the ground of appeal of the assessee is partly allowed for statistical purposes.

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

Order pronounced in court on 19th day of September, 2024

Sd/-

(SUNDARARAJAN K)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 19th September, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore