

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 1697/DEL/2024 [A.Y 2019-20]

Ujagar Research Foundation
C -7, Bindapur Extension
Uttam Nagar, New Delhi

Vs.

The Income-tax Officer
Ward - 43(1), Delhi

PAN: AAATU 6570 F

(Applicant)

(Respondent)

Assessee By : Shri R.K. Gaur, CA

Department By : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 08.10.2024

Date of Pronouncement : 11.10.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
NFAC, Delhi dated 12.02.2024 pertaining to A.Y 2019-20.

2. The grievances of the assessee read as under:

"1. On the facts and circumstances of the case learned NFAC, JCIT (A) erred in confirming the LD AO's view of disallowing the application of income on the pretext of non-filing of form 10B before filing of return as it is a provision requiring furnishing of form 10B (Audit Report) is procedural in nature and assessee had filed Audit report before filing the revised return of Income, which was much before initiating the assessment by LD AO.

2 On the facts and circumstances of the case learned NFAC, JCIT (A) erred in upholding AO's version of rejecting the claim of application and treating the same to be the income as application of income declared in the return of income in form 7 is in any case an expenditure.

3 On the facts and circumstances of the case learned NFAC, JCIT (A) has erred in aligning with AO not considering the fact that the assessee was misinformed by a professional without any fault on his part.

4 Learned NFAC, JCIT (A) has erred in law and on facts in not giving proper opportunity to the Assessee to be heard

5 Learned NFAC, JCIT(A) wrongly did not allowed the condonation on delay in filing audit report.

6 On the facts and circumstances of the case and in law, the order of the learned NFAC, JCIT (A) is bad in law and is against the tenets of natural justice liable to be quashed.

7 The appellant craves to add, alter, modify or delete any ground of appeal during the pendency of appeal.”

3. Briefly stated, the facts of the case are that the assessee is a trust, engaged in the business of social services and filed its original Return of Income for the A.Y 2019-20 under consideration on 30.09.2019 declaring total income at Rs. 50/-. Thereafter, the assessee received notice of infirmity that Form No. 10B which was required to be filed, was not filed.

4. The assessee filed a revised return of income on 06.01.2020 but did not file Form No. 10B. The return was processed u/s 143(1) determining the income at Rs 14,78,650/- by denying the benefit of section 11 and 12 of the I T Act.

5. The main reason for disallowing the application of income is that the audit report was not filed alongwith Form No. 10B with the return of income but was filed on 09.06.2020.

6. The assessee preferred an appeal before the ld. CIT(A) and explained that the audit report and Form 10B was obtained by the assessee much before the filing of return of income and since the audit report has been obtained prior to the filing of the return, the Assessing Officer was not justified in disallowing the application of income.

7. After considering the facts and submissions, the ld. CIT(A) held that the Form 10B has been filed after five months of its filing the return, which was not filed within the time frame outlined in the Act. Relying on CBDT Circulars and section 119(2)(b), the ld. CIT(A) dismissed the appeal of the assessee. The CIT(A) held that u/s 119(2)(b) of the Act, the Assessing Officer/ld. CIT(A) do not have authority to grant condonation for the delay in filing Form No. 10B.

8. We have given thoughtful consideration of the findings of the ld. CIT(A). The undisputed fact is that the assessee has obtained audit report alongwith Form 10B prior to filing of return of income. The CBDT vide Circular 3/2020 dated 03.01.2020 and Circular 16/2022 dated 19.07.2022 have mandated condonation of delay upto 365 days for delay in filing Form 10B for AY 2018-19 or for any subsequent AYs.

9. In the light of above discussion, we direct the Assessing Officer to admit the audit report with Form 10B and decide the issue afresh as per provisions of law. In that view of the matter, in the interest of justice and fair play, we restore the issue to the file of the Assessing Officer. The assessee is directed to furnish the original documents for verification and the Assessing Officer is directed to examine the same and decide the issue as per the provisions of law after affording reasonable and sufficient opportunity of being heard to the assessee.

10. In the result, the appeal of the assessee in ITA No. 1697/DEL/2024 is allowed for statistical purposes.

The order is pronounced in the open court on 11.10.2024.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]
ACCOUNTANT MEMBER**

Dated: 11th OCTOBER, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	