

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: VIRTUAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 328/Chd/2024
निर्धारण वर्ष / Assessment Year : 2020-21

Mahaprabhu Ram Mulkh Hi-Tech Education Society Yog Divya Mandir, Sector-7, Raily, B.O. Naraingarh, Yamunanagar, Haryana	बनाम	The DCIT(E)(C-2) Chandigarh
स्थायी लेखा सं./PAN NO: AABTM8670M		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Parikshit Aggarwal, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख/Date of Hearing : 30/09/2024
उदघोषणा की तारीख/Date of Pronouncement : 14/10/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), Addl/JCIT(A)-7, Delhi dt. 01/02/2024 pertaining to A.Y. 2020-21.

2. In the present appeal, the Assessee has raised the following grounds:

1. That on the facts, circumstances and legal position of the case, Worthy CIT(A) in Appeal No. NFAC/2019-20/10145701 has erred in passing order u/s 250 dt. 01.02.2024 as the same is in contravention of provisions of s. 250 of the Income Tax Act, 1961 (hereinafter referred to as "Act").

2. That on facts, circumstances and legal position of the case, the Worthy CIT(A) erred in confirming the action of Ld. AO of not allowing exemption u/s 11 towards Revenue Expenditure of Rs. 5,31,18,699/- and Capital Expenditure of Rs. 50,57,157/- while processing the return u/s 143(1).

3. That on facts, circumstances and legal position of the case, Worthy CIT(A) has erred in confirming the action of Ld. AO in processing the return u/s 143(1) without considering the Audit Report duly filed within time in Form 10B.

4. That on facts, circumstances and legal position of the case, the order passed by Ld. AO and then by Worthy CIT(A) deserves to be quashed since the

same have been passed without affording reasonable opportunity of being heard to the appellant.

5. That the appellant craves leave for any addition, deletion or amendment in the grounds of appeal on or before the disposal of the same.

3. During the course of hearing, the Ld. AR submitted that the assessee is a charitable society registered u/s 12AB of the Income-tax Act, 1961 ('the Act'). For the year under reference, the assessee had filed ITR on 15.02.2021 declaring Nil Income after claiming exemption u/s 11 and appending thereto the audit report in Form 10B which was also filed on 15.02.2021.

3.1 It was submitted that the above ITR was processed u/s 143(1) by the Ld. AO/CPC vide order dated 24.12.2021 wherein exemption claimed u/s 11 towards revenue expenditure of Rs. 5,31,18,699/- and capital expenditure of Rs. 50,57,157/- was denied on the ground of late filing of the audit report in Form 10B.

4. Aggrieved with the same, the assessee filed appeal before the Ld. CIT(A) who has dismissed the appeal by holding that where there is a delay in filing of audit report, the claim of exemption u/s 11 is not allowable in terms of section. 12A and against the said findings, the assessee is in appeal before the Tribunal.

4.1 It was submitted that the assessee had since moved an application u/s 119(2) for condonation of delay for the delayed filing of the audit report before Id CIT(E) vide its application dt. 11.12.2023. The said prayer has now been accepted vide order u/s 119(2)(b) dt. 17.05.2024 passed by Id CIT(E) wherein she has condoned the said delay. It was submitted that in view of above factual development, when the foundation of denial of exemption u/s 11 was the delayed filing of audit report and when such delay now stands condoned by Id

CIT(E), the said denial of exemption u/s 11 by the Ld. AO (CPC) in the order u/s 143(1) deserves to be reversed and the assessee be granted the necessary relief.

5. The Id CIT/DR is heard who has relied on the order so passed by the lower authorities. At the same time, it was fairly submitted that where the delay in filing the audit report has been condoned by the Id CIT(E), the Revenue has no objection where the matter is set-aside to the file of the AO to consider and give necessary effect thereto.

6. We have heard the rival contentions and perused the material available on record. Admittedly, the assessee is a charitable society duly registered u/s 12AB of the Act and the sole reason for the denial of claim of exemption claimed u/s 11 towards revenue expenditure of Rs. 5,31,18,699/- and capital expenditure of Rs. 50,57,157/- was on account of delayed filing of the audit report in Form 10B. The delay in filing the audit report has since been condoned by the Id CIT(E) vide her order passed u/s 119(2)(b) of the Act dated 17/05/2024 and since the same has been passed after passing of the impugned order by the Id CIT(A) dated 01/02/2024, it couldn't be taken into consideration by the Id CIT(A) resulting in sustenance of denial of exemption. A copy of the order so passed by the Id CIT(E) has been placed on order and a copy thereof already marked to the AO and shared with the Id CIT/DR as well. In normal course, the same should have been given effect to by the AO himself being the order of the higher authority which is binding on the AO. Given that the assessee has come in appeal before us, apparently, for the reason that necessary effect has not been given to the said order by the AO, we hereby direct the AO to take the same into consideration, and to allow the necessary exemption so claimed u/s 11 by the assessee society in its return of income and allow the necessary relief to the assessee society. In the result, the addition so made by virtue of denial of

claim of exemption u/s 11 while processing the return of income u/s 143(1) is hereby directed to be deleted.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 14/10/2024.

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar