

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. 196/Ind/2024 (AY: 2011-12)

ITA No. 260/Ind/2024 (AY: 2017-18)

DCIT Exemption, Bhopal	<u>बनाम/</u> Vs.	Barkatullah Vishwavidyalaya, 2 nd Floor Metro Walk Building E-5, Arera Colony, Bhopal (PAN:AAAJB0916A)
(Revenue / Appellant)		(Assessee / Respondent)

ITA No. 241/Ind/2024 (AY: 2011-12)

ITA No. 299/Ind/2024 (AY: 2017-18)

Barkatullah Vishwavidyalaya, 2 nd Floor Metro Walk Building E-5, Arera Colony, Bhopal (PAN:AAAJB0916A)	<u>बनाम/</u> Vs.	DCIT Exemption, Bhopal
(Assessee / Appellant)		(Revenue / Respondent)

Assessee by	Shri S.S. Deshpande, AR
Revenue by	Shri Ram Kumar Yadav, CIT-DR

Date of Hearing	17.10.2024
Date of Pronouncement	18.10.2024

आदेश / ORDER

Per Bench:

The captioned four appeals have been filed by revenue and assessee, the details are as under:

- (i) *ITA No. 196/Ind/2024* by revenue and *ITA No. 241/Ind/2024* by assessee are cross-appeals for Assessment-Year ["AY"] 2011-12 against the order of first-appeal dated 10.01.2024 passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 26.11.2018 passed by ACIT (Exemption), Bhopal ["AO"] u/s 147/143(3) of the Income-tax Act, 1961 ["the Act"].
- (ii) *ITA No. 260/Ind/2024* by revenue and *ITA No. 299/Ind/2024* by assessee are cross-appeals for AY 2017-18 against the order of first-appeal dated 31.01.2024 passed by same CIT(A) which in turn arises out of assessment-order dated 30.12.2019 passed by Exemption Circle, Bhopal ["AO"] u/s 143(3) of the Income-tax Act, 1961 ["the Act"].

2. Since these appeals relate to the same assessee, they were heard together at the request of parties and are being disposed of by this consolidated order for the sake of convenience, brevity and clarity.

3. There are small delays of 12 days and 6 days in filing assessee's twin appeals. The assessee is a University. The assessee has filed condonation application explaining that there was ongoing strike in its Finance Department and the counsel was authorised to file appeals after appointment of new Registrar in Finance Department which has only

resulted in small delays. Ld. AR for assessee submitted that the delay is not because of any negligence, malafide intention or ulterior motive and the assessee does not stand to derive any benefit by making delay. He submitted that the delay is solely because of strike which was a 'sufficient cause' and therefore the delay ought to be condoned. Ld. DR for revenue did not object to the submission of Ld. AR. Considering the explanation submitted by assessee and taking into account the small extent of delays, the delays in both appeals of assessee are condoned and the appeals are proceeded for hearing.

AY 2011-12 – Revenue's ITA No. 196/Ind/2024 and Assessee's ITA No. 241/Ind/2024:

4. Ld. AR explained the precise facts leading to these appeals. He submitted that the assessee is a University established under M.P. Vishwavidhalaya Adhinyam, 1973. The activities of assessee are to provide education, supervision and maintenance to various colleges and educational institutions as per regulations of Govt. and to establish, maintain and manage colleges, teaching departments, schools of studies, centers of studies and to institute degrees, diplomas, certificates and other academic distinctions, etc. For AY 2011-12, the assessee did not file any return. The AO, being of the view that the assessee was having total income exceeding the maximum amount not chargeable to tax which had escaped assessment, opened assessee's case under the provisions of section 147 through notice dated 28.03.2018 u/s 148. In response to such notice, the assessee filed

return declaring total income of Rs. Nil. Thereafter, the AO issued notices u/s 143(2)/142(1) and scrutinized assessee's case. During assessment-proceeding, the AO found that the assessee was claiming total income at Rs. Nil on the strength of exemption u/s 10(23C)(iiiab). Ultimately, the AO passed assessment-order dated 26.11.2018 denying exemption of section 10(23C)(iiiab) and also make certain consequential adjustments/additions. Aggrieved, the assessee filed appeal to CIT(A) and succeeded partly. Now, the revenue and assessee both have come in these cross-appeals challenging the orders of lower authorities.

5. Then, Ld. AR made a specific submission that the case of assessee was subjected to section 147 by AO based on scrutiny-assessment of succeeding AY 2014-15 for which assessment-order u/s 143(3) was passed after denying the benefit of exemption u/s 10(23C)(iiiab) to assessee. However, against scrutiny-assessment so made by AO, the assessee carried matter in appeal before ITAT, Indore Bench in **ITA No. 924/Ind/2018**. The said appeal of assessee has already been decided by ITAT, Indore Bench vide order dated 30.06.2022 wherein the assessee's alternative claim of exemption u/s 11/12 has been accepted based on the fact/legal provision that the assessee is subsequently registered by Income-tax Department u/s 12A(1)(aa) read with section 12AA from AY 2019-20 onwards vide Order No. ITBA/EXM/S/12AA/2019-20/1016373495(1) dated 17.06.2019 issued by CIT (Exemption), Bhopal and therefore entitled to exemption u/s 11/12 of

the Act for preceding years also in terms of proviso to section 12A(2) reading as under:

“12A(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment-year immediately following the financial year in which such application is made.

Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the object and activities of the trust or institution remain the same for such preceding assessment year:”

6. Ld. AR has filed a copy of ITAT's order in Paper-Book, the concluding para of ITAT's order is re-produced below:

*“11. Now we proceed to examine the alternative claim of exemption u/s 11 / 12 demanded by the assessee. On perusal of the Proviso to section 12A(2) and the decision of Hon'ble Co-ordinate Bench of **ITAT, Ahmedabad in Shri Bhanushali Mitra Mandal Trust (supra)**, we agree to the proposition that the assessee is entitled to the benefit of exemption u/s 11 / 12 for the assessment-year 2014-15 under consideration as the requirements prescribed in the Proviso stand satisfied, viz. (i) the revenue had already granted registration u/s 12AA from assessment-year 2019-20, (ii) the assessment-year under consideration is 2014-15 which falls within “any preceding assessment year”, and (iii) the objects and activities of the assessee remain same. We also find that the Ld. DR did not make any objection to this claim argued by Ld. AR. But however we have to ascertain one important aspect i.e. can we*

*entertain this new claim made by assessee for the first time before us? In this respect we find that the Hon'ble Supreme Court has held in **Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC)** that a fresh claim can be made only by filing a revised return. But various courts have already analysed the impact of this decision and vehemently held that a fresh claim before appellate authorities is not barred. It is constantly held in several decisions that a legal claim can be made by the assessee before appellate authorities even if the same was not claimed during assessment-proceedings. We also observe that the provisions of section 11 / 12 grant exemption to the assessee and such exemption, if not allowed, would result in illegal collection of tax from the assessee, which is never an objective of the Income-tax Act, 1961. In view of this position of law, we do not find any difficulty in accepting the alternative claim of assessee to allow exemption u/s 11 / 12. However, the claim of exemption u/s 11 / 12 involves a different type of working based on application and accumulation of income. Therefore, we feel that it would be more appropriate to refer this matter back to Ld. AO who shall give an opportunity to the assessee to provide the necessary information for computation of exemption u/s 11 / 12. Based on such information, the Ld. AO shall allow the exemption as admissible u/s 11 / 12 to the assessee."*

7. Ld. AR prayed that the AY 2011-12 under consideration in these appeals was also at par with AY 2014-15, therefore the assessee is very much entitled to the benefit of very same proviso to section 12A(2). Hence, a prayer is made to remand these appeals to AO as has been done by ITAT, Indore in aforesaid order for AY 2014-15.

8. Ld. DR for revenue fairly agreed to the submission and prayer of Ld. AR.

9. In view of above submissions and consensus by parties, we remand these matters to the file of AO in the very same terms as done by ITAT, Indore in Para 11 of order for AY 2014-15 re-produced above. These appeals are accordingly allowed for statistical purpose.

AY 2017-18 – Revenue’s ITA No. 260/Ind/2024 and Assessee’s ITA No. 299/Ind/2024:

10. Ld. AR submitted that for AY 2017-18, the assessee filed return declaring total income of Rs. Nil on 31.03.2018 u/s 139(4) which was subsequently revised on 05.04.2018. The case of assessee was subjected to scrutiny-assessment through notices u/s 143(2)/142(1). During scrutiny-proceeding, the AO rejected assessee’s claim of exemption u/s 10(23C)(iiiab). The assessee made alternative claim of exemption u/s 11/12 based on very same proviso to section 12A(2) as discussed in foregoing part of this order. The AO has accepted assessee’s claim vide Para 4.4 of assessment-order. However, vide Para 4.5 & 4.6 of assessment-order, the AO ultimately denied exemption u/s 11/12 to assessee for a different reason i.e. the return of income was filed belatedly u/s 139(4) on 31.03.2018 whereas the section 139(4A) read with section 139(1) required filing of return by due date which was 07.11.2017. Therefore, the basic and exact controversy in these appeals is whether or not the assessee was entitled to exemption u/s 11/12 when the return of relevant AY 2017-18 was filed belatedly u/s 139(4) after due date u/s 139(1)?

11. Ld. AR submitted that this very controversy has already been decided in assessee's favour by **ITAT, New Delhi in Conference of Religious India Vs. Ward-Exemption 1(3), New Delhi, ITA No. 2161/Del/2022 order dated 13.10.2022**, on the basis of **CBDT Instruction No. F.No. 173/193/2019-ITA-I dated 23.04.2019**. The relevant paras of ITAT's order are re-produced below for an immediate reference:

*"7. Strong reliance was placed on the instruction of **CBDT F.No. 173/193/2019-ITA-I dated 23.04.2019** wherein the CBDT has clarified with regard to the time allowed for filing of the return of income subsequent to the insertion of clause (ba) in sub section 1 of section 12A of the IT Act which includes the IT return filed within the time allowed u/s. 139 of the Act. The contention of the assessee were dismissed by the CIT(A) who was of the firm belief that return has been filed beyond due date as mandated in section 139(1) of the Act. The CIT(A) also dismissed the claim of the assessee that it is squarely covered by the CBDT instruction (supra) and the CIT(A) accordingly dismissed the appeal of the assessee.*

8. Before me the Counsel reiterated what has been stated before the lower authorities and once again relied upon the CBDT circular (supra). The DR strongly supported the findings of the CIT(A).

9. I have given a thoughtful consideration to the orders of the authorities below. The undisputed facts are that the assessee filed its return of income on 23.02.2021. It is also not in dispute that the due date for this assessment year has been extended till 15.02.2021. This means that there was a delay of 7 days but considering the pandemic period and the decision of the Hon'ble Supreme Court by which the Hon'ble Supreme Court has extended the period of limitation across board, I am of the opinion that the delay of 7 days deserves to be condoned. In any case the return was filed before 31.03.2021

which is the last date for filing a belated return of income. It would be pertinent to refer to the above CBDT Circular which is as under :-



Dated 23 April, 2019

To

The Pr. DGIT (Systems), New Delhi

Subject: Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in sub-Section 1 of section 12A of the income-tax Act, 1961.

Sir,

Undersigned is directed to refer to the representation (s) received on above mentioned subject stating that while processing of ITR-7 for the

A.Y. 2018-19, in respect of the belated returns filed u/s 139(4) of the Income Tax Act, 1961 (Act), the following is being communicated u/s 143(1)(a) of the Act:-

"As per section 12A(1)(ba) of the Income-tax Act, 1961 the person in Receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise, the exemption u/s 11 i.e. sr. no. 4(i) and 4 viii in schedule Part BTI is not allowed".

Based on this, exemption u/s 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

"as per the existing provisions of said section, the entities registered Under section 12 AA are required to file return of income under sub- Section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed u/s 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income- Tax shall furnish the return of income within the time allowed under section 139 of the Act.

These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, Accordingly, apply in relation to assessment year 2018-19 and Subsequent years."

3. Additionally, an excerpt of circular 02/2018 dated 15.02.2018 "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub section (1) of section 12A is quoted as under:

Alu Mulkathur

"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to Income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income Within the time allowed under section 139 of the Income – tax Act."

10. In my considered opinion the language of the aforementioned Circular is very clear and unambiguous in so far as the return of income filed u/s. 139 of the Act is concerned. Section 139 has several sub sections (1), (2), (3), (4), (4a), (5). I am of the considered view that if the return is filed within the specified time limit of sub-section of 139 would be eligible for the benefit given by the above mentioned CBDT circular and should avail the benefit of exemption u/s. 11 of the Act. In my considered opinion the CIT(A) erred in misinterpreting the aforementioned circular and, therefore, to that extent the order of the CIT(A) is erroneous and deserves to be set aside the grievance of the assessee is allowed."

Therefore, Ld. AR prayed to give the benefit of ITAT Delhi's decision to assessee and remand this matter back to the file of AO for giving exemption u/s 11/12.

12. Ld. DR for revenue fairly agreed to the submission and prayer of Ld. AR.

13. We have considered submissions of both sides. The admitted facts are such that the assessee filed a belated return on 31.03.2018 u/s 139(4) which was beyond due date of 07.11.2017 u/s 139(1) and non-filing of

return upto due date u/s 139(1) is the reason due to which the AO denied exemption u/s 11/12 to assessee. We agree to submission of Ld. AR that the ***CBDT's Instruction dated 23.04.2019 (supra)*** clearly directs the subordinate authorities to allow exemption if the return has been filed within the time-limit of section 139 and to rectify assessment even if a demand has been raised. We also agree that in ***Conference of Religious India (supra)***, the ITAT, Delhi Bench has, taking into account the CBDT's Instruction, allowed benefit of exemption u/s 11/12 to assessee in the situation where the return was filed belatedly u/s 139(4) on 23.02.2021 after expiry of due date of 15.02.2021 u/s 139(1). Therefore, respectfully applying the view taken by ITAT, Delhi, we too hold that the assessee is entitled to exemption u/s 11/12. However, the claim of exemption u/s 11 / 12 involves a different type of working based on application and accumulation of income. Therefore, we feel that it would be more appropriate to remand these matters back to the file of AO who shall give an opportunity to the assessee to provide the necessary information for computation of exemption u/s 11 / 12. Based on such information, the Ld. AO shall allow exemption as admissible u/s 11 / 12 to assessee. Thus, these appeals are also allowed for statistical purpose.

14. Since we have remanded all these matters to AO, there is no necessity to adjudicate other grounds/issues. In fact, the learned Representatives have also not made any submission qua other grounds/issues.

15. Resultantly, the appeals of both sides are treated as allowed for statistical purposes.

Order pronounced in open court on 18.10.2024

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

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

Indore

दिनांक/ Dated : 18.10.2024

Dev/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