

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

Before Manjunatha, G. Accountant Member
AND
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं / **ITA Nos.394 & 395/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2019-20 & 2020-21)

Church Educational Society, Hyderabad PAN:AAALC0017F	Vs.	Asstt. C. I. T. Central Circle 2(4) Hyderabad
(Appellant)		(Respondent)

आ.अपी.सं / **ITA Nos.476 & 393/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2019-20 & 2020-21)

Aurora Educational Society, Hyderabad PAN:AAATA8751C	Vs.	Asstt. C. I. T. Central Circle 2(4) Hyderabad
(Appellant)		(Respondent)

आ.अपी.सं / **ITA Nos.475 & 392/Hyd/2024**
(निर्धारण वर्ष/Assessment Years: 2019-20 & 2020-21)

Karshak Vidya Parishad, Hyderabad PAN:AAATK5390B	Vs.	Asstt. C. I. T. Central Circle 2(4) Hyderabad
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		
राजस्व द्वारा/Revenue by: Shri P Murali Mohan Rao, CA		
Shri B Bala Krishna,DR		
सुनवाई की तारीख/Date of hearing:		
09/10/2024		
घोषणा की तारीख/Pronouncement:		
14/11/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

These six appeals filed by different assessees are directed against the separate, but identical orders of the learned CIT (A)-12, Hyderabad, relating to A.Ys.2019-20 and 2020-21 respectively. Since common issues are involved in all these appeals, for the sake of convenience, these were heard together and are being disposed off, by this common order.

2. The assessees raised more or less common grounds in their respective appeals. The assessee raised the following grounds in ITA No.394/Hyd/2024 for the A.Y 2019-20 in the case of Church Educational Society which is reproduced as under:

“1. The order passed by the learned CIT (A) u/s 250 of the Act, dated 8/3/.2024 is erroneous both on facts and in law to the extent the order is prejudicial to the interest of the appellant.

2. The learned CIT (A) erred in rejecting the petition for condonation of delay in filing of the appeal when the delay is unintentional and the appellant has a reasonable cause for the said delay.

3. The learned CIT (A) ought to have appreciated the fact that the delay in filing of the appeal is due to COVID-19 pandemic and post COVID effect and that the delay is due to reasons which are beyond the control of the appellant.

4. The learned CIT (A) erred in confirming the disallowance of entire expenditure claimed by the assessee amounting to Rs.8,31,74,000/- which is exempt as per the provisions of section 11 of the I.T. Act, 1961.

5. The learned CIT (A) erred in not appreciating that the entire amount of Rs.8,31,74,000/- has been duly has been duly expended towards the objects of the Trust on Revenue account and Capital account which is clearly evident from the return of income filed.

6. *The learned CIT (A) ought to have appreciated that the assessee has duly complied with the provisions of section 11 of the Act, in all the previous years and not allowing the claim on the reason of delay in filing the audit report is against principle of natural justice.*

7. *The learned CIT (A) erred in dismissing the appeal without appreciating the fact that the appellant has reasonable cause for the delay in filing the Audit Report in Form No.10BB.*

8. *The learned CIT (A) ought to have appreciated the fact that the delay in filing of Audit Report in Form No.10BB is due to the search operation conducted which delayed the finalization of books of account and the further delay is due to COVID-19 pandemic and post COVID effects.*

9. *The learned CIT (A) erred in dismissing the appeal without appreciating the fact that the genuine claim of exemption cannot be disallowed on a technical reason of delay in filing of Audit Report in Form No.10BB which is due to a reasonable cause and the same is beyond the control of the appellant.*

10. *Appellant may add or alter or amend or modify or substitute or delete and/or rescind all or any of the grounds of appeal at any time before or at the time of hearing of the appeal”.*

3. The brief facts of the case are that the assessee society is registered u/s 12AA of the I.T. Act, 1961. It filed its original return of income for the A.Y 2019-020 on 30/11/2020 admitting total income of Rs. Nil/- after claiming exemption u/s 11(1)(c) of the Act. The assessee also enjoys the exemption available u/s 10(23C) of the I.T. Act, 1961. Thereafter, the return was processed u/s 143(1) and a demand of Rs.4,21,06,695/- was raised by treating the entire receipts as income on the ground that the Trust had not e-filed the Audit Report in Form 10BB on or before filing of the return of income. Thus, the exemption claimed in Sr. Nos. 4 to 4 vii of Part B-TI was not allowed in accordance with the tenth proviso to section 10(23C) of the I.T. Act, 1961.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A) who dismissed the appeal vide order dated 08/03/2024 on the ground that the DGIT (Inv.) Hyderabad after considering the appellant's application for condonation of delay of 1036 days in filing audit report in Form 10BB has rejected the application. Hence, the learned CIT (A) rejected the condonation application of the assessee on the ground that the appellant has not given any reasonable cause for delay in filing of the appeal over 189 days after the extension granted by the Supreme Court. The learned CIT (A) issued a show cause notice dated 19/12/2023 to the appellant as to why the appeal should not be dismissed since the DGIT (Inv.) Hyderabad has rejected the application for condonation of delay for filing of Form 10BB to which the appellant filed written submissions on 29/12/2023. The learned CIT (A) after considering the relevant submission of the assessee the learned CIT (A) stated that since the DGIT(Inv) rejected Form 10BB for condonation of delay vide order u/s 119(2)(b) dated 6/10/2023, the entire gross receipts of the appellant amounting to Rs.8,31,74,800/- are to be treated as income of the appellant for the A.Y 2019-20.

5. Further, according to the learned CIT (A), the Audit Report u/s 12A(1)(b) has to be filed by a charitable or religious trust or institution who has been granted registration u/s 12A or who has submitted an application for registration by filing Form 10A, if the total income of the entity for the relevant previous year has exceeded the maximum amount which is not chargeable to tax, to claim exemption u/s 11 and 12 of the I.T. Act, 1961. The

accounts of such Trust/Institutions must have been audited by an Accountant as defined in section 288(2) of the Act, and such audit report is required to be furnished before the specified date referred to in section 44AB, i.e. a month prior to the due date for furnishing the return of income under sub-section (1) of section 139. Since there was 1036 days of delay in filing Audit Report in form 10BB by the appellant, the only recourse available with the appellant was to condonation of delay from the CCIT/DGIT(Inv) who was empowered to grant condonation of delay up to 3 years, if he is satisfied of the reasonable cause of delay. Thus, the learned CIT (A) dismissed the appeal filed by the assessee for the A.Y 2019-20 and directed the appellant to pay income tax on its earnings on the ground of loss of tax exemption.

6. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

7. The learned Counsel for the assessee submitted that the delay in filing of the appeal is due to some unforeseen reasons and circumstances beyond the control of the assessee which also includes the Covid 19 pandemic and post effects of Covid-19 and the learned CIT (A) ought to have accepted the condonation application filed by the appellant. The learned Counsel for the assessee further submitted that the learned CIT (A) erred in upholding the denial of exemption u/s 11 of the I.T. Act, 1961 for not filing the Audit Report in Form 10BB or for not filing the said audit report beyond the due date prescribed under the Act, even though the assessee has satisfied other conditions provided for claiming exemption u/s 11 of the Act. The learned Counsel for

the assessee further submitted that the delay in filing Form 10-BB is neither intentional nor wanton of any undue benefit but purely beyond the control of the assessee as explained to Assessing Officer and the learned CIT (A). The assessee explained before the learned CIT (A) that due to search conducted in the group of the assessee and other cases, the books of account for the relevant A.Y could not be completed and audit report obtained on or before the due date. However, the appellant has obtained relevant audit report from the CA as required under the law and submitted before the learned CIT (A). The appellant had also explained the reasons for delay in filing of the appeal along with certain judicial precedents. The learned CIT (A) ignoring all facts, rejected the exemption u/s 11 of the Act, only on the ground that the petition filed by the assessee for condonation of delay before the DGIT (Inv) has been rejected by the authorities. The learned Counsel for the assessee further submitted that first of all, as per the Board's Circular No.15 of 2022, dated 19/07/2022, when delay is up to 365 days, the CITs are authorized to admit application for condonation of delay u/s 119(2)(b) of the Act. In the present case, if we exclude the delay of 805 days which is covered under Covid-19 period, the balance delay is only 231 days and thus, the appellant should have filed application before the CIT but not before the DGIT. Since the appellants have filed applications for condonation of delay under wrong forum or authority, it has filed further application before the CBDT for condonation of delay. Therefore, the learned CIT (A) either condoned the delay on its own having noticed the reasons given by the assessee or kept the appeal in abeyance till the CBDT decides the application filed by the assessee by considering the

order passed by the DGIT rejecting application filed by the assessee for condonation of delay. The learned Counsel for the assessee further submitted that the learned CIT (A) does not have authority under the law to deal with any other issues, except the issue challenged before the first appellate authority in the appeal filed by the assessee against the order passed by the Assessing Officer u/s 143(1) of the Act. But, the learned CIT (A) has given a finding on the order passed by the Assessing Officer u/s 154 of the Act and observed that because of rejection of application filed by the assessee by the DGIT, the order passed by the Assessing Officer u/s 154 dated 27/09/2022 has become infructuous and the assessee loses the tax exemption for the A.Y 2020-21, even though it does not have power to issue direction in an appeal, beyond the scope of this appeal, and issues disputed before the learned CIT (A). Therefore, he submitted that the observation of the learned CIT (A) with regard to the order passed u/s 154 of the Act, needs to be deleted.

8. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that there is no dispute with regard to the fact that the appeal filed by the assessee before the learned CIT (A) is barred by limitation. The learned CIT (A) after considering the relevant reasons given by the assessee for condonation of delay has rejected the application filed by the assessee and dismissed the appeal in limini. Further, the learned CIT (A) had also discussed the issue on merit and in light of the order passed by the DGIT (Inv.) Hyderabad u/s 119(2)(b) of the I.T. Act, 1961 rejecting the application filed by the assessee for condonation of delay in not filing Form 10BB, upheld the action of

the Assessing Officer for denial of exemption u/s 11 of the Act. Therefore, the order of the learned CIT (A) should be upheld.

9. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. We have also carefully considered various case laws relied upon by the assessee. Admittedly, the appeal filed by the assessee for the A.Y 2019-20 and 2020-21, before the learned CIT (A) barred by limitation. The appeal for the A.Y 2019-20 ought to have been filed on or before 14/03/2021, whereas the appeal was filed on 6/9/2022 and thus, there is a delay of 541 days. Similarly, the appeal for A.Y 2020-21 ought to have been filed on or before 31/12/2021, whereas the appeal was filed only on 6/9/2022 after a delay of 250 days. The delay in filing of the appeal before the learned CIT (A) is covered by Covid period and non-covid period. Further, even if you exclude delay covered by Covid Period, in view of the decision of the Hon'ble Supreme Court in M.A. 21/2022, still there is delay of 189 in filing of the appeal for both the A.Ys. The appellant explained the reasons for delay in filing of the appeal and according to the assessee, because of Covid period, the order passed u/s 143(1) of the Act, was not brought to notice of the management and it missed the attention of the management. However, once the covid pandemic is subsided, the appellant took steps to file the appeal and in the process, there is a delay. However, the said delay is neither intentional nor wanton of any undue benefit. In our considered view, during the Covid period, the normal life of a person be it an individual or a company was badly affected due to various reasons including lock down imposed by the government from

time to time. Further, the covid pandemic is also disturbed the normal life of many people and because of these reasons, many people could not attend their day to day business activities including pending litigation, if any, before various authorities. Therefore, while condoning the delay in filing of the appeal or any application, the authorities must be borne in mind the serious disturbances caused by the covid pandemic and there should not be any casual approach while dealing with the condonation petition etc., Therefore, to this extent, we are not in agreement with the reasons given by the learned CIT (A) for dismissing the appeals filed by the assessee for both the A.Ys in limini. Further, if we exclude the period covered by the covid, then the delay in filing of the appeal is very minimal i.e. 189 days. Therefore, considering the facts and circumstances of the case and also the reasons given by the assessee before the learned CIT (A), in our considered view, the delay in filing of the appeal before the first appellate authority needs to be condoned. Thus, we condone the delay in filing of the appeal before the first appellate authority for A.Ys.2019-20 and 2020-21.

10. Having said so, let's come back to the issue on merits. The appellant is a charitable institution registered u/s 12AA of the I.T. Act, 1961 for both the A.Ys. The appellant is also carrying out charitable activities in accordance with its objectives and the Assessing Officer and the learned CIT (A) has not pointed out any deviation or discrepancies in the activities carried by the assessee and the objects pursued for both the A.Ys. The only reason for the Assessing Officer to deny exemption u/s 11 of the Act, for both the A.Ys is non-filing of Form 10BB on or before the due date

prescribed under the Act. There is no dispute with regard to the fact that the assessee has not filed the relevant form 10BB for A.Ys 2019-20 and 2020-21 on or before the due date prescribed under I.T. Act, 1961. Further, the appellant has filed said form 10BB on 17/09/2022 with a delay of 610 days for A.Y 2020-21 and with a delay of 1036 days for A.Y 2019-20. Once again the delay in filing of Form 10BB is covered by Covid period and non-covid period. If we exclude covid period, then the delay in filing Form 10BB is only 110 days for A.Y 2019-20 and 231 days for A.Y 2019-20. The assessee once again explained the reasons for not filing Form 10BB and submitted before the learned CIT (A) that due to seizure of books of account during the search, the appellant could not complete books of account for the relevant A.Ys and because of this reason, the Auditor could not complete the audit and issued report in Form 10BB before the assessee filed its return of income. However, the appellant has obtained relevant audit report in Form 10BB for both the A.Ys and filed before the learned CIT (A) during the appellate proceedings and argued that delay in filing Form 10BB may be condoned.

11. We find that in order to claim deduction u/s 11 of the I.T. Act, 1961, any Trust or Institution claiming exemption should obtain audit report and filed one month before the due date for furnishing return of income u/s 139(1) of the I.T. Act, 1961. In case, there is a delay in filing of audit report in Form 10BB, the Board has issued a Circular No.15 of 2022, dated 19/07/2022 and authorized its Officers to condone the delay up to a period of 3 years. In case of delay up to 365 days, the CIT is authorized to condone the delay and in case the delay is more than 365 days

and up to 3 years, the CCIT/DGIT is authorized to condone the delay. In the present case, the appellant filed application for condonation of delay in filing Form 10BB before the DGIT and application filed by the assessee has been rejected vide order u/s 119(2)(b) of the I.T. Act, 1961 dated 18/11/2024. The learned CIT (A) based on the order passed by the DGIT upheld the denial of exemption. The argument of the assessee is that although the delay in the present case is more than 365 days, in general, but if we exclude the delay covered by the Covid period, then the delay is less than 365 days and accordingly, the appellant ought to have filed petition before the CIT (Exemption) but not before the DGI(Inv.). Further, in the circular issued by the CBDT, there is no clarification as to who will condone the delay, if delay is beyond 3 years. Since there is an ambiguity in the process of condonation of delay in filing of audit report, the assessee has filed further application before the CBDT seeking clarification and also condonation of delay in filing Form 10BB for both the A.Ys. We find that in the Board's Circular No.15 of 2022, dated 19/07/2022, there is a provision for the authorities to condone the delay up to 3 years and there is no provision for condonation of delay or there is no clarification as to who will condone the delay, if delay is beyond 3 years. Since there is an ambiguity in the Circular issued by the CBDT on the issue of condonation of filing of Form 10BB and further the appellant submitted that it has filed a further application before the CBDT for condonation of delay, in our considered view, there is a merit in the argument of the assessee that the learned CIT (A) should have waited till the CBDT finally decides application filed for condonation of delay. Further, in our considered view, when the appellant is otherwise

entitled for exemption under the Act, having satisfied all the conditions, the authorities should have taken a lenient view on belated filing or late filing of Form 10BB of the Act,. Since the appellant claims that it has filed further application before the CBDT for considering the condonation of delay in Form 10BB for both the A.Ys, in our considered view, the matter needs to be kept alive till such time, the CBDT takes a final decision on the delay in filing Form 10BB. Therefore, we are of the considered view, that the issue needs to go back to the file of the Assessing Officer for fresh consideration. Thus, we set aside the order passed by the learned CIT (A) for both the A.Ys and set aside the issue to the file of the Assessing Officer and also direct the Assessing Officer to decide the issue of exemption u/s 11 of the Act, for both the A.Ys after the outcome of the application, if any, filed by the assessee, before the CBDT for condonation of delay in filing Form 10BB for both the A.Ys.

12. In so far as various case laws relied upon by the learned Counsel for the assessee including the decision of the Hon'ble Bombay High Court in the case of CIT vs. Xavier Kalavani Mandal (P) Ltd, we find that in all those cases, the issue before the Hon'ble High Court was whether belated filing of Form 10BB can be considered, if such Form 10BB has been filed on or before the Assessing Officer passed the assessment order u/s 143(1) or 143(3) of the I.T. Act, 1961. Further, in all those cases, the audit report in Form 10BB has been filed on or before the Assessing Officer passed the assessment order. In the present case, the appellant has filed Audit Report in Form 10BB after the Assessing Officer passed the assessment order u/s 143(1) of the I.T. Act,

1961. Therefore, in our considered view, the case laws referred to by the assessee in support of its argument is not applicable to the facts of the present and thus, rejected.

13. In so far as appeal filed by the assessee for the A.Y 2020-21 is concerned, the learned CIT (A) in Para 6.2.8 has observed that in view of the order passed by the DGIT (Inv) u/s 119(2)(b) of the Act, dated 18/01/2024, the rectification order passed by the ACIT/CPC u/s 154 dated 27/09/2022 becomes infructuous. In our considered view, the observation of the learned CIT (A) in para 6.2.8 of his order is beyond the scope of powers of the CIT (A) because, the CIT (A) does not have any power to give any direction or finding in respect of issues which is not before the first appellate authority. In the present case, the appellant has filed appeal before the learned CIT (A) against the order passed by the Assessing Officer u/s 143(1) of the Act. Further, while adjudicating the appeal filed by the assessee, the learned CIT (A) discussed the order passed by the Assessing Officer u/s 154 of the Act, dated 27/09/2022. In our considered view, the proceedings u/s 143(1) of the Act, and proceedings u/s 154 of the Act, are separate proceedings and further there is a provision for filing appeal against both the orders. Therefore, in our considered view, the learned CIT (A) does not have any power to adjudicate the issue considered by the Assessing Officer in the order passed u/s 154 of the Act, while deciding the appeal filed by the assessee against the order passed by the Assessing Officer u/s 143(1)/143(3) of the Act. Therefore, in our considered view, the findings or directions given by the learned CIT (A) in Para 6.2.8 for the A.Y 2020-21 is beyond the scope of the powers of the

learned CIT (A) and thus, not in accordance with law. Hence, we delete the findings of the learned CIT (A) in Para 6.2.8 of his order for the A.Y 2020-21.

14. In so far as the assessment of gross receipts as income of the appellant derived from property held under the Trust, in our considered view, once any Trust/Institution loses its of exemption u/s 11 for any reason, including withdrawal of exemption granted u/s 12AA of the Act, the income of the Trust should be assessed as an AOP and only surplus/profits needs to be taxed. In the present case, it was the contention of the assessee before us that, the Assessing Officer has taxed gross receipts for both the A.Ys without allowing deduction towards various expenditure/application of income towards charitable purposes. If at all, the claim of the assessee is correct, then, in our considered view, the Assessing Officer is grossly erred in taxing gross receipts because in any case, the appellant needs to be assessed as an AOP on surplus/profit only. Therefore, we direct the Assessing Officer to verify the claim of the assessee and in case as claimed by the assessee, if the gross receipts are brought to tax, then the Assessing Officer is directed to assess only income/profit to tax for both the A.Ys, in case finally the Assessing Officer holds that the assessee is not entitled for exemption u/s 11 of the I.T. Act, 1961.

15. In the result, appeal filed by the assessee for the A.Ys 2019-20 & 2020-21 in ITA Nos. 394 & 395/Hyd/2024 are allowed for statistical purposes.

ITA Nos.476 & 393/Hyd/2024 (Aurora Educational Society)

16. The facts and issues involved in these two appeals filed by the assessee for A.Ys 2019-20 and 2020-21 are identical to the facts and issues, which we had considered in ITA Nos.394 & 395/Hyd/2024, in the case of Church Educational Society. But for figures, the facts and issues are similar to the issues in the case of Church Educational Society. Therefore, the reasons given by us in preceding Para Nos.8 to 12 in the case of Church Educational Society shall mutatis mutandis apply to these appeals, as well. Therefore, for similar reasons, we set aside the order passed by the learned CIT (A) and restore the issue back to the file of the Assessing Officer for fresh consideration. The Assessing Officer is directed to reconsider the issue in light of our discussion given herein above in the case of Church Educational Society and decide the case of the appellant for both the A.Ys.

17. In the result, appeals filed by the assessee for the A.Ys 2019-20 and 2020-21 are allowed for statistical purposes.

ITA Nos. 475 & 392/Hyd/2024 (Karahak Vidya Parishad):

18. The facts and issues involved in these two appeals filed by the assessee for A.Ys 2019-20 and 2020-21 are identical to the facts and issues, which we had considered in ITA Nos.394 & 395/Hyd/2024, in the case of Church Educational Society. But for figures, the facts and issues are similar to the issues in the case of Church Educational Society. Therefore, the reasons given by us in preceding Para Nos.8 to 12 in the case of Church Educational Society shall mutatis mutandis apply to these

appeals, as well. Therefore, for similar reasons, we set aside the order passed by the learned CIT (A) and restore the issue back to the file of the Assessing Officer for fresh consideration. The Assessing Officer is directed to reconsider the issue in light of our discussion given herein above in the case of Church Educational Society and decide the case of the appellant for both the A.Ys.

19. In the result, appeals filed by the assessee for the A.Ys 2019-20 and 2020-21 are allowed for statistical purposes.

20. To sum up, all the appeals filed by the respective assessees for the A.Ys 2019-209 and 2020-21 are allowed for statistical purposes.

Order pronounced in the Open Court on 14trh November, 2024.

Sd/-

Sd/-

(K. NARASIMHA CHARY) JUDICIAL MEMBER	(MANJUNATHA, G.) ACCOUNTANT MEMBER
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Hyderabad, dated 14th November, 2024

Vinodan/sps

Copy to:

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order