

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.1210/Bang/2024
Assessment Years : 2022-23

Vokkaligara Sangha, 1, BB Road, Chikballapur, Chikaballapur H.O Chikkaballapur. PAN – AAATV 4478 M	Vs.	The Dy. Commissioner of Income Tax, CPC, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Ms. Neha Sahay, JCIT (DR)

Date of hearing	:	01.08.2024
Date of Pronouncement	:	25.10.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order passed by the Addl/JCIT (A)-2, Vadodara dated 12/06/2024 vide DIN No.ITBA/APL/S/250/2024-25/1065600023(1) for the assessment year 2022-23.

2. The only effective issue raised by the assessee is that the learned CIT(A) erred in confirming the disallowance of exemption claimed under the provision of section 11(2) of the Act.

3. The facts in brief are that the assessee, in the present case, a public charitable trust, is registered under section 12A(1)(a) of the Act. The assessee in the year under consideration has shown gross income/receipt of Rs. 72,67,300/- and the same was claimed as exempted under section 11 of the Act in the following manner:

(a) Expenses to maintain students hostel	Rs. 11,95,157/-
(b) Accumulation 15% as per section 11(1)	Rs. 8,70,445/-
(c) Amount set apart for construction of building	Rs. <u>52,01,698/-</u>
Total	Rs. 72,67,300/-

4. The claim of the assessee for Rs. 52,01,698/- being amount set apart for the purpose of hostel building was disallowed by the CPC while processing the return under section 143(1) of the Act for reason that the assessee has not filed Form 10 as required under section 11(2)(a) of the Act within specified time limit.

5. The assessee, after receiving the intimation under section 143(1) of the Act dated 16-08-2023, has filed Form-10 as on 19-08-2023 and filed rectification application under section 154 of the Act which was rejected by the CPC.

6. The aggrieved assessee preferred an appeal before the Id. CIT(A) against the intimation passed under section 143(1) of the Act denying the exemption under section 11(2) of the Act. The learned CIT(A) dismissed the appeal of the assessee by holding that the assessee was required to file Form-10 on or before the due date of filing of return of income under section 139(1) of the Act and the due date was 7th November 2022 whereas the assessee by own admission filed form-10 as on 19-08-2023.

7. Being aggrieved by the order of the learned CIT(A), the assessee in appeal before us.

8. The learned AR before us before us submitted that the requirement of filing form 10 is procedural which was immediately filed after the intimation processed under section 143(1) of the Act.

On the other hand, the learned DR before us vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the appellant assessee during the year under consideration has accumulated or set apart the receipt for Rs. 52,01,698/- for the purpose of construction of hostel building. The provision of subsection (2) of section 11 of the Act, provides that if any income of trust not applied for the object (i.e. up-to 85%) but accumulated or set apart for the purpose of application in subsequent year in India shall be allowed as exemption subject to following conditions:

- The assessee shall furnish a statement in Form 10 to the AO stating the purpose for which income is accumulated and for the period (not exceeding 5 year) for which income accumulated and the amount being invested or deposited in specified mode or forms.
- The Form-10 shall be furnished on or before the due date specified under section 139(1) of the Act.

9.1 Thus, as per the provisions discussed above, if an assessee accumulates or set apart income for special purpose is required to furnish a report in Form 10 on or before the due date for filing the return

under section 139(1) of the Act. However, a question arises whether furnishing the report in Form 10 is mandatory or procedural requirement and whether the filing of Form 10 on or before the due date of return u/s 139(1) of the Act is mandatory or procedural requirement. In this regard we refer to the judgment of Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners Association reported in 247 ITR 201 and finds that the filing of Form-10 is mandatory requirement. The relevant observation of Hon'ble Supreme Court is extracted as under:

It is abundantly clear from the wordings of sub-section (2) of section 11 that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10. If during the assessment proceedings the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a matter of fact, the benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subject to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time it completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee.

9.2 Now coming to the question whether filing such report in Form-10 on before the due date specified for filing of return u/s 139(1) of the Act is mandatory or procedural requirement. In our considered opinion, what is mandatory is furnishing of report in form 10 before the completion of assessment and not within the time limit specified under section 139(1) of the Act. Therefore, we hold that such requirement of filing of Form-10, on or before due date of return is procedural requirement only. In holding so, we draw support and guidance from the judgment Hon'ble Gujarat High Court in the case of Association of Indian Panel Board Manufacturer vs. DCIT reported in 157 taxmann.com 550. The relevant observation of hon'ble Gujarat High court extracted as under:

*The conditions for claiming exemption under Section 11 was satisfied. **Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect.** Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under Sections 11(1) and 11(2) on the ground that the audit report was not filed.*

9.3 From the above, it is abundant clear that only the requirement of furnishing the report is mandatory whereas filing of the same is a procedural requirement. As such the purpose of furnishing such report is to enable the AO having information regarding the income amount being set apart for specific purpose and for specific period so that the AO can verify and examine the veracity of claim. Therefore, even if the assessee does not file the report in Form-10 along with return of income on or before due date specified u/s 139(1) of the Act but still the time limit shall be extended to provide the benefit of section 11(2) of the Act if such report is made available before the completion of assessment.

9.4 In the present case, admittedly the report in Form-10 was not filed along with return of income, therefore claim of exemption was disallowed by the CPC while processing the return of income under section 143(1) of the Act. However, the assessee immediately after receiving the intimation under section 143(1) filed the impugned Form-10 and subsequently filed a rectification request which was summarily rejected. The learned CIT(A) also dismissed the appeal of the assessee without verifying and considering the report furnished in Form-10 and confirmed the disallowance of exemption merely for the reason that the report was not filed along with the return of income. As such, the learned CIT(A) failed to consider the fact that the impugned Form-10 was available before him as the assessee immediately after receiving the

intimation has filed the same. It is important to note that that it is settled position of law the proceeding before the CIT(A) is an extension of assessment proceeding as the CIT(A) has co-terminus powers with that of the Assessing Officer and his aim at determining or assessing correct income and tax liability of the assessee for particular assessment year. In this regard, the judgment of Hon'ble Rajasthan High Court in the case of CIT (Exemptions) vs. Shree Shayam Mandir Committee reported in [2018] 400 ITR 466 (Raj) can be referred. Hence, we set aside the finding of the Id. CIT-A and direct the AO allow the benefit of exemption under section 11(2) of the Act to the assessee after necessary verification. Thus, the ground of appeal of the assessee is allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in court virtually on 25th day of October, 2024

Sd/-

(BEENA PILLAI)
Judicial Member
Bangalore
Dated, 25th October, 2024
/ vms /

Sd/-

(WASEEM AHMED)
Accountant Member

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