



**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.727/LKW/2019  
Assessment Year: 2016-17

<b>M/s. U.P. Hindi Sansthan.</b> 6, Hindi Sansthan, MG Road, Hazratganj, Lucknow-226001.	v.	<b>Commissioner of Income Tax (Exemptions)</b> T.C. 46V, 5 <sup>th</sup> Floor, UPSIDC Ltd, Vibhuti Khand, Gomti Nagar, Lucknow-226010.
<b>PAN:AAA AU1297Q</b>		
(Appellant)		(Respondent)

ITA No.198/LKW/2019  
Assessment Year: 2016-17

<b>Dy. Commissioner of Income Tax (Exemptions)</b> T.C. 46V, 5 <sup>th</sup> Floor, UPSIDC Ltd, Vibhuti Khand, Gomti Nagar, Lucknow-226010.	v.	<b>M/s. U.P. Hindi Sansthan.</b> 6, Hindi Sansthan, MG Road, Hazratganj, Lucknow- 226001.
<b>PAN:AAA JU0103A</b>		
(Appellant)		(Respondent)

Appellant by:	Shri Hariom Rastogi, C.A.		
Respondent by:	Shri Sanjeev Krishna Sharma, Addl. CIT(DR)		
Date of hearing:	12	11	2024
Date of pronouncement:	20	11	2024

**ORDER**

**PER BENCH:**

1 The grounds of appeal of the assessee for ITA. No. 198/LKW/2019 are as under: -

*"1 Ld. Commissioner of Income Tax (A) has erred in law and facts in allowing the claim of accumulation u/s 11(2) of the IT Act, 1961, whereas the assessee had not filed Form No.10 within prescribed time limit and deleting the addition of Rs.2,75,97,389/-.*

*2. Ld. Commissioner of Income Tax (A) has erred in law by allowing the assessee to file form no. 10 even after five years has already been lapsed and the CIT(E), Lucknow had already rejected vide order dated 12.12.2018 the application of the assessee for condonation of delay for filing of form no. 10.*

*3. The order of Ld. CIT(A) be cancelled and the order of the AO be restored.”*

1.1 The grounds of appeal of the assessee for ITA. No. 727/LKW/2019 are as under: -

*“1. That the Ld. CIT(Exemptions), Lucknow, has erred in law and on facts of the case in rejecting the application for condonation of delay in filing Form No. ‘10’ relating to accumulation of fund, without specifying any cogent reason.*

*2. That the Ld. CIT(Exemptions), Lucknow has erred in law and in fact of the case in rejecting the application for condonation of delay in filing Form No. ‘10’ submitted manually on 14.11.2018 which is against the principle of natural justice.*

*3. That the order of Ld. CIT(Exemptions), Lucknow is not maintainable in view of CBDT guidelines as per Circular No.7/2018 dated 20.12.2018 with regard to filing of Form No.10 for the A.Y. 2016-17.”*

1.2 For the sake of convenience, and as issues involved are inter-related, both appeals are disposed of through this consolidated order, though the impugned orders are not the same.

2 The appeal vide ITA. No.727/LKW/2019 for AY. 2016-17 has been filed by the assessee beyond time limit prescribed under section 254(3) of the Income Tax Act, 1961 (hereinafter “the Act”). The assessee has filed an application seeking condonation of delay in filing of this appeal. The application for condonation of delay is supported by an affidavit of the assessee. The Ld. Sr. Departmental Representative for Revenue did not express any objection to the delay being condoned. In view of Section 254(3) of the Act, we condone the delay in filing of this appeal and we admit the appeal for decision of merits.

3 In this case, the assessment order was passed on 17.12.2018 whereby the assessee's total income was assessed at Rs.2,75,97,389/- as against the returned of income of Nil. The income returned by the assessee was nil as a result of exemption claimed by the assessee under section 11 of the Income Tax Act, 1961 (hereinafter "the Act"). However, the Assessing Officer ("AO") took an adverse view of delay on the part of the assessee in filing of Form No. 10. The relevant portion of the assessment order is reproduced as under: -

*"3. The assessee society has been constituted on 31.12.1976 and it has been renewed with effect from 31.12.2014 for further five years. The assessee has claimed exemption u/s 11 of the Income Tax Act, 1961. The society is registered u/s 12A of the Income Tax Act, 1961 vide order dated 16.10.2007 of the Ld. Commissioner of Income Tax-I, Lucknow. Copy of the registration certificate have been furnished.*

*4. From perusal of data submitted by the assessee as well as the data available online it was found that there is a surplus of Rs.2,75,97,389/- available with the assessee as on 31.03.2016 for which there was requirement of Form 10 to be submitted online by the assessee by the due date as per amendment provisions of I.T. Act, 1961 as well as I.T. Rule 1962. This point was raised during the discussion with the AR and finally a show cause was issue online vide notice no.ITBA/AST/F/143(3)(SCN)/2018-19/1013953548(1) dated 02.12.2018 fixing the date of compliance by 05.12.2018.*

*Ld. A.R. sent by Speed Post a declaration that he is ready to file Form 10 now before A.O. for an amount of Rs.3,00,00,000/-. The A.R. was apprised of latest legal position (Amendment) regarding electronic filling of Form 10. He was explained in detail that after amendment Form 10 cannot be accepted manually by A.O. as well as non permissibility of manual receipt of Form 10 during assessment proceeding by A.O.*

*The A.R. sought some time to follow the instruction and get the delay condoned from appropriate authority. Till that no such decision on both point has been received from assessee in this office. As the assessment is getting barred by limitation there is no other option left but to charge this amount to tax.*

*5. During the examination of written reply as well as online data submitted by assessee, it is found that assessee has claimed depreciation of Rs. 10,58,281/- in its application of income. This is inadmissible as per provision of section 11(6) of I.T. Act 1961. Therefore, the treatment of this amount as depreciation is not being allowed. This amount is not being allowed as application of income.*

*In view of the discussion above, the income of the assessee for F.Y. 2015-16 is computed as under:*

Gross receipts as per Income & Expenditure A/c	Rs.9,76,75,680/-
<b>Less:</b>	
(i) Application of funds	Rs.5,64,85,220/-

*As claimed by assessee*

**Less:** Depreciation discussed Rs.10,58,281/- Rs.5,54,26,939/-

*In Para 5*

Excess of Expenditure over income Rs.4,22,48,781/-

*15% of Gross Receipt*

*[accumulation allowed u/s 11(1)(a)]*

*Total Income i.e. Surplus above 15%*

**Rs.2,75,97,389/-**

*In view of the above discussion, the assessment is completed at income of **Rs.2,75,97,389/-**. Charge interest as per rules. Notice of demand issued.”*

3.1 Assessee filed appeal in the office of the Ld. CIT(A) against the aforesaid assessment order dated 17.12.2018. Vide impugned appellate order dated 15.02.2019 in ITA. No.198/LKW/2019, the Ld. CIT(A) condoned the delay on the part of the assessee in filing of Form No.10 and directed the Assessing Officer to allow the accumulation of income under section 11(2) of the Act and to compute the assessee's income accordingly. Separately, the assessee had also filed an application in the office of the Ld. Commissioner of Income Tax (Exemptions) seeking condonation of delay on the part of the assessee in filing of Form No. 10. Vide impugned order dated 12.12.2018 in ITA. No.727/LKW/2019, the Ld. CIT(E) rejected the assessee's application for condonation of delay on the part of the assessee in filing of Form No. 10. The present appeal before us, vide ITA. No.198/LKW/2019 has been filed by Revenue against the aforesaid impugned appellate order dated 15.02.2019 of the Ld. CIT(A). Further, the present appeal before us, vide ITA. No.727/LKW/2019 has been filed by the Assessee against the aforesaid impugned order dated 12.12.2018 of the Ld. CIT(E).

4. In the course of appellate proceedings in ITAT, the assessee filed a paper book containing the following particulars: -

## Paper Book-I

S. No.	Particulars
1	Written Submission
2	Order of Registration u/s 12A of the I.T. Act
3	Copy of Assessing Officer order
4	Resolution and Form 10 online filed on dated 18.12.2018
5	Order of CIT Appeal (4) dated 15.02.2019
6	Circular No.7 dated 20.12.2018

## Paper Book-II

S. No.	Particulars
1	Written Submission
2	Order of 12A Registration Order
3	Application for Condonation of Delay filed before CIT(Exemption) Lucknow with Resolution and Copy of Form 10
4	Copy of CIT Order for Rejecting Connotation of Delay
5	Copy of Order of CIT Appeal (4) dated 15.02.2019
6	Copy of Circular 7/2018

5. At the time of hearing before us, the Assessee was represented by Shri Hariom Rastogi, C.A. and Revenue was represented by Shri Sanjeev Krishna Sharma, Ld. Add. CIT-Departmental Representative (DR). We have heard both sides. We have perused the materials available on record. The assessee is a Government Institution registered under section 12A of the Act. In the factual matrix before us, we find that on one hand the Ld. CIT(A) has condoned the delay on the part of the assessee in filing of Form No. 10; whereas, the Ld. CIT(E) has refused to condone this delay. After deliberations at the time of hearing before us, the representative of both sides Shri Hariom Rastogi, C.A. for the Assessee and Shri Sanjeev Krishna Sharma, Ld. Add. CIT-Departmental Representative (DR) for Revenue; were in agreement that the issue in dispute in the appeal filed by the assessee vide ITA. No. 727/LKW/2019 may be set aside to the file of the Ld. CIT(E) with a direction to pass denovo order in accordance with law after providing reasonable opportunity to the assessee. They were also in agreement that, the issues in dispute in the appeal filed by Revenue vide ITA. No.198/LKW/2019 may be set aside to the file of the Assessing Officer with a direction to pass denovo order in accordance with law after providing reasonable opportunity to the assessee.

6. In view of the foregoing, and as representatives of both sides are in agreement with this, in the specific facts and circumstances of the present case before us; we set aside both the aforesaid impugned orders including order dated 15/02/2019 passed by the Ld. CIT as well as order dated 12/12/2018 passed by the Ld. CIT(E). Further, we restore the issue in dispute in ITA. No.727/LKW/2019 to the file of the Ld. CIT(E) with a direction to pass denovo order in accordance with law after providing reasonable opportunity to the assessee. Furthermore, we restore the issues in dispute in ITA. No.198/LKW/2019 to the file of the Assessing Officer, with a direction to pass denovo assessment order in accordance with law, after providing reasonable opportunity to the assessee.

7. In the result, both appeals are partly allowed for statistical purposes.

Order was orally pronounced in the open court, after conclusion of hearing on 12/11/2024. This detailed order in writing is pronounced today in open court on 20/11/2024.

Sd/-  
[KUL BHARAT]  
VICE PRESIDENT

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 20/11/2024

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar