

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. Nos. 1174 & 1175/Kol/2024
Assessment Years: 2016-17 & 2017-18

Society for the Betterment of Education (PAN: AAHAS 9354 D)	Vs.	ITO, Ward- 38(4), Midnapur ITO, Ward-1(3), Exemption, Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	27.11.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	05.12.2024
For the assessee / निर्धारिती की ओर से	Smt. Saswati Mitra Dutta, Advocate Smt. Rajashree Dutta, Advocate
For the revenue / राजस्व की ओर से	Shri Pradip Biswas, Addl. CIT

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the appeals preferred by the assessee against the separate orders of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi (hereinafter referred to as the “Ld. CIT(A)”) for the AY 2016-17 & 2017-18 respectively.

2. As it appears from the record that the present appeal has been filed by the delay for this the assessee has filed condonation petition and according to assessee being an educational institution and school is affiliated, the governing body and members are all government officials. It has further submitted by the Counsel that the assessee stays at Midnapur which is much away from Kolkata where the office of the assigned advocate is situated. The ld. Counsel further submits that the A.R who has been handed over the file was in fact only on account of illness of her father and in this way the considerable time has been elapsed. The prayer of the counsel is to condone the delay.

3. The Ld. D.R did not raise in condoning the delay. Accordingly the delay is hereby condoned.

4. Brief facts of the case of the assessee is a school which is registered under Society Registration Act, 1961. The assessee is solely engaged in running school in Midnapur filed its return of income for AY 2016-17 declaring total income at Rs. Nil. The case was selected for scrutiny and after issuance of notice which respect to the claim of exemption of income of Rs. 81,26,484/-. Nothing has been submitted by the assessee before the AO, hence the claim of exemption of Rs. 81,26,484/- has been denied by the AO.

5. The said order has been challenged by the assessee before the Ld. CIT(A) wherein the appeal of the assessee has been partly allowed by holding that the assessee was granted 12AA registration on 18.12.2018 for AY 2017-18 and for AY 2016-17 on 20.12.2018 and therefore as per Circular 1/15 dated 21.01.2015 registration claimed u/s 12AA is also applicable for this year. But the Ld. CIT(A) dismissed the claim of exemption of Rs. 81,26,482/- on the ground that audit report in Form 10B is not filed.

Being aggrieved and dissatisfied the present appeal has been filed.

6. The Ld. Counsel challenges the impugned order that there was submitting that the Ld. CIT(A) was not justified in disallowing the claim of deduction u/s 11 of the Act. Despite the fact that audited report of the said order was filed before the AO during the

proceedings and according to him claim of exemption merely on the occasion of furnishing audited report in Form 10B cannot be said to be justifiable. In view of catena of decision of ITAT as well as Hon'ble High Court at Calcutta. According to him, furnishing of audit report along with return is a procedural requirement only. He has cited a decision passed by the Hon'ble Calcutta High Court in the case of CIT vs Rai Bahadur Bissesswarlal Motilal Malwasie Trust.

7. Contrary to that the ld. D.R supports the impugned order.

8. We have gone through the order of Ld. CIT(A) and find that the assessee was granted 12AA registration on 17.12.2018 and as per the Ld. CIT(A) registration u/s 12AA was also applicable for this year. The Ld. CIT(A) in its order has held that as per provision of section 12A(1)(d) read with Rule 17B to claim the benefits of 12A and deduction u/s 11 of the act, the audit report in form 10B mandatorily needs to be filed along with return of income which is not filed by the assessee within the due date prescribed. In this context, we have perused such decision and find that Hon'ble High Court has held thus:

“Charitable Trust -Exemption-condition precedent-submission of audit report along with return- not a mandatory condition- submission of audit report before completion of assessment- trust entitled to exemption u/s 11, 12A.”

Keeping in view the above principles as decided by the Hon'ble Calcutta High Court and several benches of ITAT, we are in this view that merely filed Form 10B benefit of exemption should not be denied. Accordingly, the case of the assessee restored in the file of Ld. CIT(A) to decide the issue in accordance with the law.

9. Issue raised in the appeal in 1175/Kol/2024 for AY 2017-18 as decided by us in ITA No. 1174/Kol/2024 for AY 2016-17 would mutatis mutandis apply to this appeal as well. Consequently the appeal of the assessee is allowed for statistical purposes.

In the result, both the appeals of the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 5th December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 5th December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Society for the Betterment of Education, Midnapore Sepoy Bazar,
Midnapore Kotowali, Paschim Medinipur-721101
2. Respondent – ITO, Ward-38(4), Midnapur
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata