

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1402/Bang/2024
Assessment Year: 2019-20

Shri Madvirashiv Shivogimandir Samsthe, Bagalkot Opp. DCC Bank Bagalkot B.H. School SO Bagalkot Karnataka India 587 101 PAN NO : AAHTS5147H	Vs.	ITO (Exemptions) Kalaburugi
APPELLANT		RESPONDENT

Appellant by	:	Sri Ashok A. Kulkarni, A.R.
Respondent by	:	Ms. Neha Sahay, D.R.

Date of Hearing	:	19.09.2024
Date of Pronouncement	:	12.12.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. CIT(A)/NFAC dated 5.6.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1065401074(1) for the AY 2019-20 passed u/s 250 of the Income Tax Act, 1951 (in short “The Act”).

2. The assessee has raised the following grounds of appeal:

- 1. The order of the Hon’ble National Faceless Appeal Centre (NFAC) Delhi is opposed to law and facts of the case.*
- 2. The Hon’ble NFAC failed to appreciate that the revised return of income which was accompanied with Form No.10B replaced the original return of income and as such consequence the appellant had complied with the provisions of the Act.*

3. *The Hon'ble NFAC ought to have held that the filing of Form 10BB instead of Form No.10B was a procedural irregularity which was rectified by filing a revised return of income.*
4. *The Hon'ble NFAC have regard to the facts of the case ought to have held that there was no delay in filing Audit report in Form No.10B of the Act*
5. *The Hon'ble NFAC failed to appreciate that there was no total default in filing Audit report.*
6. *The appellant craves for leave to add to, delete from or amend the grounds of appeal.*

3. Brief facts of the case are that the assessee trust is claimed to be formed in the year 1953 and is duly registered u/s 12A of the Act. The assessee is regularly assessed to income tax in the status of AOP as Charitable Trust within the jurisdiction of ITO(Exemption), Ward-1, Kalaburugi. The assessee filed the return of income for assessment year 2019-20 on 31.10.2019 vide acknowledgement No.24741050311019 declaring nil income after claiming exemption u/s 11 of the Act. While filing the return of income on 31.10.2019, which is also the extended due date for filing return of income for the AY 2019-20, the assessee inadvertently filed the audit report in Form 10BB instead of Form 10B required to be filed on or before filing of the return of income. The assessee thereafter realizing the mistake, took steps to file revised return on 16.3.2020. The revised return filed on 16.3.2020 was accompanied with audit report filed in Form 10B as per the provisions contained in Section 12A(b) of the Act. Thereafter, the CPC processed the revised return of income and accordingly, intimation /s 143(1) of the Act was sent to the assessee denying the benefit of section 11 of the Act on the ground that audit report in Form 10B was not filed on or before the due date. The assessee trust thereafter filed rectification application as per the provisions contained in section 154 of the Act but the said application was also rejected by the AO on the ground that the audit report was not filed by the assessee on or before the due date.

Further, the AO has also observed that as verified from the records, assessee has not filed Form 10BB at all. In the opinion of AO as the assessee has not fulfilled one of the conditions for allowability of deduction, the assessee is not eligible for deduction u/s 11 & 12 of the Act and accordingly, held that the CPC has rightly disallowed the claim of the assessee and there is no mistake apparent from the record, which can be rectified u/s 154 of the Act.

3.1 Aggrieved by the order of rectification passed u/s 154 of the Act dated 23.2.2023, the assessee has preferred an appeal before the Id. CIT(A)/NFAC. The Id. CIT(A)/NFAC vide his order dated 5.6.2024 has dismissed the appeal on the ground that due to lack of power, the present appeal cannot be adjudicated by him although he agreed with the decision of Hon'ble Gujarat High Court in the case of Association of Indian Panel Board Manufacturers Vs. DCIT reported in (2023) 157 taxmann.com 550 (Guj.) relied upon by the assessee. The Id. CIT(A) held that appeal filed by the assessee cannot be adjudicated by the Id. CIT(A) due to lack of powers. He is of the opinion that even the AO is not competent to condone the delay in filing form 10B, therefore, the action of the AO cannot be faulted with and dismissed the appeal of the assessee.

3.2 Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before the Tribunal. The assessee has also filed paper book containing 35 pages comprising following documents:

1. Written submissions filed before NFAC
2. Copy of the ITR V for AY 2019-20 dated 31.10.2019
3. Copy of the acknowledgement of Form 10BB
4. Copy of the Form 10BB
5. Copy of the ITR acknowledgement for AY 2019-20
6. Copy of the acknowledgement of Form 10B
7. Copy of the Form No.10B

8. Copy of the CPC intimation u/s 143(1) of the Act
 9. Copy of the application u/s 119(2) for condonation of delay in filing form 10B before the Commissioner of Income Tax (Exemption) dated 27.3.2023
 10. Copy of the ITAT order in the case of Secondary School Education Society Vs. The Income Tax Officer (Exemptions) reported in ITA No.897/Bang/2024 dated 24.6.2024.
 11. Copy of the judgement reported in (2024) 162 taxmann.com 114 (Bombay) between AI Jamia Mohammediyah Education Society Vs. Commissioner of Income Tax (Exemptions).
 12. Copy of the judgement reported in 2024 SCC Online Ori 2110 (High Court of Orissa at Cuttack) between Joharimal High School Vs. ITO and another.
- 4.** Before us, ld. A.R. of the assessee vehemently submitted that the assessee trust in fact filed return of income as well as audit report well within the extended due date of filing the return of income and audit report applicable for AY 2019-20 but inadvertently instead of filing audit report in Form 10B, the auditor has filed the form 10BB. The ld. A.R. of the assessee further submitted that realizing the mistakes in audit report, took immediate steps to file the revised return on 16.3.2020 accompanied with audit report u/s 12A(b) of the Act in form 10B and therefore, submitted that it is not a case of non-filing of the audit report or belatedly filing of the audit report but in fact due to inadvertent mistake the auditor has submitted the form 10BB instead of form 10B and accordingly, prayed to allow the appeal of the assessee.
- 5.** The ld. D.R. on the other hand supported the order of the authorities below and vehemently submitted that the assessee has to file the condonation of delay in filing the audit report belatedly before

the Commissioner as per provisions contained in section 119(2) of the Act and the AO as well as ld. CIT(A) has no power to condone the delay in filing the audit report and accordingly, the authorities below have rightly sustained the additions made by the CPC.

6. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that assessee has filed original return of income within the extended due date on 31.10.2019 along with audit report in form 10BB. It is also an undisputed fact that the assessee realizing the mistake that the wrong audit report had been filed, took voluntary steps to file revised return on 16.3.2020 u/s 139(5) of the Act accompanied with audit report u/s 12A(b) of the Act in form 10B. On perusal of the order of the rectification passed u/s 154 of the Act, we find that AO has observed that on verification, it is found that the assessee has not filed audit report in form 10BB at all. On going through the paper book placed before us, we find that the assessee has attached the copy of form 10BB dated 11.9.2019 uploaded on 31.10.2019 vide e-filing acknowledgement no.247395271311019 (pages 5 to 7 of PB). Therefore, we are of the considered opinion that it is not a case of non-filing of audit report on or before the due date for which condonation of delay in filing the audit report is required to be filed before the commissioner. It is also not disputed fact that audit of accounts was completed on or before the extended due date and the audit report was also obtained on or before the due date. We also find that the revised return was also processed by the CPC but the benefit of exemption u/s 11 & 12 of the Act were denied on the sole ground that the audit report in form 10B was not filed within the due date. At this juncture, we also cannot brush aside the fact that due to lot of confusion/misunderstanding and difficulties reported by the tax payer in filing audit reports, the CBDT has by way of circulars/press release on various dates had extended the date of

filing audit report several times and also authorized the commissioners to condone the delay u/s 119(2) of the Act and decide on merits. We take a note of the fact that Id. CIT(A) on the ground of lack of powers had not adjudicated the case on merits without proper understanding the real crux of the case. Taking into consideration the totality of the facts narrated above, we are of the opinion that it is not a case that audit report along with return of income were not filed within the due date applicable for assessment year 2019-20. The auditor had mistakenly uploaded form 10BB instead of form 10B as required in the case of the assessee trust. The assessee trust realizing the mistake that the wrong audit report being filed took voluntary steps not only to file revised return on 16.3.2020 but also filed audit report in form 10B on the same date. Therefore, we set aside the order of the Id. CIT(A)/NFAC and direct the AO to delete the additions and allow the exemption claimed by the assessee u/s 11 of the Act for the AY 2019-20.

7. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 12th Dec, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 12th Dec, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.