

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. No. 1774/Kol/2024
Assessment Year: 2022-23

Kaydee Foundation (PAN: AAFCV 5824 K)	Vs.	ITO, Ward-1(2), Exempt, Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	05.12.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.12.2024
For the assessee / निर्धारिती की ओर से	Shri Abhishek Bansal. CA
For the revenue / राजस्व की ओर से	Shri Prabhakar Prakash Ranjan, Addl. CIT Sr. DR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-Addl/JCIT(A)-1, Coimbatore (hereinafter referred to as the "Ld. CIT(A)") dated 22.07.2024 for the AY 2022-23.

2. Brief facts of the case of the assessee is that the assessee being a trust filed its return of income u/s 139(4a) and on the same date the assessee has submitted auditors

report in form No. 10B. While processing the return of income the AO rejected the exemption claimed u/s 11 of the Act for the delay in filing the audited report in form no. 10B.

3. The assessee preferred an appeal before the Ld. CIT(A) wherein also the appeal of the assessee has been dismissed by holding that there was a delay in filing form no. 10B hence the assessee is not entitled to claim exemption u/s 11 of the Act.

Being aggrieved and dissatisfied the impugned order the assessee preferred the appeal before us.

4. The Ld. Counsel for the assessee challenges the impugned order by submitting that the Ld. AO erred in rejecting the exemption claimed u/s 11 merely for the reason of delay of 24 days in filing audit report. The Ld. Counsel further submits that the AO erred in rejecting the exemption claimed u/s 11 of the Act in spite of the fact that report was available with the AO while passing intimation u/s 143(1) of the Act on 31.03.2023 an order u/s 154 of the Act dated 06.04.2023. The Ld. Counsel further submits that filing of form 10B is not mandatory rather it is directory in nature. The Ld. Counsel draw the attention of the Bench regarding several order of ITAT and High Courts.

5. Contrary to that, the Ld. D.R supports the impugned order.

6. We have gone through the record and find that the assessee is a trust and he filed return of income along with auditor's report in Form no. 10B. The claim has been rejected on the ground of delayed filing of Form no. 10B which as per the annual mandate provision was required to be filed one month before the due date by filing the return of income though it was filed on 1.11.2022. The extended issue date of filing of return of income for the AY 2022-23 on 07.11.2022, hence there was delay of 24 days in furnishing the report in Form no. 10B. The Ld. A.R has submitted that he was unaware of the new provisions requiring of filing report in form no. 10B one month before the due date of filing the same. In this connection, we have gone through the judgment of Hon'ble Calcutta High Court and find that Hon,ble High Court has held

that filing of form No. 10B is a procedural provision and not directory in nature. On perusal of the order of Ld. CIT(A) it appears to us that there was a delay in filing form no. 10B and due to this claim of exemption has been denied. The assessee has submitted that due to the mistake on the end of income tax department initially the assessee was confused and delayed in getting up accounts audited for filing 10B. According to the assessee, the delay in filing 10B was mainly in the technical mistake in certificate itself which has been rectified later. We have gone through the order passed by the Co-ordinate Bench of Kolkata and find that the Co-ordinate Bench, Kolkata in Manav Seva Trust Vs. AO, Ward-1(4), Kolkata in ITA No. 940/Kol/2024 dated 9.8.2024 has discussed this issue and held thus:

“3. We have considered the submissions by both the ld. A/R and ld. D/R and also perused the orders of ld. AO and the ld. CIT(A). Ld. A/R has relied on the case of Hari Gyan Pracharak Trust vs. DCIT in ITA No. 245/AHD/2021, order dated 16.06.2023. In this case, the Coordinate Bench has held that since filing of Form-10B is merely a procedural requirement, any defect in that is curable. It is seen that the Hon'ble Orissa High Court in the case of Oneness Educational and Charitable Trust vs. Commissioner of Income-tax (Exemption) reported in [2024] 161 taxmann.com 544 (Orissa) has held that the oversight in not filing Form-10B within the due date was to be condoned and the exemption was to be allowed and granted. Also, the Hon'ble Telangana High Court in the case of Global Organization for Development vs. Commissioner of Income-tax (Exemption) reported in [2024] 162 taxmann.com 633 (Telangana) has held that the delay on the part of the assessee in submitting Form-10B was to be condoned and the matter remanded back to the file of the AO for passing appropriate order on merits. Similarly, the Hon'ble Bombay High Court in the case of Al Jamia Mohammediyah Education Society vs. Commissioner of Income-tax (Exemptions) reported in [2024] 162 taxmann.com 114 (Bombay) has held that where the assessee Trust belatedly submitted Form-10B, along with return, on account of oversight by the Chartered Accountant, the delay in filing of Form-10B deserves to be condoned. In fact, some relevant portions from the said order deserves to be extracted as under:

“■ Admittedly, Petitioner is a charitable trust and had been filing its returns and Form 10B for AY 2015-16, for AY 2017-18 to AY 2021-22 within the due dates. On this ground alone, delay condonation application should have been allowed because the failure to file returns for AY 2016-17 could be only due to human error. Even in the impugned order, there is no allegation of mala fide. As held by the Gujarat High Court in Sarvodaya Charitable Trust v. ITO (Exemption) [2021] 125 taxmann.com 75/278 Taxman 148, the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, Respondent No.1 might be justified in denying the exemption by rejecting such condonation application, but an assessee, a public charitable trust with almost over thirty years, which

otherwise satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. [Para 6]

■ *Moreover, the Petitioner does not appear to have been lethargic or lacking in bona fides in making the claim beyond the period of limitation which should have a relevance to the desirability and expedience for exercising such power. Such routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, Page 3 of 5 I.T.A. No.: 940/KOL/2024 Assessment Year: 2018-19 Manav Seva Trust. if such powers are routinely exercised without considering its desirability and expedience to do so to avoid genuine hardship. [Para 7]*

■ *In a similar matter in Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (Exemptions) [2024] 161 taxmann.com114 (Bombay) was also a case where auditor had due to oversight not filed Form 10B. The Court held that the error on the part of auditor cannot be rejected but should be accepted as a reasonable cause shown by the trust management. In that case also, Petitioner did not suo moto realize its mistake and filed a condonation request only after Centralised Processing Centre (“CPC”) sent an intimation about non-filing of Form 10B. [Para 8]*

■ *Having considered the matter in its entirety, one is satisfied that the delay was not intentional or deliberate. Petitioner cannot be prejudiced on account of an ignorance or error committed by professional engaged by Petitioner. Respondent No.1 ought to have exercised the powers conferred. [Para 9]*

■ *In the circumstances, this Writ Petition has to be allowed and is hereby allowed in terms of prayer clause.*

■ *Since the delay has been condoned, Respondent shall process Petitioner’s returns in accordance with law by giving effect to this order on the basis that Form No.10B has been filed within time. [Para 11]”*

4. Considering the discussions made above, the delay in filing of Form 10B is hereby condoned and it is directed that the appellant be allowed exemption as would be due to him as per law. The ld. AO is directed accordingly.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.”

7. Keeping in view the above decision and considering the facts of the present case delay in filing form 10B is here by condoned. A.O is directed that the appellant be allowed exemption as would be due to him as per law.

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

Order is pronounced in the open court on 31st December, 2024

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 31st December, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Kaydee Foundation, F-15, Geetanjali Park Village Tower, 18/3A, Kumud Ghosal Road, Ariadaha, Kolkata-700057.
2. Respondent – ITO (Exempt), Ward-1(2), Kolkata
3. Ld. CIT(A)-Addl/JCIT(A)-1, Coimbatore
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata