

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 319/Ind/2024
Assessment Year: 2017-18

Bhartiya Aadarsh Shikshan Samiti, Manas Bhawan, Sanjit Road, Mandsaur (Assessee/Appellant)	<u>बनाम/</u> <u>Vs.</u>	Deputy Commissioner of Income-tax (Exemption), Bhopal (Revenue/Respondent)
PAN: AABAB2693N		
Assessee by	Shri Apurva Mehta, C.A. and Shri Rajesh Mehta, CA & Ld. AR	
Revenue by	Shri K. Bala Murali Krishna, Sr. DR	
Date of Hearing	04.12.2024	
Date of Pronouncement	27.12.2024	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 29.12.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 28.12.2019 passed by learned ITO, Exemption, Ujjain ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2017-18, the assessee has filed this appeal on following grounds:

- "1. *On the facts and in the circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals), NFAC, ('the Ld. CIT(A), NFAC') has erred in not providing proper opportunity of being heard and had erred in ex-parte order dated 29.12.2023, which is wrong and contrary to the facts of the case and provisions of the Act and is against the principle of natural justice. Thus, the order passed by the Ld. CIT(A), NFAC is liable to be quashed.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A), NFAC, and the Ld. AO have erred in not allowing exemption u/s 11 of the Act without appreciating that the assessee society in running schools and is engaged in providing education to students and is registered u/s 12AA of the Act and not doing so is against the provisions of the Act.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) as well as the Ld. AO have erred in not appreciating that registration granted u/s 12AA of the Act is applicable in respect of pending assessment proceedings and, thus, the assessee society was eligible for exemption u/s 11 of the Act in view of the 12AA Registration Certificate dated 29.07.2019"*

2. The registry has informed that the present appeal is delayed by 43 days and therefore time-barred. Ld. AR for assessee submitted that the assessee is a charitable society engaged in advancement of education. He drew us to Para 5 & 6 of impugned order and submitted that the CIT(A) issued first notice of hearing dated 28.01.2021 for which the assessee sought adjournment vide letter dated 19.02.2021 and the same was granted. Subsequently, after a gap of more than 2 years, the CIT(A) issued only two notices of hearing dated 11.10.2023 & 21.11.2023, noted non-compliances thereof by assessee and passed impugned order as ex-parte on 29.12.2023. Ld. AR next submitted that the assessee has filed an application for condonation of delay supported by an affidavit on stamp. Referring to contents of affidavit, Ld. AR submitted that the prescribed period of 60 days for filing of present appeal expired on 27.02.2024 but in

the month of February and March, 2024, the final examinations of students were conducted in schools run by assessee by CBSE, MP Board and at local level. Therefore, due to workload of examinations, staff of school was busy and it is only when new session of school started in the first week of April, 2024 that the assessee could file appeal on 10.04.2024. Therefore, the delay of 43 days occurred. Ld. AR very humbly submitted that there is no deliberate lethargy, negligence, mala fide intention or ulterior motive of assessee in making delay and the assessee does not stand to derive any benefit because of delay. He went ahead on submitting that the assessee is a charitable institution and the AO has assessed total income as high as Rs. 69,37,663/- whereas the assessee's income was fully exempt u/s 11/12. Therefore, Ld. AR prayed, the delay in filing present appeal must be condoned otherwise the assessee shall be saddled with huge tax liability against the provisions of Act.

3. Replying to this, Ld. DR for Revenue strongly objected to the prayer of assessee and submitted that the assessee has been non-compliant before CIT(A) and also made a delay of 43 days in filing present appeal. He submitted that the assessee has not given importance to statutory work of filing appeal in time, therefore does not deserve any sympathy.

4. Having heard learned Representatives of both sides and after a careful consideration, we find that the assessee is a charitable institution and also eligible for exemption u/s 11/12 as would be discussed in later part of this

order. Further, the assessee is advancing explanation that its staff had to be busy in conducting examinations during the month of February & March, 2024 and therefore the appeal could not be filed in time, which was ultimately filed in April, 2024 when the new session started. This explanation advanced by assessee deserves a liberal consideration. At the same time, we also find that the assessee has a meritorious case because the AO has assessed total income at Rs. 69,37,663/- without giving exemption u/s 11/12 but the assessee is entitled to exemption u/s 11/12 as would be seen in later part of this order. The Hon'ble Supreme Court has observed in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387** that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Therefore, taking into account the guidance given by Hon'ble Supreme Court, we take a liberal view and condone delay subject to payment of cost by assessee as mentioned in last para of this order.

5. The background facts leading to present appeal are such that the assessee is a society engaged in charitable purpose of advancing education. The AO, based on an information from AIMS Module of ITBA regarding cash deposited by assessee in bank a/c during demonetization period, issued notice dated 28.11.2017 u/s 142(1) calling the assessee to file return of AY 2017-18 by 28.12.2017. The assessee failed to comply with such notice. Subsequently, the AO issued query notices u/s 142(1) in response to which

the assessee made submissions. It was a submission of assessee that it is engaged in educational activities through schools; that there were cash-receipts by way of fee from students which were deposited in bank a/c; and that the assessee is registered u/s 12A vide order dated 29.07.2019 by CIT (Exemption), Bhopal w.e.f. AY 2019-20. During proceeding before AO, the assessee also filed Return of Income of AY 2017-18 under consideration on 10.06.2019 alongwith Computation of Total Income, Audit Report and Audited Financial Statements. Ultimately, based on documents of assessee, the AO assessed total income at Rs. 69,37,663/- but without giving exemption u/s 11/12. The AO denied exemption u/s 11/12 for two-fold reasons, viz. (i) the assessee had not filed return within the time permitted in the notice u/s 142(1), and (ii) the assessee got registration u/s 12A from AY 2019-20 which is not for AY 2017-18 under consideration. Aggrieved by order of AO, the assessee carried matter in first-appeal before CIT(A). The CIT(A), however, agreed with AO's conclusions and upheld assessment-order. Now, the assessee has come in next appeal before us assailing the orders of lower-authorities.

6. Ld. AR for assessee initially submitted that the assessee has, although after expiry of time allowed in notice u/s 142(1) but still before passing of assessment-order dated 28.12.2019, filed Return of Income, Audit Report and Audited Financial Statements for AY 2017-18 under consideration to the AO. Further, the department has granted registration u/s 12A to assessee vide order dated 29.07.2019 from AY 2019-20, but as on

29.07.2019, the assessment of AY 2017-18 with which we are concerned was pending before AO. Therefore, the assessee is entitled to the benefit of proviso to section 12A(2) reading as under:

"12A(2) Where an application has been made on or after the 1st day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment-year immediately following the financial year in which such application is made.

Provided that where registration has been granted to the trust or institution under section 12AA, then, the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the object and activities of the trust or institution remain the same for such preceding assessment year:"

Therefore, Ld. AR submitted, both of the lower authorities are wrong in denying exemption u/s 11/12 to assessee against the clear cut mandate of Proviso to section 12A(2). Ld. AR requested to direct the AO to allow exemption as claimed by assessee.

7. Per contra, Ld. DR for revenue supported the orders of lower-authorities and submitted that the assessee has failed to file return within the time allowed by AO in the notice u/s 142(1). Therefore, the AO has passed assessment-order u/s 144 without giving exemption u/s 11/12 to assessee. Ld. DR very strongly contended that the assessee has made a non-compliance of statutory obligations, therefore disentitled to exemption. He requested to dismiss the present appeal.

8. We have considered rival submissions of both sides and also perused the orders of lower authorities as well as the documents filed in Paper-Book of assessee to which our attention has been drawn during hearing. After a careful consideration, we find that the assessee has not submitted the return of income uptill 28.12.2017 as required by AO in the notice dated 28.11.2017 u/s 142(1). Thus, the assessee is negligent in filing return within the time fixed by AO. However, so far computation of total income is concerned, the assessee is entitled to exemption u/s 11/12 in terms of proviso to section 12A(2) noted above. What needs to be verified by AO is only the fact that the object and activities of assessee remained same for AY 2018-19 as were there at the time when registration u/s 12A was granted. That apart, the claim of exemption u/s 11/12 involves a different type of working based on application and accumulation of income which needs to be verified by AO. Therefore, we feel that it would be more appropriate to refer this matter back to the AO who shall give an opportunity to the assessee to provide necessary information for the aforesaid verifications by AO and based on such information allow exemption as admissible u/s 11/12 to assessee.

9. Since the assessee has not filed return of income within the time allowed by AO in statutory notice u/s 142(1) and also not filed present appeal in time, we apprised the Ld. AR of assessee during hearing that the assessee shall be directed to pay a cost of Rs. 10,000/- to Prime Minister

National Relief Fund and submit receipt of same to the AO during proceeding before AO. The assessee is accordingly directed.

10. Resultantly, this appeal is allowed for statistical purpose.

Order pronounced by putting on notice board in terms of Rule 34 of ITAT,
Rules, 1963, on 27/12/2024

Sd/-

Sd/-

(TR SENTHIL KUMAR)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 27/12/2024

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore