

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH**

**BEFORE: SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
AND SHRI PARESH M. JOSHI, JUDICIAL MEMBER,**

आयकर अपील सं./ITA No. 608/CHD/2024

निर्धारण वर्ष / Assessment Year : 2022-23

Farid Educational Social Welfare and Charitable Society, C/o Saint Farid Public School, New Shastri Nagar. Mandi Gobindgarh.	Vs	The DDIT, CPC, Bengaluru.
स्थायी लेखा सं./PAN /TAN No: AAAAF1283D		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashok Kumar Gera, Advocate

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT-DR

तारीख/Date of Hearing : 09.12.2024

उद्घोषणा की तारीख/Date of Pronouncement : 13.01.2025

HYBRID HEARING

आदेश/ORDER

PER PARESH M. JOSHI, JM

This is the second appeal filed by the assessee under Section 253 of the Income Tax Act, 1961 (hereinafter referred to as Act) before this Hon'ble Tribunal. The assessee is aggrieved by the order bearing No. ITBA/APL/S/250/2023-24/1063054999(1) dated 21.03.2024 of ld. Addl.CIT(A) passed under

Section 250 of the Act which is hereinafter referred to as the “impugned order”. The relevant assessment year is 2022-23 and the corresponding previous year period is from 01.04.2021 to 31.03.2022.

2.

Factual Matrix

2.1 The assessee Society is an educational Institute solely for educational purpose. It is also registered under Section 12AB of the Act vide Registration Order dated 24.09.2021.

2.2 That the assessee Society had filed return of income (ROI) electronically on 01.11.2022 vide e-filing acknowledgement No. 770186081011122 declaring total income of Rs. “Nil”.

2.3 That an intimation under Section 143(1) of the Act dated 13.06.2023 passed by ADIT CPC was received by the assessee on 19.06.2023.

2.4 That in the intimation, the total income of the assessee Society was computed at Rs.4,47,34,329/- as against ‘Nil’ returned by the assessee Society in ROI.

2.5 That as such, an exemption claimed by the assessee Society/Trust under Section 11 for Rs.4,47,34,329/- stood denied by CPC with following reasons/comments :-

“The Trust or Institution registered u/s 12A/12AA/12AB has not E-filed the Audit Report in Form 10B atleast one month prior to the due date for furnishing return u/s 139(1). Hence the exemption claimed in Sr. no. 6i to 6vii of Part B1 - Part B-TI is not allowable in accordance with the provisions of Section -12A(1)(b) of the Income tax Act

The details provided at Si. No. A19 of Schedule Part - A General are not matching with the information as per Form 10AC. Hence, the amount mentioned at Sr. No. 4 & 6(viii) of Part B Tl is not allowable.”

2.6 The aforesaid is under Section 143(1) of the Act. The date of order is dated 13.06.2023.

2.7 That the assessee being aggrieved by the aforesaid order under Section 143(1) dated 13.06.2023 preferred first appeal under Section 246A of the Act and Addl. CIT(A) however has dismissed the appeal by impugned order.

2.8 The Addl. CIT(A) in the impugned order has held as under :

“6.1.3 In this regard, the appellant mentioned that the Provisional Registration Number was inadvertently mentioned as

AAAAAF1283DE20219 as against the correct Provisional Registration Number is AAAAF1283DE20219. This was typographical error with no malafied intention.

6.1.4 The society is registered under sec.12AB of the act and has not uploaded the audit report on e-filing portal in Form 10B at least one month prior to the due date for furnishing the return of income tax u/s 139(1) of the act. The appellant has filed Return of income on 01.11.2022 and audit report was uploaded on 10.03.2023. Hence, the exemption claimed u/s 11 & 12 of the Income tax Act are not allowed. In this regard, the appellant mentioned that accounts were audited on 20.08.2022 but the auditor failed to upload the same online within due date. When the AO, CPC pointed out that the audit report has not been submitted, the same got uploaded on 10.03.2023.

6.1.5 The appellant on late uploading of audit report has requested this office to condone the delay. In this regard, it is to submit that this office is not empowered for condonation of such delay in filing Audit report. The appellant has to file application for condonation of delay before concerned CIT(Exemption) and get the delay condoned. In absence of condonation of delay order from CIT(Exemption), these grounds of the appellant fails. Addition made by CPC is hereby upheld.

6.2 Ground No. 5 & 6 are general in nature and hence Dismissed

7. In the result, the appeal is "Dismissed".

2.9 The assessee being aggrieved by the impugned order has filed this second appeal before this Tribunal and has raised following grounds of appeal in Form No. 36 against the impugned order :

- “1. That the order of the Hon'ble ADDL/JCIT (Appeals)-I, VADODARA is dated 21.03.2024,upholding the addition made by the CPC is against the facts, circumstances, principles of natural justice and fair play.*
- 2. That denial of exemption by the Deputy Director of I Tax C P C ,on the basis of technical mistake of not matching information as per Form 10AC with the one provided at sr.no.A19 of schedule Part-A General, is against the provisions of the Income tax Act. 1961 especially section 292B.*
- 3.1 That the intimation u/s 143(1)(a) dated 13.06.2023,disallowing exemption, merely on the ground of not filing Audit Report in Form*

10B, one month before the due date of filing return under section 139(1), by having recourse to Prima facie adjustment, ignoring the final accounts, even though the Audit Report in Form 10B (filed on 10.03.2023), was before the Assessing Authority during processing, is against the provisions of the Income -tax Act, 1961. This is not regular assessment under section 143(3) wherein the assessee-appellant could explain his point of view.

- 3.2 *.That the requirement, under section 12A(1)(b) of the Act ibid, of filing Audit Report in Form 10B, one month before the due date of filing of return under section 139(1) is procedural in nature.*
- 3.3 *That the appellant, in appeal before the Hon'ble CIT/ADDL/JCIT (APPEALS) had prayed to condone the delay in filing Audit Report in Form 10B, because the appellant was under a bona fide belief that the Hon'ble CIT/ADDL/JCIT (Appeals) under his co-terminus powers, could condone the delay. But the delay was not condoned by the Hon'ble CIT/ADDL/JCIT (Appeals).*
- 3.4 *That now, the appellant has on 09. 05.2024, filed request before the Hon'ble Commissioner of Income- Tax (Exemptions) Chandigarh for condonation of delay in filing audit report in Form 10 B. The appellant will inform the Hon'ble Court about the decision of the CIT (Exemptions).*
4. *That the intimation under section 143(1)(a) of the Deputy Director of Income tax CPC dt. 13.06.2023 denying exemption, is against the principles of natural justice, prevailing law.*
5. *That the appellant craves for leave to urge, amend, add, vary any ground till disposal of appeal. It is, therefore, prayed that the order of the Hon'ble ADDL/JCIT (Appeal) may kindly be set aside or any other relief as deemed fit may kindly be given.*

3. **Record of Hearing**

3.1 The hearing in the matter took place before us on 09.12.2024 when both parties i.e. ld. AR for and on behalf of the assessee appeared and ld. DR for and on behalf of the Revenue appeared. Both the parties were treated

equally and equal opportunity was afforded to them to canvass their respective contentions. The ld. AR has placed on record of this Tribunal a detailed Paper Book. Basis Paper Book he contended that Audited Balance Sheet of the assessee Society was on record on 10.03.2023 much before intimation order under Section 143(1) which is dated 13.06.2023. Therefore, before the impugned intimation order was passed under Section 143(1) the Audit Report dated 20.08.2022 was available and it was incumbent upon CPC to have considered the same but the same was just not considered an approach wholly untenable in law and claim of the assessee for exemption came to be rejected on hyper technical ground which has caused serious prejudice to them. It was submitted that assessee Society filed ROI on 01.11.2022 and audit report dated 20.08.2022 was uploaded on 10.03.2023. The ld. AR pointed out that though the Audit Report is dated 20.08.2022 but assessee's Auditor failed to upload the same online within due date. When the ld. AO of CPC pointed out to them that the audit report is not submitted/uploaded, the same was uploaded on

10.03.2023. The ld. AR pointed out to us that for no fault of assessee, this fiasco has happened and this Tribunal should ignore and/or condone this aspect in order to secure ends of justice as huge amount of exemption stands denied to them despite they being registered entity and in field of education. They requested the Addl. CIT(A) to take on record Audit Report by preferring additional evidence application in terms of Rule 46A but same was not considered by ld. Addl. CIT(A) and instead impugned order is passed stating that office of Addl. CIT(A) is not empowered to condone such delay of filing Audit Report and that assessee is required to file application for condonation of delay in filing Audit Report in Form 10AB before concerned CIT(E) and get the delay condoned. Hence assessee ground has been held to be failed one. In application for additional evidence U/R 46A it was also pleaded that proposed adjustments were intimated on 14.02.2023; 10B was filed on 10.03.2023, response was made on 15.03.2023 and adjustment demand was made on 13.06.2023. These facts goes to show that before order

under Section 143(1) was passed, requisite audit report dated 20.08.2022 was on record.

Per contra, ld. DR has gone by CPC intimation order under Section 143(1) dated 13.06.2023 and impugned order.

4. **Observations, findings and conclusions**

4.1 We have examined the records of the case. We have heard the rival submissions. We are of the considered view that Audit Report was dated 20.08.2022 which could not be filed due to mistake on part of the assessee's Auditor. However, the same was uploaded when AO-CPC called upon the assessee to do so which was done by assessee on 10.03.2023 much before impugned intimation order was passed by CPC on 13.06.2023. However, CPC did not take into consideration on the ground that it ought to have been filed on or before one month prior to due date of return. The ld. Addl. CIT(A) in the impugned order has held that he has no power to condone the delay in filing Audit Report-10B and said powers are with CIT (E). Be that as it may, in Paper Book placed on record, the assessee has placed copy

of such approval order of CIT(E) which is dated 07.10.2024 vide DIN No. ITBA/COM/F/17/2024-25/1069475415(1) wherein delay in filing Audit Report is condoned. The assessee vide an application for bringing additional evidence (PB Page 110) has enclosed the said order of approval. We have perused both the application and approval order.

4.2 In view of above premises, we allow the application for additional evidence and admit approval order dated 07.10.2024 of CIT(E) (supra).

4.3 In overall facts and circumstances we set aside the impugned order and remand the case back to the file of ld. AO to examine the case of the assessee afresh basis Audit Report so filed and now approved by CIT(E). We hold that with approval order of CIT(E) in place controversy between assessee and revenue stands resolved on audit report and we sincerely hope and trust that ld. AO would now give an opportunity afresh to the assessee and would dispose off the claim of exemption to assessee society in accordance with law.

5.

ORDER

5.1 Impugned order is set aside and matter is remanded back to ld. AO on denovo basis to pass a speaking order.

5.2 Appeal allowed for statistical purposes.

Order pronounced on 13.01.2025.

**Sd/-
(VIKRAM SINGH YADAV)
ACCOUNTANT MEMBER**

**Sd/-
(PARESH M. JOSHI)
JUDICIAL MEMBER**

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar