

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.572/Nag./2024
(Assessment Year : 2021-22)

Income Tax Officer
Ward-4, Exemption, Nagpur

..... Appellant

v/s

Deendayal Seva Pratishthan
Shakambhari, 5, Kale Layout
Wadgaon Road, Yavatmal 445 001
PAN – AAATD7507R

..... Respondent

Assessee by : Shri Kishore B. Phadke
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/03/2025

Date of Order – 21/03/2025

ORDER

PER K.M. ROY, A.M.

The instant appeal by the Revenue is emanating from the impugned order dated 11/09/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2021-22.

2. In its appeal, the assessee has raised following grounds:-

"1. The Ld. CIT(A) has erred in law and facts in allowing the exemption of Rs. 2,01,39,828 claimed by the assessee trust by relying upon the decision of BABASAHEB RAOSAHEB KOBARANE & ANR v. PYROTEK INDIA P LTD and Others (Civil Appeal No. 2022 @ Special Leave Pettion (C) No. 2522/2022) eventhough the last date of filing ITR and Audit Report vide CBDT Circular 01/2022 dated 11/01/2022 were 15/3/2022 and 15/2/2022 respectively for the relevant assessment year.

2. *The learned CIT(A) has erred in law and on facts by relying upon decision of BABASAHEB RAOSAHEB KOBARNE and ANR v. PYROTEK INDIA P LTD & Ors. (Civil Appeal No. 2022 @ SLP (C) no. 2522/2022 as the same was rendered for limitations as may be prescribed under any general laws in respect of all judicial and quasi-judicial proceedings whereas, filing of audit report in form no. 10B within due date was a statutory duty of the assessee trust for claiming exemption u/s 11 of the Act."*

2. The Revenue has challenged the impugned order passed by the learned CIT(A) granting relief based on the judgment of the Hon'ble Supreme Court in Babasaheb Raosaheb Kobarne & Anrversuspyrotek India Pvt. Ltd. & Ors., SLP(C) no.2522/2022, [2022] Livelaw (SC) 250. We have gone through the order and the relevant portion of the order is reproduced below:–

"From the impugned judgment and order passed by the High Court, it appears that the High Court has refused to condoned the delay and take on record the written statement on the ground that the period of 120 days within which the written statement could have been taken on record, expired on 09.05.2020 which was during the lock-down imposed. Therefore, the High Court has refused to condone the delay and take the written statement on record.

Having heard the learned counsel appearing on behalf of the respective parties and having considered order dated 10.01.2022 passed by this Court in Miscellaneous Application No.21/2022 by which the following order was passed and order dated 04.01.2022 passed by this Court in SLP (C) No.17298/2021 in the case of Centaur Pharmaceuticals Pvt. Ltd. & Anr. Vs. Stanford Laboratories Pvt. Ltd., the impugned order passed by the High Court is unsustainable. The operative portion of the order passed by this Court in Miscellaneous Application No.21/2022 reads as under –

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021. It is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12 A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

In that view of the matter, the period from 15.03.2020 till 28.02.2022 shall have to be excluded for the purposes of limitation as may be prescribed under any General or SPECIAL LAWS in respect of all judicial or quasi-judicial proceedings. The Commercial Courts Act, 2015 being a Special Law, the said order shall also be applicable with respect to the limitation prescribed under the Commercial Courts Act, 2015 also.

In view of the above and for the reasons stated above and more particularly when the 120 days period expired in the present case on 09.05.2020 which was during the aforesaid period as prescribed by this Court in the aforesaid order, the High Court ought to have excluded the aforesaid period for the purpose of filing the written statement and ought to have permitted to take the written statement on record. The impugned judgment and order passed by the High Court refusing to condone the delay and take on record the written statement is hereby quashed and set aside.

It is directed that the written statement, already filed, be taken on record and the same be considered in accordance with law. It is reported that an interim injunction application is pending before the learned Trial Court since long. We direct the learned Trial Court to finally decide and dispose of the interim injunction application at the earliest and preferably within a period of six weeks from the date of receipt of the present order.

The Appeal is accordingly allowed to the aforesaid extent. No costs.”

3. Facts in Brief:- The assessee is a Trust. On 09/03/2022, the assessee trust filed its return of income declaring total income at ₹ nil, claiming exemption under section 11 of the Act. The assessee trust has filed the Audit Report under section 12A(1)(b) of the Act on 09/03/2022 and Form No. 9A on 04/02/2022. As per the details furnished by the assessee trust in its return of income, the trust received total income of ₹ 2,01,39,828, including the voluntary contribution and claimed to have applied or deemed to have applied whole of income for the charitable and religious purposes as per provisions under section 11 of the Act. The Central Processing Centre (CPC), Bengaluru,

carried out processing under section 143(1) of the Act of the return of the assessee trust on 19/10/2022 rejecting the claim of exemption under section 11 of the Act for the reason that the Trust or Institution registered under section 12A/12AA/12AB of the Act has not filed the Audit Report in Form 10B electronically one month prior to the due date for furnishing return of income under section 139(1). Hence, the exemption claimed in Sr.no. 2 [exemption claimed under section 11(1)(d)] and Sr.no. 4i to 4viii of Part B-TI is not allowable in accordance with the provisions of section 12A(1)(b) of the Act. The CPC disallowed exemptions claimed by the assessee and treated the income of ₹ 2,01,39,828, received by the assessee trust as total income chargeable to tax. Consequently, the assessee trust filed application for rectification for which the rectification order under section 154 of the Act was passed by the CPC on 07/03/2023 rejecting the claim of the assessee and confirming the addition made in order u/s 143(1) dated 19/10/2022.

4. On appeal, the learned CIT(A) allowed the grounds raised by the assessee by observing as under: –

"5.3.2 In the instant case, the reason for disallowance of exemption available u/s 11 of the Act is that the condition laid u/s 12A(1)(b) of the Act is not met. As per the said condition laid u/s 12A(1)(b) of the Act, the assessee is required to file the audit report under section 12A(1)(b) one month prior to the due date for furnishing return u/s 139(1). The appellant trust has filed the audit report on 09/03/2022 whereas the last date of filing ITR and audit report, as extended vide CBDT circular 01/2022 dated 11/01/2022 were 15/03/2022 and 15/02/2022 respectively for relevant assessment year.

However, after pronouncement of the judgement of the Hon'ble Supreme the case of BABASAHEB RAOSAHEB KOBARNE & Court ANRVERSUSPYROTEK INDIA PRIVATE LIMITED & ORS. (CIVIL APPEAL NO. OF 2022 (@Special Leave Petition (C) No. 2522/2022)), the period from 15.03.2020 to 28.02.2022 is excluded for the purposes of limitation due to the Covid pandemic situation. The date of limitation applicable in the instant case i.e 15th Feb 2022 lies in the above said relaxation period, therefore one month period as required for filing audit report in form 10B shall commence from 01/03/2022. Hence

limitation date for filing the required audit report in the instant case shall be 31/03/2022.

Therefore, in wake of the above referred Hon'ble Supreme Court decision, exemption available under section 11 of the Act can not be denied based the reason that the filing of required audit report was limited by the limitation date in the appellant's case.

5.3.3 In view of the above discussion, ground no 2,3 and 4 of the appeal are allowed."

Consequent upon passing of the impugned order by the learned CIT(A), the Revenue is in appeal before the Tribunal.

5. Having heard both the learned Counsel for the parties and having perused the material available on record, we find that the Hon'ble Kerala High Court in Mary Queen Mission Hospital v/s CIT, vide order dated 06/08/2024, has held that the application for condonation of delay should have been regarded without being too hyper technical and in a judicious manner. A Public Charitable Trust that fulfils the condition to claim these exemptions must not be refused only on the ground of limitation particularly when legislature has conferred wide discretionary powers to condone the delay on the authorities. The delay in filing the Audit Report was within a reasonable range and that the Petitioners had complied with the extended deadline for income tax returns. The Audit Report was duly submitted before filing of the return of income and was existent before processing of the return of income. The delay is minimal and further we find that the delay has occurred during the COVID-19 pandemic period. Hence, there are justifiable reasons to condone the delay. Accordingly, the delay is condoned.

6. In the result, appeal by the Revenue stands dismissed.

Order pronounced in the open Court on 21/03/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 21/03/2025

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur