

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

(THROUGH VIRTUAL HEARING)

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER

AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA Nos.496-498/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2015-16, 2016-17 & 2017-18)

Odisha Sports Development And Promotion Company, Western Stand, Kalinga Stadium Bhubaneswar, Odisha	Vs	DCIT, Exemption Ward, Bhubaneswar
PAN No. : AABCO 9237 H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri P.R.Mohanty, Advocate
राजस्व की ओर से / Revenue by	:	Shri Sanjay Kumar, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	08/04/2025
घोषणा की तारीख / Date of Pronouncement	:	08/04/2025

आदेश / O R D E R

Per Bench :

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated all dated 30.09.2024, passed in ITBA/NFAC/S/250/2024-25/1069244316(1), ITBA/NFAC/S/250/2024-25/1069244321(1) & ITBA/NFAC/S/250/2024-25/1069244327(1) for the assessment year 2015-2016, 2016-2017 & 2017-2018.

2. Shri P.R.Mohanty, FCA appeared on behalf of the assessee. Shri Sanjay Kumar, Id CIT DR represented on behalf of the revenue.

3. It was submitted by Id AR of the assessee that the assessee is a company promoted by the Government of Odisha. It was the submission that the company's accounts were audited by statutory auditors. It was the

submission that the assessee had filed his return of income on 31.03.2017 and Form 9A of the Act for the assessment year 2015-2016 on 30.03.2017. It was the submission that the same was filed belatedly as its accounts were delayed on account of statutory audit. It was the submission that the assessment came to be completed u/s.143(3) of the Act on 21.11.2017 assessing the income of the assessee at Nil. It was the submission that subsequently notice u/s.263 of the Act has been issued for revision. The assessee had replied to the notices issued u/s.263 of the Act but the Id. CIT(E) had not considered the explanation and had set aside the assessment order with a direction to revise the same. it was submitted that unfortunately the assessee has not challenged the order u/s.263 of the Act. It was the submission that subsequently a consequential order 143 r.w.s.263 came to be passed on 31.03.2023 wherein the assessee has been denied the benefit of Section 11(2) of the Act. It was the submission that the benefit of exemption u/s.11(2) has been denied on the ground that return of income has been filed along with Form 9A beyond the due date of filing of the return u/s.139(1) of the Act. It was submitted that the AO further went on to hold that the assessee has not complied with the notices issued to the assessee. Ld. AR placed before us copy of the show cause notice issued which is shown at page No.31 of the paper book which reads as under :-

*To
Additional/Joint/Deputy / Assistant Commissioner of Income
Tax/Income-tax Officer,
National Faceless Assessment Centre,
Delhi*

Sub Submission in reply to the letter No-
ITBA/AST/F/143(3)(SCN)/2021-22/1041451762(1) dated
24/03/2022.

Respected Sir

In respect to your above cited show cause notice, we wish to following information as sought by you

a) The assessee has merely furnished the P&L account stating that the fund was utilized for its objects.

Compliance: The details of expenditure wise GL was never asked by AO earlier. Hence, not furnished. However, it is now attached at Annexure 1

b) The assessee has not furnished the type and nature of activities conducted over and above its regular activities, which were carried out for utilizing the said funds.

Compliance The company has been incorporated for promotion of sports in the state of Odisha. It was explained to AO earlier that "The main objects of the assessee board are To undertake talent search, promotion of & participation in welfare schemes like health insurance, group insurance, life insurance, pension or superannuation schemes, and any other schemes for sports persons". The said fact has been reproduced by AO in this show cause notice. OSDPC has no other activity other than its objective of promotion of sports,

c) The assessee has not furnished any documentary evidences in support of its activities, Compliance The details of expenditure wise GL was never asked by AO earlier Hence, not furnished. However, it is now attached at Annexure 1

d) The assessee has not furnished the copies of Resolutions and Extract of Minutes, passed in the Board Meeting, for conducting the activities.

Compliance: The copies of Resolutions and Extract of Minutes, passed in the Board Meeting was never asked by AO earlier Hence, not furnished. We will furnish the same within a week.

e) The assessee has not furnished the funds flow of the income of subsequent year and that of the amount to be accumulated.

[9:22 am, 9/4/2025] Prakash Kumar Mishra: 1) Mere filling of profit and loss account does not suffice and discharge the onus of the assessee to prove the utilization of funds.

Compliance The details of expenditure wise GL was never asked by AO earlier Hence, not furnished. However, it is now attached at Annexure 1

we would like to humbly submit that during the financial year 2016-17 the trust instead of spending the entire amount of the income derived from its asset decided to invest a portion of it for future expenses and thereby chose to elect the option granted u/s 11(2) of the Income Tax Act 1961. The amount referred in this regard was invested in the mode specified u/s 11(5).

At the time of filing of Income Tax Return the option under explanation 2 to sub-section (1) of section 11 was exercised and consequently, form-9A (Copy Enclosed) was filed. It may be seen from the subsequent year account i.e AY 2017-18 that we have spent expenses in excess of income by Rs.3,30,06,672/- indicating that money set apart was spent in the subsequent year. (Copy of audited P& L Attached).

As during the subsequent assessment year the assessee has applied a sum of Rs. 3.30,06,672/- for attaining the object of the company which is more than the amount specified in Form 9A i.e. Rs. 3,14,63,464/- the amount deemed to have been applied has been duly spent as declared In view of this we request you to kindly complete the assessment proceeding without any addition.

Thanking You

Yours faithfully

For ODISHA SPORTS DEVELOPMENT AND PROMOTION COMPANY

4. It was the submission that the returns of the assessee have also not been considered. He further placed reliance on decision of the coordinate bench of the Tribunal in the case of Ramji Mandir Religious & Charitable Trust, passed in ITA No.374/Ahd/2023, vide order dated 20.12.2023, wherein it has been held as follows :-

INCOME TAX OFFICER (EXEMPTION) vs. RAMJI MANDIR RELIGIOUS & CHARITABLE TRUST, ITA No. 374/Ahd/2023; Asst. yr. 2019-20 Date of Decision 20th December, 2023 Source (2024) 38 NYPTTJ 6 (Ahd)

Charitable trust-Application of income-Benefit of s. 11(2) denied for non-filing of ITR and Form No. 10 within due-date prescribed under s. 139(1)- Requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed under s. 139(1) cannot be so fatal so as to deny they

very claim of exemption under s. 11(2) especially when Form 10/10B was available on record when the intimation was passed by CPC under s. 143(1)-Dy. CIT vs. Croygas Equipments (P) Ltd. in ITA No. 415/Ahd/2020 followed; Principal CIT vs. Wipro Ltd. (2022) 327 CTR (SC) 381 : (2022) 216 DTR (SC) 1 distinguished

5. Ld. AR also placed reliance on the decision of the coordinate bench of the Tribunal in the case of ITO Vs. Takshshila Foundation (NGO), reported in (2024) 208 ITD 677 (Ahd), wherein it has been held as follows:-

INCOME TAX OFFICER vs. TAKSHSHILA FOUNDATION (NGO)

ITA No. 118/Ahd/2024 & Cross Objection No. 8/Ahd/2024; Asst. yr. 2022-23 Date of Decision 2nd July, 2024 Source (2024) 38 NYPTTJ 1345 (Ahd): (2024) 208 ITD 677 (Ahd)

Charitable trust-Exemption under s. 11-Rejection on account of delay in filing Form 10A/10B-Not correct-Procedural requirements like filing Form 10B should not override the substantive claim of exemption, when the assessee has substantially complied with the requirements-Requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed under s. 139(1) cannot be so fatal so as to deny they very claim of exemption under s. 11(2) In the case the delay in filing Form 10B was due to technical issues and was beyond the control of the assessee Procedural requirement should not deny the substantive claim of exemption under s. 11-In view of this the AO is directed to grant exemption under s. 11 claimed by the assessee-Shardaben Education Trust vs. ITO (ITA No. 2312/Ahd/2018, dt. 16th Nov., 2022), CIT vs. Xavier Kelavani Mandal (P) Ltd. (2014) 221 Taxman 43 (Guj), Zenith Processing Mills vs. CIT (1996) 134 CTR (Guj) 288: (1996) 219 ITR 721 (Guj) and CIT vs. Mayur Foundation (2005) 194 CTR (Guj) 197: (2005) 274 ITR 562 (Guj) followed.

6. It was the submission that as the assessee has filed its return u/s.139(4) and also filed Form 9A and the same was available with the AO when the assessment was being framed, the assessee is therefore entitled to exemption u/s.11(2) of the Act. It was the submission that even Form 10 was filed on 31.03.2009 through the same was not actually required to be filed and he may be assuming but not considering the Form

10, the same was available in the course of the consequential assessment order. It was the submission that the assessee may be granted benefit of exemption u/s.11(2) of the Act.

7. Ld. CIT-DR submitted that the assessee having filed his reply to the show cause notice the issues may be restored to the file of AO for readjudication. Ld. CIT-DR vehemently supported the order of the Id. CIT(A) and that of the AO.

8. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that the assessee has filed Form 9A and its return of income u/s.139(4) of the Act. The coordinate bench of ITAT Ahmedabad Tribunal, referred to supra, has clearly held that the requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed under s. 139(1) cannot be so fatal so as to deny they very claim of exemption under s. 11(2) especially when Form 10/10B was available on the record when the intimation was passed. As it is found that the coordinate bench of the Tribunal has held that the availability of Form 10/10B is available when the assessment is passed in assessee's case, Form 9A was very much available when the assessment order originally passed and Form 9A and Form 10 was available when the consequential order u/s.263 of the Act was passed. This being so, respectfully following the decision of the coordinate bench of the Tribunal it is held that the assessee is entitled to deduction u/s.11(2) of the Act in all the three assessment years under

consideration and the AO is directed to allow the benefit of deduction u/s.11(2) of the Act as claimed by the assessee in all the three appeals.

9. In the result, all three appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 08/04/2025.

Sd/-

(राजेश कुमार)
(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

दिनांक Dated 08/04/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack