

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा0 एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 1397/JPR/2024
निर्धारण वर्ष / Assessment Year : 2019-20

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| Rajasthan Nursing Council B-39, Sardar Patel Marg, C-Scheme, Jaipur. | बनाम Vs. | The Assistant Director of Income Tax, CPC, Bangalore. |
| स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAAAR 8632 E | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओरसे / Assessee by : Shri Tarun Agarwal, C.A.
राजस्व की ओरसे / Revenue by : Smt. Runi Pal, CIT-DR

सुनवाई की तारीख / Date of Hearing : 20/02/2025
उदघोषणा की तारीख / Date of Pronouncement : 07/05/2025

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of Id. Addl/JCIT(A), Faridabad dated 27.09.2024 passed under section 250 of the I.T. Act, 1961, for the assessment year 2019-20. The assessee has raised the following grounds of appeal

:-

“1. The learned Assessing Officer has erred in facts and in law in not allowing the amount set apart for specified purposes under section 11(2) of the Income Tax Act, 1961 and making an addition of Rs. 5,50,79,589/- on the basis that the return of

income and form 10 were not filed within due date. Whereas the Audit Report in Form 10B was filed within the due date where the amount of set apart claimed in the return under section 11(2) was separately mentioned.

2. The Id. CIT (Appeals) has erred in law as well as in facts in not giving due regard to the circular no. 6/2020 dated 19.02.2020 and circular no. 173/193/2019-ITA-1 dated 23.04.2019 issued by the CBDT.

3. The Ld. CIT (Appeals) has completely ignored the judgments of Honourable Delhi and Surat Bench of ITAT and Honourable Bombay High Court referred by the appellant Council.

4. That the Id. CIT (Appeals) has acted against the principle of natural justice in not allowing proper opportunity of being heard to the appellant Council.

5. The appellant craves to add or alter any ground of appeal during or before the hearing of the case.”

2. The brief facts of the case are that the assessee Rajasthan Nursing Council set up by the State Government was established under the Rajasthan Nursing, Midwives, Health Visitors and Auxiliary Nurse Midwives Registration Act No. 9 of 1964, published in the Rajasthan Gazette dated March 28, 1964, for the fulfillment of the aims and the objectives as laid down in the Act. The Council is directly governed by the State Government under the Department of Medical and Health. The Council is an educational institution undertaking activities mentioned in the Act, i.e. providing recognition to the institution, registration of the members, prescribing syllabus and conducting examination. The appellant filed the return of income for the Assessment year 2019-20 under section 139(4) (belated return) after claiming the benefits available under section 11 and 12 of the Income Tax Act, 1961 and showing Nil amount as taxable income. An intimation order was passed

against the filing of return on 18.05.2020 under section 143(1) of the Income Tax Act, 1961, making an addition in the returned income to the tune of Rs. 5,50,79,589/- on the following basis:-

“ As per the details furnished in Schedule Personal information under Details of registration or approval under the Income-tax Act, the trust or institution is registered u/s 12A/12AA and is claiming exemption u/s 11(2), but the trust or institution has not filed the return of income within the due date, hence the exemption claimed in Sr. no. 4vi of Schedule Part B-TI-Amount in addition to amount referred to in (v) above, accumulated or set apart for specified purposes if all the conditions in section 11(2) and 11(5) are fulfilled, is not allowed in accordance with the provisions of section 13(9) of the Income Tax Act.” Hence, the exemption under section 11(2) was denied to the appellant council. Aggrieved by the order (Intimation) of the AO dated 18.05.2020 the assessee filed appeal before the Id. CIT (A), National Faceless Appellate Centre, Delhi. The Addl./JCIT (A), Faridabad dismissed the appeal of the assessee vide his order dated 27.09.2024.

The assessee has filed the present appeal against the order of the Id. Addl./JCIT (Appeals) on the grounds mentioned herein above.

3. At the time of hearing before us, the Id. A/R of the assessee filed the written submission as under :-

“ The Intimation order passed under section 143(1) for the AY 2019-20 with the error description as *“As per the details furnished in Schedule Personal information under Details of registration or approval under the Income-tax Act, the trust or institution is registered u/s 12A/12AA and is claiming exemption u/s 11(2), but the trust or institution has not filed the return of income within the due date, hence the exemption claimed in Sr. no. 4vi of Schedule Part B-TI - Amount in addition to amount referred to in (v) above, accumulated or set apart for specified purposes if all the conditions in section 11(2) and 11(5) are fulfilled, is not allowed in accordance with the provisions of section 13(9) of the Income Tax Act”*, hence, the exemption under section 11(2) was denied to the appellant Council.

In this case, the due date referred for filing of ITR was not correct, as the ITR was filed within the time allowed under section 139(4) of the Income Tax Act, 1961. CBDT's Circular No. 6/2020 dated 19.02.2020 and Circular No. 173/193/2019-ITA-1 dated 23.04.2019 has clarified that for availing benefit of Section 11, the registered under section 12A shall file its return of income within time allowed under section 139. Section 139 includes belated return under section 139(4) and CBDT has directed that demand raised on this issue are to be rectified. Thus, the case of Council is covered by the Circular of CBDT.

Further, the CIT (A) has erred in holding at page 7 of the order that the CIT (A) is not have the authority to condone the delay, while failing to take into account the binding circulars on the issue, where the circular itself direct the Ld CPC to rectify the demand issued in such cases, hence, the Ld. CIT (A) complete missed the intention of the circular that there was no requirement to condone the delay in filing of the Income Tax Return as there is no delay.

Further, we also rely on several judgment on the similar facts, where the benefit of section 11 and 12 were provided.

1. In the case of Conference of Religious India vs. Ward Exemption 1(3), New Delhi, the Honorable Delhi Bench of ITAT has held at page 7 of the order that “10. In my considered opinion the language of the aforementioned Circular is very clear and unambiguous in so far as the return of income filed u/s 139 of the Act is concerned. Section 139 has several sub sections (1), (2), (3), (4), (4a), (5). I am of the considered view that if the return is filed within the specified time limit of sub section of 139 would be eligible for the benefit given by the above mentioned CBDT circular and should avail the benefit of exemption u/s 11 of the Act. In my considered opinion the CIT(A) erred in

misinterpreting the aforementioned circular and, therefore, to that extent the order of the CIT (A) is erroneous and deserves to be set aside the grievance of the assessee is allowed”.

2. In the case of Income Tax Officer vs. Sant Shri Asharam Gurukul, the Honorable Surat Bench of ITAT has held at page 6 and 7 of the order that, “6. We have considered the rival submission of both the parties and perused the case record carefully. We have also deliberated on the various Circulars of CBDT and decision of Bombay High Court as relied upon by ld.CIT (A). We find that there is very short controversy in the present appeal. There is no dispute about filing of Form 10AB, which is filed with the time prescribed. The objection of Assessing Officer objected only on filing return of income after due date of filing return of income prescribed under section 139(1). We find that Hon’ble Bombay High Court in Tulsidas Gopalji Charitable and Chaleshwar Temple Trust vs. CIT (1994) 207 ITR 368 (Bom) held that on a careful reading of the provisions of sub-sections (1) and (4) of Section 139 lead to an inevitable conclusion that a return made within the time specified in sub-section (4) has to be considered as having been made within the time prescribed in sub-section (1) or sub section (2) of Section 139. We further find that CBDT in its Circular No. 6/2020 dated 19.02.2020 and Circular No. 173/193/2019-ITA-1 dated 23.04.2019 clarified that for availing benefit of Section 11, the registered under section 12A shall file its return of income within time allowed under section 139. The NFAC/Ld. CIT (A) specifically held that Section 139 includes belated return under section 139(4) and CBDT has directed that demand raised on this issue are to be rectified. We find that ld. CIT (A) by following the mandates of aforesaid circulars allowed relief to the assessee on independent examination of facts of the case, we do not find any infirmity in the order of ld CIT (A), which we affirm.”
3. In the case of Trustees of Tulsidas Gopalji vs. Commissioner of Income Tax (16 September, 1993), Honorable Bombay High Court [1994] 207 ITR 368 (Bom.) has held at para 9 of the order that “ Applying the ratio of the above decision, the option exercised by the assessee under the Explanation to section 11(1) of the Act before the time allowed under sub-section (4) of section 139 has to be held to have been exercised before the time allowed under sub-section (1) or sub-section (2) or section 139 of the Act and in that event, the assessee would be entitled to the benefit of deduction under section 11 of the Act.”

Further, as Form 10 was filed with the Income Tax Return which is within the due time, the benefit under section should have been provided to the Council.

In view of the same, it is requested to your good self to kindly allow the appeal in favor of the Council and oblige in public interest.”

4. On the other hand, the Id. DR supported the orders of the Revenue Authorities.

5. We have heard the rival submissions and perused the material on record. We have also deliberated on the various Circulars of CBDT and decisions of Hon'ble Bombay High Court and various Benches of the Tribunal, as relied on by the Id. A/R of the assessee. The assessee Council is an educational institution undertaking activities as mentioned in the Rajasthan Nursing Council set up by the State Government was established under the Rajasthan Nursing, Midwives, Health Visitors and Auxiliary Nurse Midwives Registration Act No. 9 of 1964. The Council was granted registration under section 12AA on 18.03.2021 from the AY 2019-20 by the Id. CIT (Exemptions), Jaipur. As per the Intimation under section 143(1) of the I.T. Act, 1961, the assessee filed its return of income on 24.12.2019 for the Assessment year 2019-20 under section 139(4) (belated return) after claiming the benefits available under section 11 and 12 of the Income Tax Act, 1961. We find that the return was filed before 31.03.2020 which is the last date for filing a belated return of income. However, the AO denied the claim of exemption

to the assessee on the ground that the assessee has not filed its return of income within the due date. As per the CBDT circular, the claim of exemption u/s 11 of the Act for application of income for charitable purposes is available to the appellant despite the return of income filed belatedly but before expiry of time limit laid down u/s 139 of the Act. In this context, reliance is placed in the circular F No.173/193/2019-ITA-1 dated 23.04.2019 issued by CBDT, wherein it is provided that the appellant is eligible to claim of exemption u/s 11 of IT Act even if the ITR has been filed belatedly before the expiry of time limit laid down in sec 139 of the Act. In this regard, it would be pertinent to refer to the CBDT Circular No. 173/193/2019-ITA-1 dated 23.04.2019 as under :-

F.No. 173/193/2019-ITA-1
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 23 April, 2019

To.

The Pr. DGIT(Systems),
New Delhi.

Subject: Clarification with regard to the time allowed for filing of return of income subsequent to the insertion of Clause (ba) in sub-section 1 of section 12A of the Income-tax Act, 1961.

Sir,

Undersigned is directed to refer to the representation(s) received on above mentioned subject stating that while processing of ITR-7 for the A.Y. 2018-19, in respect of the belated returns filed under section 139(4) of the Income-tax Act, 1961 (Act), the following is being communicated under section 143(1)(a) of the Act:—

"As per section 12A(1)(ba) of the Income-tax Act, 1961 the person in receipt of the income has furnished the return of income for the previous year in accordance with the provisions of sub-section (4A) of section 139, within the time allowed under that section. Otherwise the exemption under section 11 i.e. sl.no. 4(i) and 4(viii) in schedule Part BTI is not allowed."

Based on this, exemption under section 11 of the Act has been denied to otherwise eligible trust, thereby creating huge demand.

2. In the matter, the memorandum explaining the relevant provisions of the Finance Bill, 2017 reads as under:

"as per the existing provisions of said section, the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income tax. However, there is no clarity as to whether the said return of income is to be filed within time allowed under section 139 of the Act or otherwise. In order to provide clarity in this regard, it is proposed to further amend section 12A so as to provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Act. These amendments are clarificatory in nature.

These amendments will take effect from 1st April, 2018 and will, accordingly, apply in relation to assessment year 2018-19 and subsequent years."

3. Additionally, an excerpt of circular No. 2/2018 dated 15-2-2018 "Explanatory Notes to the Provisions of the Finance Act, 2017" on insertion of clause (ba) in Sub-section (1) of section 12A is quoted as under:

"the entities registered under section 12AA are required to file return of income under sub-section (4A) of section 139 of the Income-tax Act, if the total income without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax. Amendment to section 12A of the Income-tax has been made so as to provide for additional condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139 of the Income-tax Act."

3. Thus, for a trust registered under section 12AA of the Act to avail the benefit of exemption under section 11 shall inter-alia file its return of income within the time allowed under section 139 of the Act. Accordingly, orders under section 143(1)(a) in those cases in which demand has been raised on this issue may please be rectified. This issues with the approval of Chairman(CBDT).

Sd/-
(Vinay Sheel Gautam)

Copy to:-

1. The Pr. CCIT(Exemptions), New Delhi.

5.1. The aforementioned Circular is very clear and unambiguous in so far as the return of income filed u/s 139 of the Act is concerned. The objection of the Assessing Officer was only on filing return of income after due date of filing return of income prescribed under section 139(1) of the IT Act, 1961. In this regard it is note-worthy that Hon'ble Bombay High Court in the case of Trustees of Tulsidas Gopalji Charitable and Chaleshwar Temple Trust vs. CIT (1994) 207 ITR 368 (Bom.) while adjudicating the issue, has held that “ *On a careful reading of section 139 of the Act, we are of the clear opinion that sub-section (1) and (4) of section 139 have to be read together and on such a reading, the inevitable conclusion is that a return made within the time specified in sub-section (4) has to be considered as having been made within the time prescribed in sub-section (1) or sub-section (2) of section 139 of the Act*”. We further find that CBDT in its Circular No. 6/2020 dated 19.02.2020 and Circular No. 173/193/2019-ITA-1 dated 23.04.2019 clarified that for availing benefit of Section 11, the registered under section 12AA shall file its return of income within time allowed under section 139. The NFAC/Ld. CIT (A) specifically held that Section 139 includes belated return under section 139(4)

and CBDT has directed that demand raised on this issue are to be rectified. Thus, we are of the considered view that if the return is filed within the specified time limit of sub section of 139, it would be eligible for the benefit given by the above mentioned CBDT circular and should avail the benefit of exemption u/s. 11 of the Act. We, therefore, considering the CBDT circulars mentioned hereinabove and the judicial pronouncements referred above, allow the appeal of the assessee and set aside the order of the Id. CIT (A).

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 07/05/2025.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 07/05/2025.

***Santosh**

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

1. अपीलार्थी / The Appellant- Rajasthan Nursing Council Jaipur
2. प्रत्यर्थी / The Respondent- Assistant Director of Income Tax, CPC, Bangalore.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1397/JPR/2024 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst.