

IN THE INCOME TAX APPELLATE TRIBUNAL, DIVISION BENCH, JODHPUR

HEARING THROUGH: VIRTUAL MODE

BEFORE: SHRI. LALIET KUMAR, JM & DR. MITHA LAL MEENA, AM

ITA No. 730 /Jodh/ 2024
Assessment Year : 2022-23

Apna Ghar Ashram C/o Rajendra Jain Advocate, 106, Akshay Deep Complex, 5 th B Road, Sardarpura, Jodhpur	Vs.	The DDIT, CPC Bangalore
PAN NO: AAITA7441B		
Appellant		Respondent

Assessee by : Shri Rajendra Jain, Advocate
Revenue by : Shri Karni Dan, Addl. CIT(Sr. D.R)
Date of Hearing : 21/05/2025
Date of Pronouncement : 02/06/2025

आदेश/Order

PER LALIET KUMAR, J.M:

This appeal by the assessee is directed against the order passed by the Ld. CIT, Appeal, Addl/ JCIT(A)-11, Delhi dated 27.08.2024, whereby the action of the Centralized Processing Centre (CPC), Bengaluru under section 143(1) of the Income Tax Act, 1961, disallowing the exemption claimed under section 11, has been upheld.

2. Briefly the facts of the case are that the assessee, a public charitable trust registered under section 12A of the Income Tax Act, filed its return of income for the assessment year 2022-23 on 27.09.2022, declaring nil income after claiming exemption under section 11. The trust had its accounts audited as required under section 12A(b), and an audit report in Form 10B was issued by a Chartered Accountant on 24.09.2022 and duly uploaded on the e-filing portal. However, the assessee, due to inadvertence and technical oversight, failed to verify the said Form 10B at that time. It was only upon checking the status of return processing that the assessee became aware that the Form 10B was still showing as unverified. The assessee promptly verified the Form 10B on 17.04.2023.

2.1 Subsequently, CPC processed the return under section 143(1) on 21.04.2023, disallowing the claim of exemption under section 11 and making an addition of Rs.

1,60,22,225/-, thereby raising a demand of Rs. 65,21,700/-. The assessee filed a rectification application before CPC, which was rejected, and thereafter filed an appeal before the CIT(A). The CIT(A), however, upheld the action of CPC, holding that since the audit report in Form 10B was verified only on 17.04.2023 beyond the due date for filing such report the CPC was justified in denying the exemption.

3. In appeal before us, the learned counsel for the assessee submitted that the disallowance was purely technical in nature and not on the merits of the exemption claim. He pointed out that Form 10B had been uploaded by the auditor within time and that the delay was only in verification, which was cured before the return was processed. It was contended that the audit report was very much available on record before the issuance of intimation under section 143(1), and thus the denial of exemption under section 11 was unwarranted. The learned counsel relied on various judicial precedents, including the decisions of the Gujarat High Court in CIT v. Gujarat Oil & Allied Industries Ltd. (1993) 201 ITR 325 and Sarvodaya Charitable Trust v. ITO(E) (2021) 278 Taxman 148 (Guj.). He also placed reliance on ITAT Pune's decision in Akshay Devendra Birari v. DCIT [ITA No. 782/PUN/2024] and the Jodhpur Bench's ruling in Shiv Sai Sewa Samiti v. ITO, Ward-1, Jalore [ITA No. 137 & 138/Jodh/2023].

4. Per contra, the Department relied upon the judgment of the Delhi Bench of the Tribunal in Pradeep Kumar Batra v. DCIT in ITA No. 6384/Del/2019, where it was held that filing the audit report after the due date is fatal to the claim, as the electronic filing procedures are mandatory. It was contended that since the Form 10B was verified after the due date, and not along with the return, CPC was justified in denying the exemption.

5. We have considered the rival submissions and perused the material on record. It is not in dispute that the Form 10B was uploaded by the Chartered Accountant on 24.09.2022 and verified by the assessee on 17.04.2023, before the CPC processed the return on 21.04.2023. The exemption under section 11 was denied solely on the ground of procedural lapse in verifying the audit report, despite its availability to the Department before the intimation was issued. In our considered view, as supported by the judicial precedents cited, the requirement to file Form 10B is directory and procedural, and substantive compliance by the assessee entitles it to the exemption claimed. For the above purpose we may rely upon the decision of Hon'ble Delhi High

Court in case of Associated Chambers of Commerce and Industry of India v. Deputy Commissioner of Income-tax [2024] 165 taxmann.com 510 (Delhi) wherein it was held as under:

22. While evaluating the above disclosure, we find that the respondents seek to assert that at the relevant time the online portal supported a "flawless filing" of Form 10. They further aver that the total filing count of Form 10 between 01 October 2016 to 31 October 2016 was 3687. It is in the aforesaid backdrop that the respondents argue that the allegation of non-availability of the functionality to upload the forms on the portal is baseless. It is the aforesaid rival contentions which fall for determination.

23. In our considered opinion, the stand as struck by the respondents, relying on Paragraph 16 of the counter affidavit, is firstly belied by the issuance of the CBDT Circular itself. The Circular itself acknowledged and took note of the grievances which were raised with respect to the non-functionality of the facility for digital submission of forms leading to a delayed e-filing of Form 10. The CBDT also appears to have taken a sympathetic view bearing in mind the fact that the requirement of digital filing had come to be introduced and become applicable for the first time in AY 2016-17. It was in that backdrop that the CBDT had hoped that assessing authorities would approach the issue bearing in mind reasonable cause being established by individual assesseees in case of a delayed digital submission of Form 10.

24. We additionally note that the respondents allude to 3687 digital submissions of Form 10 in the month of October 2016. We have not been provided any further details with respect to how that number would be representative or proof of a broad or universal functionality of the filing portal when compared with the body of assesseees seeking to accumulate income under Section 11(2) of the Act. We take judicial notice of the fact that the said year saw an exponential increase in the number of tax filings and with the total number being pegged at 28.2 million. Similar trends were reported in other leading national periodicals. The number of 3687 thus clearly fails to inspire any confidence.

25. More importantly, we note that Section 11(2) speaks of a statement in the prescribed form (which in this case is Form 10) being "furnished" to the AO. The change in the prescribed manner under Section 11(2)(a) for the submission of Form 10 and which moved to a digital filing was introduced for the first time by virtue of the 2015 Act and the 2016 Amendment Rules.

26. As was noticed by us hereinbefore, prior to those amendments, all that Section 11(2)(a) required was for the assessee to apprise the AO, by a notice in writing, of the purposes for which the income was sought to be accumulated and the mode of its investment or deposit in accordance with Section 11(5). The requirement of Form 10 being furnished electronically was undisputedly introduced for the first time by way of the 2016 Amendment Rules. There thus clearly appears to exist plausible cause for the petitioner having been unable to effect an online filing.

27. More fundamentally, we note that the action for reassessment is not founded on income liable to tax having escaped assessment. The respondents also do not question the acceptance of the accumulations in terms of Section 11(2) in the assessment order dated 01 December 2018. The entire action for reassessment is founded solely on Form 10 having been submitted after 17 October 2016 and which was the due date in terms of Section 139(1).

28. In our considered opinion, an action for reassessment would have to be based on the formation of an opinion that income chargeable to tax has escaped assessment. That primordial condition would clearly not be satisfied on the mere allegation of a delayed digital filing of Form 10.

29. Quite apart from the above, we also bear in mind the underlying intent of Section 11(2) and the submission of Form 10 in connection therewith which were aspects succinctly explained by the Supreme Court in Commissioner of Income-tax v. Nagpur Hotel Owners'

Assn. [\(2001\) 2 SCC 128/\[2001\] 114 Taxman 255/247 ITR 201 \(SC\)](#). The Bench of three learned judges in Nagpur Hotel Owners' Assn. (supra) rendered the following pertinent observations:-

"6. It is abundantly clear from the wordings of sub-section (2) of Section 11 that it is mandatory for the person claiming the benefit of Section 11 to intimate to the assessing authority the particulars required, under Rule 17 in Form 10 of the Act. If during the assessment proceedings the Assessing Officer does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from Section 11 and is subject to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our opinion, it is reasonable to presume that the intimation required under Section 11 has to be furnished before the assessing authority completes the assessment concerned because such requirement is mandatory and without the particulars of this income the assessing authority cannot entertain the claim of the assessee under Section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of Section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such reopening of the assessment. In the case in hand it is evident from the records of the case that the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee. In view of our answer to the first question, we agree with Mr Varma that it is not necessary to answer the second question on the facts of this case.

7. In view of the above findings of ours, the second question referred will not arise for consideration. Accordingly these appeals are allowed."

30. Of equal significance is the judgment rendered by a Division Bench of our Court in Commissioner of Income-tax v. Contimeters Electricals (P.) Ltd. 2008 SCC Online Delhi 1458/[2009] 178 Taxman 422/317 ITR 249 (Delhi) and where the Court had observed:-

"8. In view of this long line of decisions of various High Courts in considering the provisions of section 80J(6A) which are similar to the provisions of section 80-IA(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of the assessment, the requirement of section 80-IA(7) would be met."

31. While we are conscious that the judgments in Nagpur Hotel Owners' Assn. as well as Contimeters Electricals P. Ltd. were rendered prior to the promulgation of the 2015 Act and the 2016 Amendment Rules, the said decisions clearly underline the importance of due disclosure as opposed to adherence to the mere procedural requirements of the digital filing of a form.

32. We further note that a Division Bench of the Gujarat High Court has in its decision rendered after the insertion of the 2015 Act and the 2016 Amendment Rules in Association of Indian Panelboard Manufacturer v. Deputy Commissioner of Income-tax 2023 : GUJHC : 27028-DB/[2023] 157 taxmann.com 550 clearly held that the electronic submission of Form 10B is essentially a matter of procedure as opposed to being a mandatory condition which may be recognized to form part of substantive law. We deem it apposite to extract the following passages from that decision:-

"5.4 Recollecting the relevant dates, the income was filed on 31.8.2018. On 15.3.2019 Form 10B was filed electronically. On 7.12.2019 intimation under Section 143(1) of the Act was given to the appellant that the exemptions were denied, while processing the return of income on the ground that alongwith the return of income Form 10B was not filed.

5.5 It is to be observed in the present case that the Form D- the audit report, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under Section 143(1) of the Act. The conditions for claiming exemption under Section 11 was satisfied. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under Sections 11(1) and 11(2) on the ground that the audit report was not filed.

5.6 The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy.

5.7 The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.

6. The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.

6.1 The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report alongwith return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.

6.2 Accordingly the substantial questions of law have to be decided in favor of the appellant.

7. They are accordingly decided. The appeal is allowed."

33. Though rendered in the context of Form 10B, in our considered opinion, the legal position as enunciated in the aforesaid judgment would equally apply to the submission of Form 10.

34. We, accordingly, allow the instant writ petition and quash the impugned order under Section 148A (d) dated 31 March 2023 and the consequent initiation of reassessment proceedings through notice under Section 148 of the Act of even date.

5.1 We also rely upon the order of the Hon'ble Gujarat High Court in case of Navjeevan Charitable Trust v. Commissioner of Income-tax (Exemption) [2024] 166 taxmann.com 725 (Gujarat) wherein it was held as under:

9.1 Having considered the direction in clause 4(i), it appears that the Central Board of Direct Taxes directed the authorities to condone the delay caused in filing Form 10B in the cases where the audit report for the previous year has been obtained before filing of return of income. However, the interpretation made by the authority while passing the impugned order would reveal that the authority has held that Form 10B should have been filed on or before 31st March, 2018. In our considered opinion, the interpretation of the authority with regard to clause 4(i) is ex facie fault. We say so because as per the plain language of the Circular No.10, CBDT, in no uncertain terms, has directed that delay in cases where Form 10B obtained before filing of return of income is specified, meaning thereby, Form 10B ought to have been obtained before filing return of income so as to have the benefit of clause 4(i), whereas while passing the impugned order; instead of word "obtained", the authority considered it as "filed". Therefore, this being a basic factual understanding and interpretation of the Circular, in our view, based on such interpretation; the impugned order cannot be said to be in accordance with law and the Circular No.10 dated 22nd May, 2019

Accordingly, the disallowance made by CPC under section 143(1) is not sustainable.

5.2 Therefore, we hold that the assessee is eligible for exemption under section 11 of the Act. The appeal is allowed and the Assessing Officer is directed to grant the relief accordingly.

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

(Order pronounced in the open Court on 02/06/2025)

Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

AG

Copy of the order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. The CIT(A)
5. DR, ITAT, JODHPUR
6. Guard File

आदेशानुसार / By order,
सहायक पंजीकार / Assistant Registrar