आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस. एम. सी', अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" SMC " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

ITA No.257/Ahd/2024
Assessment Year : 2022-23

Shri R V Shah Charitable Trust C/o. Madhu Silica Pvt.Ltd. 147, GIDC, Vartej Bhavnagar 364 060 Gujarat	Vs	The Dy. Director of Income Tax, CPC Bengaluru (current JAO : ITO (Exempt), Bhavnagar
PAN: AAETS 0593 C		

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Tushar Hemani, Sr. Adv. & Shri Parimalsinh B. Parmar, AR
Revenue by :	Shri C. S. Sharma, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 17/04/2024**
घोषणा की तारीख /**Date of Pronouncement: 19/04/2024**

आदेश/O R D E R

PER NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER:

The present appeal is filed by the Assessee against the order u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") dated 19/01/2024 passed by the Addl./Joint Commissioner of Income-tax (Appeals)-8, Mumbai ["JCIT(A)" in short] for Assessment Year (AY) 2022-23.

2. The assessee is a Charitable Trust and filed its return of income for AY 2022-23 on 17/10/2022 declaring total income of Rs.1,48,175/-. The said return was processed by CPC Bengaluru u/s.143(1) of the Act on 03/03/2023 and income was determined at Rs.13,64,912/-. This was due to denial of exemption u/s.10(23C) of the Act by the CPC. The assessee had filed an

appeal against the intimation u/s.143(1) of the Act, which has been decided vide the impugned order and the appeal of the assessee was dismissed. The assessee is in second appeal before us and the following grounds have been taken in this appeal:

1. *The Ld. CIT(A) has erred in law and on facts of the case in confirming the order passed u/s. 143(1) of the Act in spite of the fact that the issue before both the lower authorities was debatable and not any mistake apparent on record or information. Hence, both the lower authorities erred in exceeding the jurisdiction in making an adjustment u/s. 143(1)(a) of the Act.*

2. *The Ld. CIT(A) has erred in law and on facts of the case in not granting exemption of 12,16,737/- u/s.11 & 12 of the Act correctly, in spite of both the lower authorities knowing that the Appellant had inadvertently claimed exemption u/s. 10(23)(iv) of the Act.*

3. *The Ld. CIT(A) erred in law and on facts of the case in holding that remedy for the present case lies only in S.119 of the Act. The Ld. CIT(A) has failed to consider the fact that Ld. CIT(A) has the power to pass appropriate directions to correctly allow exemption u/s. 11(1) & (2) of the Act to the Appellant as per S.251(1)(c) of the Act.*

4. *Alternatively, and without prejudice S.119 of the Act does not bar the Appellant from opting for remedy of appeal u/s. 246A of the Act.*

5. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various S, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

6. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234B/C of the Act.*

7. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

3. Shri Tushar Hemani, Sr. Advocate appearing for the assessee submitted that the assessee was eligible for exemption of Rs.12,16,737/- u/s.11 of the Act. However, while filing the return, the above exemption was

wrongly claimed u/s.10(23C) of the Act instead of Section 11 in the return of income. As the wrong section 10(23C) of the Act was inadvertently mentioned in the return, the CPC while processing the return adjusted and disallowed the claim of the assessee for the reason that the Form No.10BB essential for claiming exemption u/s.10(23C) of the Act was not furnished. The Ld. Sr.Advocate submitted that the issue was debatable in nature and did not fall within the purview of "*prima-facie adjustment*", as envisaged u/s.143(1) of the Act. According to the Ld.AR, the claim of exemption u/s.11 of the Act was maintainable and the Audit Report in Form 10B necessary for claiming this deduction was subsequently filed during the appellate proceedings before the Ld. JCIT(A) and, therefore, the denial of the genuine claim of exemption u/s.11 of the Act, was not justified.

3.1. Though the appeal was filed against the additions made u/s.143(1) of the Act while processing the return, the main grievance of the assessee is that the additional claim of deduction u/s.11 of the Act made before the Ld.JCIT(A) was not entertained, who while rejecting the claim had directed the assessee to avail the remedy u/s.119 of the Act. According to the Ld.AR, the remedy u/s.119 of the Act was merely an additional remedy and this did not affect the power of the appellate authorities in entertaining the additional claim for deduction u/s.11 of the Act as made before the Ld.JCIT(A). In this regard, reliance was placed on the decision(s) of Hon'ble Gujarat High Court in the case of Association of India Panelboard Manufacturer vs. DCIT reported at (2023) 157 taxmann.com 550 (Guj) and in the case of the PCIT vs. UTI Bank reported at 398 ITR 514 (Guj). He further submitted that Assessing Officer was duty bound to determine the 'correct income' of the assessee, as held in the case of S.R. Koshti vs. CIT reported at (2005) 276 ITR 165 (Guj).

4. The Ld.DR, on the other hand, submitted that no claim for deduction u/s.11 of the Act was made in the return of income. The claim for deduction was made only u/s.10(23) of the Act. As the assessee had not filed the Form 10B, the CPC had rightly disallowed the claim for deduction u/s.10(23C) of the Act. Since no claim for deduction u/s.11 of the Act was made in the return, the claim of the assessee could not have been entertained either by the CPC or by the Ld. JCIT(A). According to the Ld.DR, the Ld.JCIT(A) had rightly rejected the additional claim made in the appellate proceedings as no such claim was made in the original return of income.

5. We have heard both the parties and carefully considered the facts of the case as well as the materials brought on record. There is no denial to the fact that the claim for deduction u/s.11 of the Act was not made in the return of income. The assessee had claimed deduction u/s.10(23C) of the Act in the return. As the Form 10B essential for claiming exemption u/s.10(23) was not furnished, the CPC had rightly rejected the claim. Therefore, the adjustment as made by the CPC, while processing the return, cannot be faulted. The contention of the assessee that the issue was debatable has no substance. The matter was only factual in nature and the CPC had made the adjustment u/s.10(23C) as the mandatory Form 10BB was not available. As no deduction u/s.11 of the Act was claimed in the return, the CPC never had the opportunity to examine the admissibility or rejection of this claim.

5.1. The main grievance of the assessee is that the exemption u/s.11 of the Act claimed in the appellate proceedings before the Ld.JCIT(A) was not entertained. According to the assessee, the Ld.JCIT(A) should have

entertained the additional claim for exemption u/s.11 made in the course of appellate proceedings as the Form 10B necessary for claiming deduction u/s.11 of the Act was also filed before the Ld.JCIT(A). The finding of the Ld.JCIT(A) in respect of this additional claim is found to be as under:

> *(b)Since a wrong exemption has been shown in the Return of Income, the only remedy available lies in the machinery provisions of the Act rather seeking legal remedy. Such provisions are found in section 119(2)(b) which enables an assessee to approach the Board for seeking relief in such cases. The provisions of section 119(2)(b) are reproduced below:*
>
> *Section 119:*
> *"Instructions to subordinate authorities.*
>
> > *1. The Board may from time to time...*
> > *2. Without prejudice to the generality of the foregoing power,-*
> >
> > *(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class, by general or special order, authorize (any income tax authority, not being a [***] Commissioner(Appeals) to admit an application or claim for any exemption, deduction, refund, or any other relief under this Act after expiry of the period specified by or under this Act for making such application or claim and deal with the some on merits in accordance with law."*
>
> *From the above, it is clear that the first appellate authorities have not been entrusted with powers of condoning delay in such cases. The intention of legislature with respect to such cases is very clear that the remedy in such situation lies in the section 119 of the Act.*
>
> *(c) For making the claim of exemption u/s 11, the appellant was either required to file the Revised return or if time for revision is not available, make a claim before the competent authority (Pr. CIT) for condonation of delay. In the instant case it appears that the appellant has neither revised the return nor made any application for condonation. In the statute, the Addl. CIT (Appeals) has not been empowered to condone such delay or allow any claim which is not made in the return.*
>
> *(d) The Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs Cit (2006) 284 ITR 323 has held that the assessee can amend a return filed by it only by filing a revised return. In this case the appellant has not filed any revised return.*

In view of the aforesaid discussion the above grounds of appeal of the appellant are dismissed."

5.2. Looking to the facts of the case, we do not find anything wrong with the findings of the Ld.JCIT(A). As admitted by the assessee, no claim for deduction u/s.11 of the Act was made in the return of income. The assessee has only filed Audit Report in Form 10B based on which exemption u/s.11 of the Act was claimed in the appellate proceedings. The filing of Audit Report in Form 10B is a secondary requirement. The primary requirement is to claim the deduction u/s.11 in the Income Tax Return. No action can be taken on the fulfillment of secondary requirement, when the primary requirement was not fulfilled. Had the assessee made the claim of deduction u/s.11 of the Act in the return of income and complied with the primary requirement, only then the Ld.JCIT(A) could have entertained and acted upon the secondary requirement of Audit Report in Form 10B. In the absence of any claim of deduction u/s.11 of the Act in the return of income, the exemption could not have been allowed only on the basis of Form 10B filed in the appellate proceedings. The Ld.JCIT(A) has relied upon the judgement of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. vs. CIT reported at (2006) 284 ITR 323 (SC), wherein it was held that the assessee cannot amend a return filed by him for making a claim for deduction other than by filing a revised return. We do not find any error in the direction of the Ld. JCIT(A) to avail the remedy u/s.119 of the Act to file the revised return.

5.3. The assessee has relied upon the decision of Hon'ble Gujarat High Court in the case of Association of India Panelboard Manufacturer(supra). In that case, exemption under sections 11(1) and 11(2) of the Act was claimed in the return of income, but the Audit Report in Form 10B was not filed along with the return of income. The same was filed electronically at a later stage.

The assessee was denied exemption while processing the return u/s.143(1) of the Act for the reason that Audit Report was not filed along with the return of income. It was on consideration of these facts, that the Hon'ble Gujarat High Court had held that the assessee was eligible for deduction and entitled to exemption u/s.11 of the Act as the Audit Report was available with the Assessing Officer when he processed the return u/s.143(1) of the Act and requirement of law was satisfied. Thus, the facts of that case are found to be totally different from the facts of the present case. In the present case, no exemption u/s 11 of the Act was claimed in the return of income rather deduction was claimed u/s 10(23C)(iv) in the return. The audit report in Form 10B is a common audit report for deduction u/s 10(23C) and for section 12A of the Act. Hence, Form 10B was not a conclusive proof for deduction u/s 11 of the Act. Therefore, the decision of Hon'ble Jurisdictional High Court cannot be imported to the facts of the present case. Further, the Hon'ble Court had observed that section u/s 119(2)(b) was only an additional remedy for the assesse which cannot be compulsorily resorted by the assesse. The assesse was allowed an opportunity in the intimation to file a rectification application, if so required, which was not availed. Accordingly, the remedy of rectification of mistake has to be availed before resorting to the alternate remedy u/s 119(2)(b), if required.

5.4. In the case of UTI Bank Ltd. (supra), the Hon'ble Jurisdictional High Court has held that any ground, legal contention or even a claim would be permissible to be raised for the first time before the Appellate Authority or the Tribunal when the facts necessary to examine such ground, contention or claim are already on record. In the present case, the basic fact of claim for exemption u/s.11 of the Act was not available on record as no such claim was made in the return of income. In the absence of any claim for deduction

u/s.11 of the Act in the return of income, the claim could not have been allowed in the appellate proceedings only on the basis of Form 10B filed before the Ld.JCIT(A). Thus, the decision of the Hon'ble Jurisdictional High Court in this case also does not help the assessee. The facts of the other cases relied upon by the Ld. Sr. Advocate are also found to be different.

5.5 We have carefully considered the facts of the case and the evidences brought on record. It is seen from the intimation u/s.143(1) of the Act that Form 10B was filed along with the return of income. However, no exemption u/s.11 of the Act was claimed rather the assessee had claimed exemption u/s.10(23C)(iv) of the Act as appearing at Sl.No.1 of the intimation. It is found from the Sl.No. 5 and 6 of the intimation that there was a common column for claim of exemption u/s.10(23C)(iv) of the Act as well as for exemption u/s.11 of the Act. Therefore, it was not apparent as to whether the total exemption of Rs.12,16,737/- as appearing in Sl.No.6 of intimation was in respect of section 11 or u/s.10(23C)(iv) of the Act. The CPC did not allow the claim of the assessee, but **in the notes there is no mention as to why the claim of the assessee as made in the return was disallowed**. However, there was a note at Sl.No.5 which stated that if the assessee considered that any part of the intimation was required to be rectified, then rectification u/s.154 of the Act may be filed. The assessee in place of filing the rectification, preferred an appeal before the Ld.JCIT(A) and claimed for deduction u/s.11 of the Act. As already mentioned earlier, the Ld.JCIT(A) did not allow the claim of the assessee and advised to avail the remedy u/s. 119 of the Act.

5.6 As already mentioned earlier, it is not clear from the intimation as to why the adjustment of Rs.12,16,737/- was made while processing the return u/s.143(1) of the Act. The exact reason for disallowing the claim of the assessee has also not been mentioned in the intimation. The audit report in Form 10B is a common audit report for deduction u/s 10(23C) and for section 12A of the Act, which entitles for deduction u/s 11 of the Act. Therefore, the CPC may have made a query as to under which section the deduction was claimed before disallowing the claim of the assessee. The Revenue is, therefore, directed to intimate the exact reason for disallowing the claim of the assessee while processing the return. Thereafter, the assessee may file an application u/s.154 of the Act to rectify the mistake in the intimation, as deemed proper. The assesse is also free to avail the remedy u/s. 119 of the Act, if he so desires.

5.7. The other ground taken by the assessee regarding breach of principle of natural justice is found infructuous as the Ld.JCIT(A) had allowed proper opportunity to the assessee and passed a speaking order. The ground on the issue regarding charging of interest u/s.234B/C of the Act is only consequential.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 19th April, 2024 at Ahmedabad.

Sd/-	*Sd/-*
(SUCHITRA KAMBLE) **JUDICIAL MEMBER**	**(NARENDRA PRASAD SINHA)** **ACCOUNTANT MEMBER**

Ahmedabad, Dated 19/04/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)/Addl/JCIT (A)-8 Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad