

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 441/Ahd/2024
Assessment Year : 2018-19**

Shiksha Foundation, B/2 Sahana Apartment, Kankaria Road, Ahmedabad PAN: AALTS6277Q (Appellant)	Vs	The ITO, Ward-2 (Exmp), Ahmedabad (Respondent)
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**Assessee by: Shri Divyang Shah, A.R.
Revenue by: Shri Santosh Kumar, Sr. D.R.**

Date of hearing : 30-05-2024
Date of pronouncement : 14-06-2024

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A), Madurai, in proceeding u/s. 250 vide order dated 21/02/2024 passed for the assessment year 2018-19.

2. The assessee has raised the following grounds of appeal:-

"1. Whether on facts and in circumstances of the case and in law. Ld CIT(A) has erred in not allowing exemption of Rs. 32,98,068/- u/s 11 of the act?"

2. Whether on facts and in circumstances of the case and in law. Ld CIT(A) has erred in allowing adjustment of Rs 32,98,068/- u/s 143(1) of the act?

Further appellant craves leave to add amend, alter or withdraw all or any ground of appeal.”

3. The brief facts of the case are that the assessee received intimation u/s 143(1)(a), making the adjustment / disallowance for "application of income" amounting to Rs. 32,98,068/- because the audit report for trust for AY 2018-19 was not filed on or before the date of filing of the Income-tax return for AY 2018-19. The case of the assessee is that audit report in case of Shiksha Foundation for AY 2018-19 was duly signed by auditor as on 21st September, 2018, meaning thereby, audit report for AY 2018-19 was signed by auditor before the filing of Income-tax return (i.e. before 26th September, 2018) but, the said audit report was filed late by the auditor on the Income-tax portal (i.e. on 20th January, 2020). However, Intimation Order u/s 143(1) of the Act was passed by Ld. AO on 8th February, 2020 i.e. after the filing of the audit report of trust by it's auditor under Form No. 10B as on 20th January, 2020. Thus, exemption of Rs.32,98,068 claimed u/s 11 was not allowed by ADIT, CPC, Bengaluru while issuing the Intimation Order u/s 143(1) because the audit report of trust (i.e. Form 10B) had not been filed along with the return of the income. Due to this reason, an adjustment was made of Rs.32,98,068/- while passing the Intimation Order u/s 143(1).

4. In appeal before Ld. CIT(A), dismissed the appeal of the assessee, with the following observations:

“Notices u/s 250 were issued to the appellant on 04 10.2023 and 30.11. 2023. In response the appellant had filed replies on 11.10.2023 and 14 12.2023. The written submissions of the appellant together with the evidences submitted and

case laws relied upon by the appellant have been perused and the grounds of appeal filed by the appellant are adjudicated as hereunder.

All the grounds of the appeal pertain to disallowance of exemption u/s. 11 for reasons of delay in filing of Form 10B and hence are adjudicated unanimously.

The Exemption u/s 11 will be given only if the appellant filed Form 10B before filing the Return of income. In this case Form 108 has not been filed by the appellant within the due date for filing the Return of income. While the due date was 30.09.2018 the Form 100 had been filed only on 29.10.2018. Hence the denial of claim of exemption u/s 11 by the CPC in intimation u/s 143(1) is justified. At this juncture it is pertinent to take note of the judgement of the H'ble Ahmedabad Tribunal in the case of Association of Indian Panelboard Manufacturer v. Deputy Commissioner of Income-tax (2022] 143 taxmann.com 418 (Ahmedabad ITAT) [22-07-2022] wherein on similar circumstances the Tribunal had rendered its decision in favour of revenue while analysing the provisions of Section 119 of the Income-tax Act 1951 with regard to the power of Central Board of Direct Taxes issuing instructions to subordinate authorities on the issue of condonation of delay in filing Form No 10B for Assessment year 2018-19. In that case the assessee was a charitable institution registered under section 12AA, claimed exemption under section 11. On filing original return of income assessee was communicated by Assessing Officer that assessee had not filed Audit Report Immediately thereafter, assessee filed Audit Report in Form 108 by uploading same in electronic mode Central Processing Centre denied exemption under section 11 for want of submission of Form No. 10B within due date on appeal Commissioner (Appeals) held that Form 10B shall be submitted electronically with effect from 1-4-2016 applicable for assessment year 2016-17 and as per CBDT Circular No 273. dated 3-6-1980 CBDT had authorized jurisdictional Commissioner/Director of Income-tax to condone delay in filing Form 10B, and Commissioner (Appeals) did not have any power under section 119(2)(b) to condone delay in filing Form 10B. Thus, Commissioner (Appeals) dismissed assessee's appeal holding that assessee had remedy before jurisdictional Commissioner Pr Commissioner/Director of Income-tax for condoning delay in filing Form 108 and claiming benefit of section 11. It was noted that assessee was well aware that there was a delay in filing Form 10B, however assessee seemed to have not made any application for condonation of delay in filing Form 10B before concerned P Commissioner/Commissioner/Director of Income-tax as provided under section 119(2). Therefore on the question of whether there was no infirmity in order passed by Commissioner (Appeals), the H'ble Tribunal held "Yes" in Paras 6.2 and 6.3 of its order in favour of revenue.

The above factual matrix and the decision rendered by the H'ble Tribunal in the case of Association of Indian Panelboard Manufacturer Deputy Commissioner of Income-tax [2022] 143 taxmann.com 418 (Ahmedabad -ITAT)

(22-07-2022] perfectly to the instant case of our appellant. As per CBDT Circular No. 273, dated 3-6-1980, CBDT had authorized only the jurisdictional Commissioner/Director of Income-tax to condone delay in filling Form 10B, and Commissioner (Appeals) did not have any power under section 119(2)(b) to condone delay in filling Form 10B.”

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A). Before us, the counsel for the assessee submitted that the disallowance was made only for the reason that audit report applicable for trust was not filed before the due date of filing of income tax return. Therefore, the only reason why the disallowance was made/the application of income was denied to the assessee trust only for the reason that audit report was not filed by the assessee along with return of income. However, the said audit report was filed before the intimation under section 143 (1) of the Act was passed by the Department. The counsel for the assessee submitted that it was a pure procedural lapse and this fact has also not been disputed that the audit report was prepared before the due date of filing of return of income, but there was an omission to file same before the due date of filing of return of income. However such audit report was filed before the order under section 143 (1) was passed by the Department. The counsel for the assessee relied on several judicial precedents in support of the contention that if the audit report, though not filed along with return of income, is later on filed before the assessing officer or before the appellate authority, it should be considered as sufficient compliance and exemption under section 11 of the Act should not be denied to the assessee trust.

6. In response, the Ld. Departmental Representative placed reliance on the observations made by Ld. CIT(A) in the appellate order and submitted

that exemption under section 11 of the Act can be given to the assessee only if form 10 B has been filed before the filing of return of income. In this case, form 10 B had not been filed by the assessee within the due date of filing of return of income. Accordingly, there is no infirmity in the order of Ld. CIT(A) so as to call for any interference.

7. We have heard the rival contentions and perused the material on record. In this case, on going through the facts of the case, what transpires from the records is that the audit report for assessment year 2018-19 was duly signed by the auditor on 21-09-2018, though the same was omitted to be filed on the income tax portal. The due date of filing of income tax return for assessment year 2018-19 was 26-09-2018. Notice under section 143 (1) (a) was issued on 19-12-2019. The audit report of the assessee trust was filed on the income tax portal by the auditors of the assessee trust on 20-01-2020. Intimation under section 143 (1) denying the claim of the application of income was issued by CPC, Bengaluru on 08-02-2020. Therefore, what can be seen is that as on the date on which the intimation/order under section 143(1) of the Act was passed by CPC, Bengaluru, the auditor of the assessee trust had already filed the audit report in form 10B, before such order/intimation under section 143 (1) of the Act was issued. From the facts placed on record before us, we see no deliberate/mala fide intention on the part of the assessee or it's auditor to file the audit report in form 10 B belatedly.

7.1 In the case of **Shree Jain Swetamber Murtipujak Tapagachha Sangh v CIT 161 taxmann.com 114 (Bombay)**, the High Court held that

where assessee-trust filed Form No. 10 beyond due date and assessee's auditor admitted to oversight that he did not consider provisions of Rule 17 and was under bona fide impression that since factum of accumulation of receipts was reported in audit report in Form No.10B a separate statement in Form No. 10 was not required, in view of fact that delay was not intentional, assessee could not be prejudiced on account of an ignorance of rules admitted by professional engaged by assessee and thus, delay was to be condoned.

7.2 In the case of **Social Security Scheme of GICEA v. CIT 147 taxmann.com 283 (Gujarat)**, the Assessee a Public Charitable Trust had been filing returns of income in time along with audit report under section 12A(1)(B). For relevant assessment year 2016-17, assessee obtained audit report from Chartered Accountant well before time, however, same could not be uploaded along with return of income inadvertently. In absence of any audit report, Central Processing Centre had not granted exemption under section 11 which otherwise was available to it since many years and resultantly demand was raised. The Assessee therefore filed a rectification application under section 154, seeking to place on record audit report to Central Processing Centre but same was rejected on ground that Form No. 10Bauditreport, was not filed in time. The Assessee filed an application before CBDT to condone delay in filing Form No. 10Baudit report, however same was rejected. The High Court held that since assessee was a public charitable trust for past 30 years and substantially satisfied conditions for availing exemption under section 11 it should not be denied exemption merely on bar of limitation especially when legislature had conferred wide

discretionary powers to condone such delay. Accordingly, the Gujarat High Court directed that the order of rectification under section 154 be quashed

7.3 In the case of **JCIT v. Gujarat Energy Development Agency**¹⁵⁴**taxmann.com 348 (Ahmedabad - Trib.)**, the ITAT held that where assessee, a charitable trust, filed audit report in Form No. 10B during assessment proceedings, Assessing Officer could not have denied exemption under section 11 on ground that audit report was not e-filed along with return.

7.4 In the case of **Sarvodaya Charitable Trust v. ITO** ¹²⁵**taxmann.com 75 (Gujarat)**, the High Court held that where assessee, a public charitable trust registered under section 12A, had substantially satisfied condition for availing benefit of exemption as a trust, it could not be denied exemption merely on bar of limitation in furnishing audit report in Form no. 10B.

7.5 In the case of **CIT v. Gujarat Oil & Allied Industries**²⁰¹**ITR 325 (Gujarat)**, the High Court held that where an assessee could not file audit report along with return but filed it later before completion of assessment by ITO, he was entitled to deduction under section 80J of the Act.

7.6 Accordingly, in light of the above judicial precedents cited above and the assessee's set of facts, we are of the considered view that the claim of application of income cannot be denied to the assessee only on the ground that the assessee/the auditor of the assessee omitted to file form 10 B

(auditor's report) along with return of income, when the same was submitted to the tax authorities before the order/intimation under section 143 (1) of the Act was issued.

8. In the result, the above ground of appeal of the assessee is allowed.

9. In addition to the above, the assessee has filed additional ground challenging the levy of fee amounting to ₹ 5000/- under section 234F of the Act, being penalty for delayed filing of income tax return. In this regard, the counsel for the assessee submitted that the assessee trust had filed its return of income on 26 September, 2018. The counsel for the assessee submitted that the due date of filing of return for the impugned year under consideration was 30th day of September, 2018. However, the CPC Bengaluru considered the date of filing of return as 31st August, 2018 on an incorrect assumption of facts and thereby levied fee for delayed filing of return of income amounting to ₹ 5000/- under section 234F of the Act.

10. On going through the facts of the case, we observe that as per Explanation 2(a)(ii) of section 139(1) of the act, the due date for filing the Income-tax return in case of a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force, is 30th day of September of the assessment year. Accordingly, due date for filing the Income-tax return in the case of appellant-trust, for AY 2018-19, as per section 139(1) of the act, is 30th September, 2018. Further, from the facts of the case, we observe that appellant trust had filed its return of income as on 26th September, 2018 (i.e.

before 30th September, 2018). Thus, we understand that the return of income of appellant trust was duly filed within the prescribed time limit u/s 139(1) of the act. As per section 234F of the act, fees is payable by a person when such person is required to furnish a return of income u/s 139 of the Act and the person fails to do so within the time prescribed in section 139(1) of the act. Now, as observed above, the appellant-trust had filed its return of income before the prescribed time limit u/s 139(1) of the act. Thus, in our view, section 234F is not applicable in the case of appellant trust.

10.1 Accordingly, the additional ground of appeal raised by the assessee is allowed.

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

Order pronounced in the open court on 14-06-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 14/06/2024

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद