

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 51/Ahd/2024
(निर्धारण वर्ष / Assessment Year : 2014-15)

DCIT Circle-1 (Exemptions), Ahmedabad	बनाम/ Vs.	Gujarat State Board of School Text Book Vidhyayan Sector 10-A, Gandhinagar, Ahmedabad, Gujarat 382010
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATG4671P		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	Dr. Darsi Suman Ratnam, CIT. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri M. K. Patel, Advocate

Date of Hearing	25/06/2024
Date of Pronouncement	01/07/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre (NFAC) (in short ‘the CIT(A)’) dated 11.12.2023 for A.Y. 2014-15.

2. The brief facts of the case are that the assessee filed its return of income for A.Y. 2014-15 on 28.11.2014 declaring Nil income as the entire income was claimed exempt under Section

11 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’). The return was processed under Section 143(1) of the Act on 16.03.2016 wherein the assessee’s claim for deduction of Rs.38,93,39,705/- under Section 11(2) of the Act was disallowed. Thereafter, the assessee filed an application under Section 154 of the Act before the AO to rectify the mistake as the deduction under Section 11(2) of the Act was admissible since the assessee had already filed Form No.10 before the due date. The AO passed order under Section 154 of the Act on 17.06.2021 and the rectification request was rejected for the reason that audit report in Form No.10B and Form No.10 were not filed along with the Income Tax Return as required under Section 12A(b) of the Act. The assessee had preferred an appeal against the rectification order before the First Appellate Authority, which was decided vide the impugned order and the appeal of the assessee was allowed.

4. Now, the Revenue is in appeal before us and the following ground has been taken in this appeal:

“1. Whether on the facts and in the circumstances of the case, Ld. CIT(A) has erred in law in deleting additions made by the Assessing Officer under section 11(2) of the I.T. Act, 1961 as the assessee has not filed Audit report in form 10B along with its ITR, which is mandatory as per the provisions of section 12A(1)(b) of the I.T. Act, 1961?”

5. Dr. Darsi Suman Ratnam, the CIT.DR submitted that the Ld. CIT(A) was not correct in allowing the appeal of the assessee as Form No.10 necessary for claiming exemption under Section 11 of the Act was not filed along with the return of income.

6. Shri M. K. Patel, Ld. AR for the assessee, on the other hand, submitted that Form 10 was filed on 30.11.2014 which was within the due date as prescribed under the provisions of the Act and the Rules and, therefore, the Ld. CIT(A) had rightly allowed the claim of the assessee.

7. We have carefully considered the facts of the case. It is found that the return of income for this year was filed by the assessee on 29.11.2014, whereas Form No.10 was filed one day later on 30.11.2014. The CPC had disallowed the claim for deduction under Section 11(2) of the Act presumably for the reason that the Form No.10 was not filed along with the return of income. It is found from the intimation under Section 153(1) of the Act that a note was given for disallowing the claim of exemption under Section 11(2) of the Act and the said note is found to be as under:

“Note: In return of income furnished by you, the required information has not been provided in schedule J & I for claiming of exemptions u/s 11(2). In spite of opportunities given, you have not furnished the corrected return. Hence exemption claimed u/s 11(2) has not been allowed while computing your total income.”

Thus, the claim of the assessee was denied for the reason that the information as required in schedule J & I for claiming exemption under Section 11(2) of the Act was not provided by the assessee. The Ld. AR clarified that the deficiency as noticed by the CPC was corrected and a revised return was filed on 16/07/2016, a copy of which has been brought on record. The assessee has also

brought on record the evidence for filing of Form No.10 as well as Form No.10B on 30.11.2014, which was within the due date as prescribed under the Act and Rules.

8. The only grievance of the Revenue is that the Ld. CIT(A) was not correct in allowing deduction under Section 11(2) of the Act for the reason that audit report in Form No.10B was not filed along with the return of income. As per the provisions of the Act and the Rules, the audit report in Form 10B is required to be filed before the due date of filing of return. It is not mandatory that it should be filed along with the return of income itself. As long as the audit report is filed within the time allowed under Section 139(1) of the Act, the claim of the assessee has to be allowed. There is no dispute to the fact that the audit report was filed in this case on 30.11.2014, which was within the time as admissible under the provision of Section 139(1) of the Act. Therefore, we do not find anything wrong with the direction of the Ld. CIT(A) to allow the claim for deduction under Section 11(2) of the Act. The decision of the Ld. CIT(A) is, therefore, upheld and the appeal of the Revenue is dismissed.

9. In the result, appeal preferred by the Revenue is dismissed.

This Order pronounced on 01/07/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER
Ahmedabad; Dated 01/07/2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad