

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 555/AHD/2023

निर्धारण वर्ष/Asstt. Year: 2021-2022

Gyandeep Charitable Trust, A/204, Ashutosh Apt., B/h. St. Xaviers School, Naranpura, Ahmedabad-380013. PAN: AACTG0352M	Vs.	A.D.I.T, CPC, Bengaluru, Now Income Tax Officer, Ward-3(3)(1), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N Divatia, A.R
Revenue by :	Ms. Saumya Pandey Jain, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **28/12/2023**

घोषणा की तारीख /**Date of Pronouncement**: **03/01/2024**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the National Faceless Appeal Centre(NFAC), Delhi, arising in the matter of assessment order passed under s.143(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2021-2022.

2. The only grievance raised by the assessee is that the Id. CIT(A) erred in not granting exemption u/s 11 of the Act on the reasoning that there was a delay in filing Form 10B i.e. audit report

3. The necessary facts are that the assessee is a public charitable trust and claimed to be engaged in carrying out charitable activities. It filed its return of income declaring income at Rs. 1,83,230.00 dated 8-1-2022 However, while

processing the return u/s 143(1) of the Act, the exemption claimed u/s 11 of the Act was denied and the income was assessed at Rs. 2,68,841.00 only.

4. Aggrieved assessee preferred an appeal before the Id. CIT(A) who dismissed the same while observing as under:

82 During appellate proceedings, the appellant has filed copy of Form 10B uploaded for the year by the appellant trust in order to establish that it has complied with all conditions required as per section 11. It is noticed that the return of income for the year was filed belatedly by the appellant on 08.01.2022 whereas the due date to file the return of income for the AY 2021-2022 was 31.12.2021. Further Form 10B dated 08.01.2022 was uploaded on e-filing portal on 30.03.2022 with acknowledgment no 503742200300322. Thus Form 10B was neither filed on the due date of filing of return of income u/s 139(1) i.e. 31.12.2021 nor on the date of actual filing of return of income i.e. 8-01-2022. It was filed 3 months after the actual date of filing of return of income on 30-03-2022. Provisions of section 12A (1) (b) requiring assessee to furnish audit report has been amended wef 01.04.2020. Requirement of furnishing audit report before the due date prescribed in section. 44AB is made mandatory wef 01.04.2020 i.e. from AY 2020-21. The assessment year under consideration being A yr 2021-22, amended provisions of section 12A (1)

(b) are applicable. In the present case, section 12A (1)(b) required the appellant to file Form 10B before the due date of filing of return of income u/s 139(1) which in this case is 31.12.2021. If there is delay in filing Form 10B, delay can be regularised by making an application to CIT concerned for condonation of delay in filing Form 10B as prescribed by CBDT circular no 19/2020 dated 03.11.2020. In the present case the appellant has filed Form 10B belatedly on 30.03.2022. But it appears that appellant trust has not made any application for the condonation of delay in filing form 10B belatedly. Therefore no condonation was granted to the appellant trust to file Form 10B till the date of processing of return of Income. During the appellate proceedings the appellant was specifically asked to provide details of condonation granted by CIT concerned, if any, vide notice dated 2-05-2023. Though appellant responded to the notice on 5-05-2023 but failed to provide any details regarding condonation of delay granted to the appellant allowing it to file Form 10B belatedly for the year under consideration. The appellant could not even provide evidence to show that an application for condonation has been made. It means appellant clearly failed to satisfy provisions of section 12A (1)(b) making it ineligible for exemption u/s 11. It is noticed from details filed by the appellant that as far as A.yr 2020-21 is concerned, the appellant has properly filled in details of registration u/s 12A in the return of Income and also filed form 10B in time. Hence exemption u/s 11 was allowed to the appellant for that year. But for the year under consideration Since the appellant failed to satisfy provisions of section 12A(1)(b), denial of exemption u/s 11 of Rs.85,611/- vide 143(1) dated 27.10.2022 by AO, CPC is upheld. Thus grounds of appeal numbering 1 to 4 of the appellant are dismissed.

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

6. The Id. AR before us filed a paper book running from page 1 to 42 and submitted that the requirement of filing audit report in Form 10B is procedural in nature and therefore exemption claimed by the assessee u/s 11 cannot be denied. The Id. AR in support of his contention relied on the following orders:

- i. Hari Gyan Pracharak Trust vs. DCIT vide ITA No. 245/Ahd/2021 order dated 16-06-2023.*
- ii. Shri Visha Oswal Jain Sewa Samaj vs. ITO vide ITA No. 59/Ahd/2022 order dated 11-10-2023*

6.1 The Id. AR further submitted that the CBDT Circular No. 16/2020 dated 19th July, 2022 has also delegated the power to the Principal Commissioner/Commissioner of Income Tax to admit the application for the condonation of delay u/s 119(2) of the Act with respect to the delay in filing Form 10B for assessment year 2018-19 and subsequent assessment years on merit. Accordingly, it was contended by the Id. AR that the delay should be condoned, and assessee should be granted the exemption u/s 11 of the Act.

7. On the other hand, the Id. DR contended that the assessee for condoning the delay in filing Form 10B of the Act was to move an application before the concerned Income Tax Authorities in pursuance to the CBDT Circular who were authorized to condone the delay after considering the merit of the case. As such, the Id. AR cannot take shelter of CBDT Circular discussed above in the appeal pending before the ITAT.

8. The Id. A.R. in his rejoinder submitted that once it was found that the Tribunal has taken a view after referring the judgment of Hon'ble Gujarat High Court in the cases discussed above, the assessee did not prefer to adopt the alternate remedy available to it.

9. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset, we note that this Tribunal in identical

facts and circumstances in the case of Hari Gyan Pracharak Trust vs. DCIT vide ITA No. 245/Ahd/2021 order dated 16-06-2023 has decided the issue in favour of the assessee by observing as under:

"7. We have carefully considered the order passed by the authorities below and the judgment passed by the Hon'ble Jurisdictional High Court in case of Association of Indian Panelboard Manufacturer (supra) on the issue involved. While passing order in favour of the assessee, the Hon'ble Jurisdictional High Court has been pleased to observe as follows:

"5.6 The Tribunal further committed an error in appreciating the import of Section 1192(b) of the Act inasmuch as the application contemplated hereunder is only a 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 that 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 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 112) 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."

8. In view of the ratio laid down by the Hon'ble Jurisdictional High Court holding that non filing of Audit Report along with return of income is a procedural omission and cannot be an impediment in law in claiming the exemption, we allow this appeal condoning the delay in filing the Audit Report in Form No. 10B. However, we also upon condoning the delay, restore the matter to the file of the Ld. CIT(A) to pass order in regard to the exemption claimed by the assessee strictly in accordance with law.

9. In the result, assessee's appeal is allowed for statistical purposes."

9.1 Respectfully following the order of Co-ordinate Bench as discussed above, we condone the delay and restore the matter to the file of Id. CIT(A) to allow exemption u/s 11 of the Act to the assessee as per the provisions of law. Hence, the grounds of appeal of the assessee are allowed for statistical purposes.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 03/01/2024 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
03/01/2024