

आयकर अपीलीय अधिकरण न्यायपीठ “एक-सदस्य” मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH “SMC”, RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं./ ITA Nos. 15 & 16/RPR/2022

निर्धारण वर्ष / Assessment Years : 2016-17 & 2017-18

Shri Jain Shwetamber Murtipujak Sangh
C/o. Santosh Parekh, Near Hanuman Mandir,
Near Itwari Bazar, Dhamtari,
Chhatisgarh-493 773
PAN : AAHAS5883K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer (Exemption),
Ward-1, Raipur (C.G.).

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Sunil Kumar Agrawal &
Revenue by : Madhu Sudan Sawdia, CAs
: Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 21.03.2023
घोषणा की तारीख / Date of Pronouncement : 22.05.2023

आदेश / ORDER

PER RAVISH SOOD, JM

The captioned appeals filed by the assessee are directed against the respective orders passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 29.11.2021 & 02.12.2021, which in turn arises from the orders passed by the Central Processing Center (CPC)/A.O under Sec. 143(1) of the Income-tax Act, 1961 (in short 'the Act') dated 29.03.2019 & 27.03.2019 for the assessment years 2016-17 & 2017-18. As the issues involved in the captioned appeals are inextricably interlinked; or in fact interwoven, therefore, the same are being taken up and disposed off together by way of a consolidated order.

2. I shall first take up the appeal filed by the assessee in ITA No.15/RPR/2022 for the assessment year 2016-17, wherein the impugned order has been assailed on the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in denying the exemption u/s.11 at Rs.24,83,562/- by stating that audit report in Form No.10B has not been filed before the due date of filing return of income u/s.139.

2. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in denying the exemption u/s.11 at Rs.24,83,562/-, while, there is no change in the objects and activities of the earlier and subsequent A.Ys and further, there is no finding that the assessee had carried on any activity not in accordance with its objectives and therefore, in the absence of any finding of facts, the exemption u/s.11 cannot be denied, thus, addition is liable to be deleted.

3. The appellant craves leave, to add, urge, alter, modify or withdraw any ground/s before or at the time of hearing."
3. As is discernible from the record the present appeals as pointed out by the registry involve a delay of 1 day. As the period of impugned delay therein involved is covered by the order of the Hon'ble Supreme Court of India, in *Suo Moto Writ Petition (Civil) No.3 of 2020* dated 23.03.2020 which was thereafter modified vide further order(s) dated 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022, therefore, the appeal filed by the assessee is admitted.
4. Succinctly stated, the assessee trust is a religious-cum-charitable trust registered u/s.12AA(1)(b)(i) of the Act with the CIT(Exemption), Bhopal. The registration granted to the assessee trust vide order dated 11.07.2016 is effective from 01.04.2015.
5. The assessee trust had e-filed its return of income u/s.139(4) of the Act for A.Y.2016-17 on 28.03.2018, declaring nil income (after claiming exemption u/s.11 of the Act).
6. Intimation u/s.143(1)(a) dated 29.03.2019 was issued by the DCIT, CPC, Bangalore, wherein the assessee's claim for exemption u/s.11(2) of the Act was declined, for the reason that the same was to be allowed only if Form 10 (*sic.10B*) a/w. return of income were furnished electronically within the "due date" specified u/s.139(1) of the Act. For the sake of clarity, the reasons

for declining the assessee's claim of exemption u/s.11 as stated in the intimation issued by the CPC, Bangalore dated 29.03.2019, is culled out as under:

"Exemption U/s. 11(2) of the Income Tax Act shall be allowed only if Form 10 (in Electronic Mode) and the Return of Income are furnished within due date specified U/s.139(1) of the Act. Also, Schedule J and I of ITR 7 have to be appropriately filled."

The assessee on receipt of the aforesaid intimation u/s.143(1)(a) of the Act filed an appeal before the CIT(Appeals), and also moved an application for rectification of mistake u/s.154 of the Act dated 09.04.2019 with the A.O. The application for rectification of mistake was rejected by the CPC, Bangalore vide its order passed u/s.154 of the Act dated 07.06.2019. In the meantime, the assessee uploaded Form 10B electronically on 21.06.2019.

7. On appeal, the CIT(Appeals) did not find favour with the contentions advanced by the assessee. It was observed by the CIT(Appeals) that the assessee trust had filed Form 10B r.w.r. 12(2) of the Income Tax Rules, 1962 on 21.06.2019 i.e. much after the "due date" for filing of its return of income u/s.139 of the Act. Apropos the request of the assessee for condonation of the delay involved in filing of Form 10B, it was observed by the CIT(Appeals) that the same did not fall within the four parameters of CBDT Circular No.28/2019 [F.No.197/55/2018-ITA-1], dated 27.09.2019 read a/w. Circular No.7/2021 [F.NO.197/49/2021-ITA-1] dated 26.03.2021. It was, inter alia, provided in CBDT Circular NO. 10 [F.No.197/55/2018-ITA-1], dated 22.05.2019 Para 4(i)

that the delay in filing of Form 10B for A.Y.2016-17 and A.Y 2017-18, in all such cases where audit report for the previous year had been obtained before filing of return of income and was furnished subsequent to the filing of return of income but before the date prescribed u/s.139 of the Act, were to be condoned. Accordingly, the CIT(Appeals) referring to the CBDT Circular No.28/2019 dated 26.03.2021, observed that the delay in filing Form 10B for A.Y.2016-17 and A.Y.2017-18 could only be condoned in those cases where Form 10B was filed before the "due date" of filing of return of income u/s.139 of the Act. The CIT(Appeals) observed that as stated by the A.O, as the assessee had e-filed the Form 10B on 21.06.2019, i.e. beyond the "due date" for filing of its return of income u/s.139 of the Act, therefore, its case did not fall within the scope and gamut of Para 4(i) of the aforesaid Circular No.28/2019 dated 27.09.2019. Accordingly, the CIT(Appeals) on the basis of his aforesaid observations dismissed the assessee's appeal.

8. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before me.

9. I have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

10. It is the claim of the Ld. Authorized Representative (for short 'AR'), that the assessee trust had though obtained the audit report in Form 10B dated 30.09.2016 but the same due to certain technical glitches could not be filed a/w. its return of income that was filed u/s.139(4) of the Act on 28.03.2018. Carrying his contention further, it was submitted by the Ld. AR that the audit report dated 30.09.2016 was, thereafter, e-filed/uploaded on 21.06.2019. My attention was drawn by the Ld. AR to the audit report u/s.12A(b) of the Act in Form 10B, dated 30.09.2016 Page 3 to 9 of APB. Further, the Ld. AR has taken me through Form 10B dated 19.06.2019 that was uploaded by the assessee on 21.06.2019. On the basis of the aforesaid facts, it was submitted by the Ld. AR that as the assessee-trust had obtained the audit report u/s.12A(b) of the Act in Form 10B on 30.09.2016, i.e. before filing of its return of income u/s.139(4) of the Act on 28.03.2018, and had further e-filed/uploaded the same subsequent to filing of its return of income, i.e. on 21.06.2019, therefore, the delay involved in filing of Form No.10B was to be condoned as per Para 4(i) (supra) of CBDT Circular No.10 (supra) r.w. Circular No.28 (supra). On the basis of the aforesaid facts, it was submitted by the Ld. AR that as the assessee had cumulatively satisfied the conditions provided in Para 4(i) of the CBDT Circular No.10 [F No.197/55/2018-ITA-I], dated 22.05.2019, therefore, the delay involved in e-filing/uploading of Form 10B for the year under consideration i.e. A.Y.2016-17 was mandatorily required to be condoned.

Apart from that, it was submitted by the Ld. AR that as filing of "audit report" is merely directory in nature and the same can also be filed in the course of proceedings before the CIT(Appeals) which are in a way in continuation of the assessment proceedings, therefore, now when the assessee had produced the same in the course of proceedings before the CIT(Appeals) which had culminated vide the latter's order 29.11.2021, there was no justification for him to decline the assessee's claim for exemption u/s.11 of the Act. In order to support his aforesaid contention the Ld. AR had relied upon a host of judicial pronouncements.

11. Per contra, the Ld. Departmental Representative (for short 'DR') relied on the orders of the lower authorities. It was submitted by the Ld. DR that as the assessee-trust was obligated to e-file/upload its "audit report" u/s.12A(b) of the Act in Form 10B a/w. its return of income for the year under consideration, which it had failed to do, therefore, its entitlement for exemption u/s.11 of the Act was rightly declined by the DCIT, CPC vide intimation u/s.143(1)(a) of the Act, which order was thereafter was sustained by the CIT(Appeals).

12. Controversy involved in the present appeal lies in a narrow compass, i.e. as to whether or not the case of the assessee falls within the realm of Para 4(i) of the CBDT Circular No.10 [F.No.197/55/2018-ITA-I], dated 22.05.2019.

Before proceeding any further, it would be relevant to cull out the aforesaid circular (supra), as under:

"CIRCULAR NO.10[F.NO.197/55/2018-ITA-I]

SECTION 12A, READ WITH SECTION 119 OF THE INCOME-TAX ACT, 1961-
CHARITABLE OR RELIGIOUS TURST-REGISTRATION OF- CONDONATION OF
DELAY IN FILING OF FORM NO.10B FOR YEARS PRIOR TO ASSESSMENT
YEAR 2018-19

CIRCULAR NO.10[F.NO.197/55/2018-ITA-I], DATED 22-5-2019
SUPERSEDED BY CIRCULAR NO.28/2019 [F. NO.197/55/2018-ITA-I],
DATED 27-9-2019

AS AMENDED BY CIRCULAR NO.28/2019[F. NO.197/55/2018-ITA-I], DATED
27-9-2019, CIRCULAR NO.7/2021 [F. NO.197/49/2021-ITA-I], DATED 26-3-
2021

Under the provisions of section 12A of Income-tax Act, 1961 (hereafter 'Act') where the total income of a trust or institution as computed under the Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have to be audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and the person in receipt of the income is required to furnish along with the return of income for the relevant assessment year the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

2. As per Rule 17B of the Income-tax Rules, 1962 (hereafter 'Rules') the audit report of the accounts of such a trust or institution is to be furnished in Form No. 10B. As per Rule 12(2) of the Rules, such audit report is to be furnished electronically. The failure to furnish such report in the prescribed form along with the return of income results in disentitlement of the trust from claiming exemption under sections 11 and 12 of the Act.

3. Representations have been received by the Board/field authorities stating that Form No. 10B could not be filed along with the return of income for AY 2016-17 and AY 2017-18. It has been requested that the delay in filing of Form No. 10B may be condoned. Previously, vide instruction in F. No. 267/482/77-IT(part) dated 09-02-1978, the CBDT had authorized the ITO to accept a belated audit report after recording reasons in cases where some delay has occurred for reasons beyond the control of the assessee.

4. Accordingly, in supersession of earlier Circular/ Instruction issued in this regard, and with a view to expedite the disposal of applications filed by such trusts or institutions for condoning the delay in filing Form No. 10B and in exercise of the powers conferred under section 119(2) of the Act, the Central Board of Direct Taxes hereby directs that:

(i) The delay in filing of Form No. 10B for AY 2016-17 and AY 2017-18, in all such cases where the Audit Report for the previous year has been obtained before the filing of return of income and has been furnished subsequent to the filing of the return of income but before the date specified under section 139 of the Act is condoned.

(ii) In all other cases of belated applications in filing Form No.10B for years prior to AY 2018-19, the Commissioners of Income-tax are authorized to admit such applications for condonation of delay u/s.119(2)(b) of the Act. The Commissioners will while entertaining such belated applications in filing Form No.10B shall satisfy themselves that the assessee was prevented by reasonable cause from filing such application within the stipulated time.

[Further, all such pending applications as well as applications received henceforth shall be disposed off preferably within three months from end of the month in which the application is received.]”

On a perusal of the intimation issued by the CPC, Bengaluru u/s. 143(1) of the Act dated 29.03.2019, it transpires that the assessee trust had filed its return of income for A.Y.2016-17 on 28.03.2018. Also, I find that the assessee had obtained the “audit report” in Form-10B on 30.09.2016, Page 3 to 9 of APB. Further as stated by the Ld. AR, Form 10B dated 19.06.2019 was uploaded/e-filed on 21.06.2019. On a perusal of the aforesaid facts, it is though clearly established that the assessee trust had obtained the “audit report” in Form 10B on 30.09.2016, i.e. prior to filing of its return of income on 21.06.2018, but the third limb/condition provided in Para 4(i) which requires that the audit

report in Form 10B should be filed before the date specified u/s.139 of the Act is not found to be satisfied. I, say so, for the reason that the term "specified date" u/s.139 of the Act is defined in "Explanation 1" to Section 139 of the Act, which reads as under:

"Explanation 1.- For the purpose of this sub-section, "specified date", in relation to a return for an assessment year, means,-

- (a) in the case of every assessee whose total income, or the total income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year or the 30th day of June of the assessment year, whichever is later;
- (b) in the case of every other assessee, the 30th day of June of the assessment year."

13. On the basis of the aforesaid "Explanation 1", it can safely be gathered that the "specified date" in the case of the assessee trust before me for A.Y.2016-17 will be 30.06.2016. As the assessee trust in the case before me, had e-filed/uploaded the "audit report" in Form 10B as on 21.06.2019, which is much beyond the date specified u/s.139 of the Act, therefore, it's case would clearly fall beyond the scope and gamut of Para 4(i) of the CBDT Circular No. 10 dated 22.05.2019. On the basis of the aforesaid facts, I am of the considered view that the case of the assessee before me would not fall within the meaning of Para 4(i) of the CBDT Circular (supra.).

14. As the assessee's case with respect to condonation of delay in filing of Form 10B would not be covered by Para 4(i) (supra), therefore, the same

would fall within the sweep of Para 4(ii) of the CBDT Circular No.10 (supra), which, as observed by me hereinabove, would be applicable to all other cases prior to A.Y.2018-19 where Form 10B is belatedly filed. Accordingly, I am of the considered view that the case of the assessee due to non-satisfaction of the conditions contemplated in Para 4(i) of CBDT Circular No. 10(supra), would thus fall within the sweep of Para 4(ii) of the said circular (supra.).

15. Be that as it may, as the assessee-trust does not cumulatively satisfy the set of conditions specified in Para 4(i) of the CBDT Circular No.10 (supra), and also had not filed any application for condonation of delay u/s.119(2)(b) of the Act as provided in Para 4(ii) of the said circular, therefore, there remains no occasion for condoning the delay involved in filing of Form 10B by the assessee beyond the stipulated time period. I, thus, on the basis of my aforesaid observations, find no infirmity in the view taken by the lower authorities who had rightly declined the assessee's claim for exemption u/s.11 of the Act. However, I may herein observe that the A.O after declining the assessee's claim for exemption u/s.11 of the Act could not have summarily held its gross receipts of Rs.24,83,562/- as its income. In sum and substance, the A.O after treating the assessee as an unregistered trust was obligated to have considered its claim for deduction of expenses as were raised in the income and expenditure account. Accordingly, on the basis of my aforesaid deliberations, I though uphold the declining of the assessee's claim for

exemption u/s.11 of the Act, but at the same time, restore the matter to the file of the A.O with a direction to consider the assessee's claim for deduction of expenses as debited in the income and expenditure account, i.e. to the extent the same are allowable under the Act. Needless to say, the A.O shall grant a reasonable opportunity of being heard to the assessee in the course of set-aside proceedings.

16. In the result, appeal of the assessee in ITA No.15/RPR/2022 for A.Y.2016-17 is partly allowed for statistical purposes in terms of my aforesaid observations.

ITA No.16/RPR/2022
A.Y.2017-18

17. As the facts and the issue involved in the captioned appeal remains the same as were there before me in the aforementioned appeal in ITA No.15/RPR/2022 for A.Y.2016-17, therefore, my findings recorded while disposing off the appeal in ITA No.15/RPR/2022 for A.Y.2016-17 shall apply *mutatis-mutandis* for disposing off the captioned appeal i.e. ITA No.16/RPR/2022 for A.Y. 2017-18. Accordingly, in this case also I restore the matter to the file of the A.O with similar directions as were recorded in ITA No.15/RPR/2022 for A.Y.2016-17.

18. In the result, the appeal of the assessee in ITA No.16/RPR/2022 for A.Y.2017-18 is partly allowed for statistical purposes in terms of my aforesaid observations.

19. In the combined result, both the appeals of the assessee are partly allowed for statistical purposes in terms of my aforesaid observations.

Order pronounced in open court on 22nd day of May, 2023

Sd/-

(रवीश सूद / RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 22nd May, 2023.

*#SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G.)
4. The Pr. CIT-1, Raipur (C.G.)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक-सदस्य" बैच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur