

**IN THE INCOME TAX APPELLATE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM
&
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 59/Jodh/2023
(ASSESSMENT YEAR- 2019-20)**

Sarla Singhvi Charitable Society 301, N-1 Road Bhupalpura, Udaipur-313001.	Vs	ITO (Exemption) Ward, Udaipur.
(Appellant)		(Respondent)
PAN NO. AAGTS 7314 F		

(Virtual Hearing)

Assessee By	Shri Shyam S. Singhvi-C.A.
Revenue By	Shri S.M. Joshi, JCIT-DR
Date of hearing	06/07/2023
Date of Pronouncement	04/10/2023

ORDER

PER: Dr. S. Seethalakshmi, JM

The assessee has filed an appeal against the order of the National Faceless Appeal Centre, Delhi [herein after “NFAC/Ld.CIT(A)”] dated 19.01.2023 for the assessment year 2019-20.

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

“1. The Ld. CIT(Appeals) has grossly erred on facts and in law while making addition of Rs. 26,23,593/- without considering the condonation of delay order u/s 119(2)(b) passed by Ld. CIT(Exemption), Jaipur.

2. *The ld. CIT (Appeals) has grossly erred on facts and in law while charging interest u/s 234A/B/C of Rs. 117392/-.*
3. *The appellant reserves rights to add/alter/amend/withdrawn any/all ground of the appeal.”*

3. Brief facts of the case are that the assessee is a trust registered under sec. 12AA and 80G of Income Tax Act, 1961 with its object to serve the down trodden of the society including running of blood bank in the name Saral Blood Bank at 30, Near Math Park, Bhupalpura, Udaipur. During the year the assessee declared total income NIL subject to the provision of section 11 & 12 of the IT Act wherein out of aggregate receipts of Rs.1,22,51,272/-, Rs.77,89,989/- applied for the charitable purpose during the year and Rs.26,23,593/- have been set apart for the specified purposes and in consequence invested in the specified investments as per section 11(5) of the Act. It has been intimated the department in Form 10 as provided u/s 11 (2) of the Act on 13/02/2020. Despite filing of the reply with respect to grant of the condonation of delay in filing of the Form 10 vide order no. ITBA/COM/F/17/2020-21/1027179655(1) dated 29.05.2020 by Ld CIT (Exemption), Jaipur, the Ld. AO processed the return u/s 143(1) of the IT Act without considering the order of ld. CIT (Exemption)

for condonation of delay in filing Form 10 and created a demand of Rs.7,40,952/- on the ground of non-submission of Form 10 within due date rejecting the exemption u/s 11(2) of the Act.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the ld. CIT(A). The ld. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“4.6 The assessee has not complied with the basic conditions of investing the unapplied money into specified modes mentioned in section 11(5) and mentioning that in the form 10. A lump sum amount shown in the form 10 would not satisfied the conditions mentioned in section 11(2) not disclosing the specific investment in form 10 amounts to no investment for income tax purpose. In view of the above, the action of CPC is confirmed and appeal of the assessee is dismissed.”

5. As the assessee did not receive any favor from the appeal filed before ld. NFAC/ CIT(E). The present appeal is filed against the said order of the ld. NFAC/CIT(A) dated 19.01.2023 before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the ld. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:-

“ The Appellant is a trust registered under sec. 12AA and 80G of Income Tax Act, 1961 with its object to serve the down trodden of the society including running of blood bank.

During the year, the Appellant declared total income at RS NIL on 12/09/2019 subject to the provision of section 11, 12 of the IT Act. Copy of ITR filed along with Balance sheet and profit and loss account enclosed at pg no. 16-33 of PB.

Out of aggregate receipts of Rs.1,22,51,272/-, Rs.77,89,989/- has been applied for charitable purpose during the year and Rs.26,23,593/- have been set apart for the specified purposes. In result, Rs.26,23,593/- has been invested in the specified investments as per section 11 (5) of the act and Form 10 has been filed as provided u/s 11 (2) of the act on 13/02/2020. Copy of form no 10 enclosed at pg no. 39-41 of PB.

There has caused delay in filing form No 10, as the form no 10 was required to be filed before the due date of filing the ITR u/s 139 (1) and in result CPC has made addition of Rs 2623593/ while processing of the ITR. Copy of order of CPC attached at Pg No. 1-13 of PB read with Pg No. 8 giving reason for addition.

In consequence, a prayer for the condonation of delay in filing form 10 was filed before Ld CIT (Exemption) on 21/05/2020 along with filing of proof on investments made in the mode prescribed u/s 115) of the act. Copy of prayer filed before Ld. CIT (Exemptions) along with evidences for condonation of delay is enclosed at pg no. 14-41 of PB.

On verification of the itemised detail of investments made in the mode given u/s 11 (5), the Ld CIT (Exemptions) condoned the delay in filing of the Form 10 vide order no. ITBA/COM/F/17/2020-21/1027179655(1) dated 29.05.2020 thru his order u/s 119(2)(b) of the act. Copy of order enclosed at pg no. 42-43 of PB.

Yet, the CIT (Appeals) rejected the appeal for want of itemised detail of investments made in the mode specified u/s 11(5) in the form no 10, without appreciating the following facts:

1. A declaration at column no 2 in form no 10 that "the amount so accumulated or set apart has been invested in any one or more forms or modes specified in section 11 (5) of the act. (Pg No. 40 of PB)
2. These investments made in the mode specified in section 11 (5) of the act has been furnished with proof has been submitted before Ld CIT (Exemptions) and the delay has been condoned on verification. (Pg No. 34-38 of PB)

3. Moreover, the form no 10 does not contain any such column to provide itemised detail of investments made u/s 11(5). In evidence, copy of form 10 downloaded from Income Tax Portal enclosed at pg no. 39-41 of PB.

Firstly: The very basic ground for addition of Rs. 2623593/- caused due to the failure in filing Form No 10 within the due date of ITR u/s 139 has been condoned by Ld CIT (Exemptions).

Secondly, a declaration has been provided at column no 2 in form no 10 that "the amount so accumulated or set apart has been invested in any one or more forms or modes specified in section 11 (5) of the act.

Thirdly; there is no column provided in form no 10 to give itemized detail of investments made u/s 11 (5) as stated above.

The appeal may very kindly be allowed, deleting the addition made with direction for the consequential relief deleting interest charged.”

6. Per contra, the ld. DR relied upon the orders of the ld. CIT(A).

7. We have heard rival contentions and perused the materials available on record. On verification of the case record and the details filed by the assessee we note that there is delay in filing Form No. 10. But the said delay in filling the form has been condoned by the Ld. CIT(E). In that process of condonation of delay matter the ld. CIT(E) has already verified evidences and also called for itemized details of investments and passed a detailed order dated 29.05.2020 u/s 119(2)(b) of the Income Tax Act, 1961. In light of this fact of the case we do not find any reason to confirm the finding of the ld.

CIT(A). Therefore, ground No. 1 raised by the assessee is allowed and ground No. 2 being consequential in nature same is not adjudicated in ground No. 3 being general in nature the same is also not adjudicated. In the light of the discussion appeal of the assessee is allowed.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Dated : 04/10/2023

**Santosh*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File