

**आयकर अपीलीय अधिकरण "सी" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI**

**माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER**

**आयकरअपील सं./ ITA No.1981/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2017-2018)**

M/s. Pachiyamman Ethirajammal Rajam **Vs.** The Income Tax Officer,
Mudaliyandan Educational Trust, Exemptions Ward -1,
No.66, Sriram, 1st Cross Street, Chennai.
Venus Colony,
Alwarpet,
Chennai 600 018.

[PAN: AAATP 3474H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms. S. Jecintha, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Ms.R. Anita, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 04.12.2024

घोषणा की तारीख /Date of Pronouncement

: 09.12.2024

आदेश / ORDER

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2024-25/1065253435(1) dated 30.05.2024. The assessment was framed by the Income Tax Officer, Exemptions Ward 1, Chennai for the assessment year 2017-18 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the Act'), vide order dated 21.12.2019.

2. Brief facts of the case are that the assessee is a Public Charitable Trust running educational institutions registered u/s. 12AA of the Income tax Act, 1961 vide order of the Director of Income tax (Exemptions), Chennai in DIT(E)No.2(350)/04-05 dated 28.02.2005 and also registered u/s 10(23C) (vi) vide No. C.No. CCIT III /57/10(23)(vi) /08-09 dated 17.03.2009. The assessee trust has filed the return of income for the assessment year 2017-18 on 29.03.2018 admitting 'NIL' income. The case was selected for scrutiny and notice under section 143(2) of the Act was issued on 16.08.2018. Subsequently, a notice u/s. 142(1) was issued on 26.06.2019 calling for specific details. As there was change of incumbent, a notice u/s 129 of the Act dated 23.07.2019 was also issued. In response to the notice issued, the assessee trust filed the details called for through e-Portal from time to time. The Ld. Assessing Officer on perusal of the e-filing portal found that the assessee trust had filed Audit report in Form 10B on 29.03.2018, which is beyond the due date prescribed by the provisions of the Act and had also failed to file audit report in Form 10BB as the assessee is claiming exemption u/s 10(23C) (vi) of the Act. The assessee trust during the proceedings had submitted copy of the letter dated 27.11.2019 addressed to CIT(E) requesting for condonation in filing audit report u/s Form 10BB. The Audit Report in Form 10BB was filed electronically only on 04.12.2019 and goes to prove that the assessee trust is claiming exemption u/s 10(23C)(vi) of the Act. The Id. Assessing Officer noted that as per the provisions of u/s 10(23C)(vi) of the Act, the Audit Report in Form 10-BB has to be filed along with the Return of Income, within the stipulated time, in order to consider and allow the exemption claimed under Section 10(23C) (vi) of the Act. The assessee filed

Form 10BB on 04.12.2019 and requested for condonation for delay before the Commissioner of Income-tax, Exemptions, Chennai which is pending for condonation for the assessment year 2017-18. The Id. Assessing Officer after scrutinizing the details filed completed the assessment u/s 143(3) of the Act by denying the claim of exemption claimed u/s 10 (23C) (vi) of the Act and the income of the assessee trust is treated at the rates prevailing for AOP. The depreciation claimed to the tune of Rs.37,08,051/- on the fixed assets was disallowed as the same fixed assets have been claimed as application of income during the previous years. Hence, the Id. Assessing Officer allowed depreciation only on the assets acquired during the year which amounts to Rs.1,040/- and accordingly completed the assessment by adding depreciation claim to the tune of Rs.37,08,051/- to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the Id. CIT(A).

3. The Id. CIT(A) confirmed the action of the Id. Assessing Officer on the ground that assessee has not filed required form 10BB of the Act on time. and the CIT(E) has not condoned the delay for accepting the form 10BB of the Act. Aggrieved by the order of the Id. CIT(A), the assessee filed an appeal before the Tribunal.

4. The Id. Authorized Representative contended before us that the lower authorities were not justified in holding that assessee trust is not eligible for exemption u/s.10(23C) (vi) of the Act for the reason that form 10BB was filed belatedly by electronic mode on 4.12.2019 and also not filed within the specified due date. The Id. Authorized Representative submitted that the form 10BB though filed belatedly was available during the course of assessment proceedings, hence

denial of exemption was not warranted. Further, as per the Id. AR, the Id. CIT(E) has not yet passed any order on the application for the condonation of delay, hence, he prayed for allowing depreciation of Rs.37,08,051/-.

5. On the other hand, the Id. Departmental Representative vehemently argued for confirming the action of the lower authorities.

6. We have heard both parties at length and also perused the findings of the lower authorities. Admitted facts of the case are that the assessee filed application seeking condonation of delay in filing 10BB by electronic mode on 04.12.2019. We note that as per Circular Nos.19 of 2020, dated 3rd November, 2020 and 6/2021 dated 26th March, 2021 issued by the Central Board of Direct Taxes, New Delhi, all the applications received for condonation of delay in filing 10BB should be disposed off preferably within three months from the end of the month in which the application is received. The Id. CIT(E) ought to have disposed of the condonation petition/petition on or before 31.03.2020. However, the Id. CIT(E) has not decided the condonation petition till the order dated 30.5.2024 of the Id. CIT(A). Accordingly, the impugned order is set aside and the appeal is restored back to the file of Ld. AO for denovo assessment after considering the order of the Id. CIT(E) disposing the application dated 27.11.2019 filed by the assessee for condonation of delay in filing Form 10BB. In the mean while the assessee would again request the Id. CIT(E) to dispose of the application dated 27.11.2019 for condonation of delay in filing Form 10BB. The assessee will also inform the Id.AO, the status of the application dated 27.11.2019 pending adjudication before the Id.CIT(E) for condonation of delay in filing Form 10BB.

7. In the result, the appeal filed by the assessee in ITA No.1981/ Chny/2024 is allowed for statistical purposes.

Order pronounced in the open court on 9th day of December, 2024

Sd/-

(मनोज कुमार अग्रवाल)

(**MANOJ KUMAR AGGARWAL**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-

(मनु कुमार गिरि)

(**MANU KUMAR GIRI**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

चेन्नई Chennai:

दिनांक Dated :09-12-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF