

। आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता ।

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, KOLKATA

BEFORE SHRI SANJAY GARG, HON'BLE JUDICIAL MEMBER

&

SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 411/Kol/2021

Assessment Year: 2017-18

<b>The India Industrial Mission</b> 5A, Seals Garden Lane Cossipore Kolkata - 700002 PAN : AACCT0072E	Vs	<b>Deputy Commissioner of Income Tax, (CPC), Bangaluru</b>
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Siddharth Jhalaria, FCA/ Shri Sujoy Sen, A/R & Pritee Bhubna, FCA
Revenue by :	Shri Biswanath Das, Addl. CIT, D/R

सुनवाई की तारीख/Date of Hearing : 29/06/2022

घोषणा की तारीख /Date of Pronouncement: 12/09/2022

**आदेश/ORDER**

**PER SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER :**

The present appeal by the assessee is arising out of the order of the ld. Commissioner of Income Tax (Appeal), NFAC, vide order no. ITBA/NFAC/S/250/2021-22/1035133519(1), dt. 27/08/2021, against the intimation u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), issued by CPC, Bangaluru, vide communication reference no. CPC/1718/A7/1875540238, order dt. 27/03/2019, for Assessment Year 2017-18.

2. The issue raised by the assessee vide this appeal relates to disallowance of claim made by the assessee u/s 11 of the Act. Before us, Shri Siddhartha Jhalaria, FCA along with Sujoy Sen, represented the assessee and Shri Biswanath Das, Addl. CIT, represented the department. Ld. Counsel submitted a paper book containing 24 pages, which is placed on record. Ld. Counsel also referred to the additional grounds raised before this Tribunal filed on 26/04/2022 in respect of processing of return u/s 143(1) wherein no disallowance or addition can be made which are not apparent on record or are debatable or has to be resolved by a long drawn process of reasoning and accordingly, the intimation issued u/s 143(1) by the CPC, Bangaluru by making a disallowance u/s 11 of the Act is not sustainable.

3. Brief facts as culled out from records are that assessee filed its return on 31/03/2018 for which the due date of filing was 07/11/2017. Assessee is a company registered u/s 26 of the Indian Companies Act, 1913 and has obtained registration u/s 12A of the Act claiming exemption u/s 11 of the Act. Company is registered u/s 12A vide registration dt. 09/03/1976, for which the certificate of registration is placed on record at page 24 of the paper book. On the adjustment made by CPC, Bengaluru, by issuing intimation u/s 143(1), cognizance of Form 10B filed by the assessee on 22/05/2018 in respect of claim of application of its gross receipts towards charitable purposes and accumulation of setting apart of the income derived by the assessee not exceeding 15% has not been taken into consideration and thus an adjustment has been made u/s 143(1) of the Act resulting into a demand of Rs. 14,00,906/- for the year under consideration. Assessee went into appeal before the Id. CIT(A) for the adjustment made by the CPC, Bengaluru, by not considering Form 10B which was available with the department before the processing of the return and issuance of intimation u/s 143(1) of the Act. Id. CIT(A) sustained the addition so made by way of adjustment made u/s 143(1) of the Act.

4. Aggrieved, the assessee is in appeal before the Tribunal.

5. Before us, Id. Counsel submitted that, any adjustment made u/s 143(1) by CPC, Bengaluru, are very restrictive in nature as provided in the Section itself. Further, the proviso to Section 143(1) also states that no adjustment shall be made unless an intimation is given to the assessee of any such adjustment either in writing or in electronic mode. Id. Counsel submitted that, Form 10B was placed on record and was available with the department, which was filed on 22/05/2018, much prior to the issuance of the impugned intimation u/s 143(1) which is dt. 27/03/2019. Thus, the relevant Form 10B, wherein the application of income for charitable purposes amounting to Rs.33,72,827/- and setting apart of the income of the assessee for application for charitable purposes to an extent of not exceeding 15% of such income amounting to Rs.5,08,501/- have been duly reported after the audit of a qualified Chartered Accountant. Copy of the same is placed at page no. 7 & 8 of the paper book. Id. Counsel fairly submitted that, though there is a delay

in filing of Form 10B, however, it was available with the department before the processing of the return and the issuance of intimation u/s 143(1), wherein the adjustments have been made resulting into a demand on the assessee.

5.1. He placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of *Commissioner of Income-tax v. Rai Bahadur Bissesswarlal Motilal Malwasie Trust* reported in [1992] 195 ITR 825 (Calcutta HC), wherein it was held that, exemption otherwise available to assessee-trust under section 11 could not be denied merely on account of delay in furnishing auditor's report as required under section 12A of the Act. It was also held in the said decision that, provisions of section 12A are directory in sense that Assessing Officer is not powerless to allow an assessee to file audit report, if not filed along with return, any time before completion of the assessment. Relevant extracts from the judgment of the Hon'ble Jurisdictional High Court are reproduced as under:-

*"17. In our view, therefore, the Assessing Officer ought to have given the assessee an opportunity to submit the audit report as the return was defective inasmuch as the audit report was not filed along with the return. In this case, as we have already noticed, the said defect was rectified by the assessee by filing an audit report in the prescribed form before the completion of the assessment. The income-tax authorities took a hypertechnical view of this matter. Where the assessee has complied with the provisions of the Act in the course of the assessment proceedings by curing the defect in the return by filing an audit report, the ITO cannot ignore such audit report or the return in completing the assessment.*

*19. We may also take note of the fact which has been recorded by the Tribunal that the Gujarat High Court, in a similar case, declined to call for a reference under section 256(2), against the decision of the Tribunal. The department moved the Supreme Court by a special leave petition which was dismissed on 18-8-1989.*

*20. For the foregoing reasons, we answer the question in this reference in the affirmative and in favour of the assessee."*

5.2. Reference was also made by the Id. Counsel to a decision of Co-ordinate Bench of ITAT Kolkata in the case of *Calcutta Management Association vs. ITO* reported in [1992] 42 ITD 62 (Calcutta), wherein it was held that, Assessing Officer was not justified in refusing the benefit of exemption under section 11 for simple reason that appellant had violated the provisions of section 12A(b) as it had not filed audit report in Form No. 10B along with its return of income. It was also held in the said decision that, Commissioner (Appeals) ought to have admitted audit

report in Form No. 10B and it directed the ITO to examine same for the purpose of allowing the claim of exemption made by the assessee trust u/s 11 of the Act.

6. Per contra, ld. D/R placed reliance on the order of the ld. CIT(A).

7. We have heard the rival contention and perused the material available on record. Admittedly, the dates noted above while narrating the facts are undisputed and uncontroverted. Further, we note that Form 10B is placed on record which is dt. 22/05/2018 and claimed to have been available with the department before issuance of intimation u/s 143(1) of the Act which was issued on 27/03/2019. From the perusal of Form No. 10B, we note that assessee has claimed an amount of Rs. 33,72,827/- towards application of income for charitable purposes in India during the year under consideration. It has also claimed accumulation or set apart of an amount of Rs.5,08,501/- for application to charitable purposes to the extent it does not exceed 15% of the income of the assessee. Audited financial statements of the assessee are also placed on record in the paper book. We note that, provisions of Section 143(1) deals with processing of return and refers to certain specific adjustments which can be made while processing the return provided that an intimation has been given to the assessee before making such adjustment either in writing or in electronic mode. Nothing is brought on record to demonstrate that an intimation was given to the assessee before resorting to the adjustment made in the processing of return of the assessee which resulted in raising of the demand in the year under consideration.

7.1. Further, we note that Hon'ble Jurisdictional High Court in the case of *Rai Bahadur Bissessarwalal Motilal Malwasie Trust (supra)* has dealt with this issue under consideration before us and has held that claim of exemption u/s 11 cannot be denied merely on account of delay in furnishing of auditor's report as required u/s 12A of the Act, more particularly when the said audit report in Form 10B was available with the officer before the completion of the assessment. We also note that CBDT has issued circulars vide Circular No. 10 of 2019 dt. 22/05/2019 and Circular No. 03/2020 dt. 03/01/2020 wherein, procedure for condonation of delay

in filing Form 10B & Form 9A has been prescribed for Assessment Years subsequent to Assessment Years 2016-17 which, in the present case is A.Y. 2017-18 before us.

7.2. Admittedly, assessment was not completed u/s 143(3) of the Act and, therefore, there would have been no error had the authorities below had taken up the copy of Form 10B, which was available with the Department. Thus, in our considered opinion, if the assessee was entitled to the statutory benefit, it would be incumbent upon the concerned authority to examine the admissibility of the benefit than to foreclose the assessee on technicalities. This view has been affirmed by the Hon'ble High Court of Madras in the case of *Chandra Prabhuji Maharaj Jain vs. DCIT (Exemptions)* reported in [2019] 110 taxmann.com 11 (Mad.).

8. In the interest of justice, we accordingly consider it fair and proper to set aside the order/intimation of the authorities below by taking force from the judicial precedents referred above and in the light of the fact that the assessment was not done u/s 143(3) of the Act, and restore the matter to the file of the Id. Assessing Officer for making a fresh assessment after taking into account the audit report in Form 10B placed on record as well as the claim of the assessee for exemption u/s 11 of the Act. Thus, we set aside the assessment and restore the matter to the file of the Assessing Officer for making a fresh assessment in accordance with law after giving a reasonable opportunity of being heard to the assessee in support of its claims made. Accordingly, the grounds taken by the assessee are allowed for statistical purposes.

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

**Order pronounced in the Court on 12<sup>th</sup> September, 2022 at Kolkata.**

*Sd/-*

**(SANJAY GARG)  
JUDICIAL MEMBER**

*Sd/-*

**(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

Kolkata, Dated 12/09/2022

*\*SC SpP\**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**