

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER

&

SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

**ITA NOs. 2181 & 2182/MUM/2023
(A.Ys: 2010-11 & 2011-12)**

Good Shepherd Church Dharavi Main Road Dharavi, Mumbai - 400017 PAN: AAATG0092N	v.	Income Tax Officer – (E)-1(3) MTNL – Cumballa Hill Telephone Exchange Building G.D. Deshmukh Lane Tardeo, Mumbai - 400026
(Appellant)		(Respondent)

Assessee Represented by	:	Ms. Drutika Kitwat & Shri Priyank Ghia
Department Represented by	:	Shri S.N. Kabra
Date of conclusion of Hearing	:	29.11.2023
Date of Pronouncement	:	22.12.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 21.04.2023 for the A.Ys.2010-11 & 2011-12.

2. Since the issues raised in both these appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. We are taking Appeal in ITA.No. 2181/MUM/2023 for Assessment Year 2010-11 as a lead appeal.

ITA No. 2181/MUM/2023 (A.Y. 2011-12)

3. Brief facts of the case are, the case of the assessee was re-opened u/s 147 of Income-tax Act, 1961 (in short "Act") after recording reasons and approval under section 151(1) of the Act from the Commissioner of Income Tax (Exemptions), Mumbai. The Assessing Officer has reproduced the reasons for reopening at Page No. 1 of the assessment order, as per which Assessing Officer has recorded the reasons that as per ITD system assessee has not filed its Return of Income for A.Y.2010-11. It was found that assessee has received interest other than interest on securities and made a cash deposits of ₹.17,19,600/- in a saving Bank account.

4. Subsequently, notice u/s 148 was issued and served on the assessee. In response authorised representative of the assessee confirmed the receipt of notice issued under section 148 of the Act and

filed return of income under section 139(1) of the Act dated 13.12.2013. Subsequently notices under section 143(2) and 142(1) of the Act along with questionnaire were issued and served on the assessee. In response authorised representative of the assessee attended and submitted the relevant information as called for.

5. The assessee Trust is Registered with the Director of Income Tax (Exemption), Mumbai under section 12A of the Act. It was submitted before Assessing Officer on 20.08.2017 that assessee is a more than 100 years old Trust and original documents are not traceable, which includes Trust Deed, Certificate of Registration under section 12 of the Act, Certificate under section 80G of the Act. It was stated that main object of the trust is Gospel, Charity, Education, Medical relief, Fellowship, Men's Fellowship, Sunday School Activities, Youth Counselling for the education purpose, Talent Fiesta and Bible Studies, Counselling etc.

6. During the course of assessment proceedings, Assessing Officer observed that the assessee has claimed depreciation of ₹.4.20,932/-, since the issue of depreciation is not contested before us, therefore, we are not inclined to discuss on this issue.

7. During the course of the assessment, the Assessing Officer observed that assessee neither filed its return of income nor it was audited. After receipt of notice under Non-Filers Monitoring System, assessee has made its account audited on 25.11.2013 and filed its Return of Income on 13.12.2013. Under the above circumstances, the assessee was show caused vide order sheet noting dated 21.08.2017 as to why section 12A(1)(b) be not invoked and section 11 be denied to the assessee.

8. In response assessee filed its response on 18.09.2017, for the sake of clarity it is reproduced below: -

"As per the reasons received from your office vided letter No. ITO(E)-1(3)148/2017-18 dated 26/07/2017 it is stated that the assessee trust has not filed its return of Income for A.Y. 2010-11. However, this is not correct. Our client had filed its Return of Income for A.Y.2010- 11 on 13.12.2013. Please note that our client has disclosed RRs.33,57,247/- as voluntary contribution and Rs.2,40,007/-as other income. Please note that cash deposited in Bank account is out of these receipts. We therefore state that there is no income which has escaped assessment and hence object to the re-opening of the assessment."

9. After considering the above submissions, Assessing Officer observed that assessee has made its account audited on 25.11.2013 and filed its Return of Income on 13.12.2013 for A.Y.2010-11. As per Section 139 of the Act, the last date of filling of Return of income for A.Y.2010-11 was 31.03.2012. Since assessee has filed after period of limitation therefore

the contention of the assessee is not tenable. Accordingly, by relying on section 12A(1)(b) of the Act, he held that assessee is not eligible to claim deduction under section 11 of the Act. Accordingly, he brought the total income to tax by recomputing the income of the assessee as under: -

			₹.
	Income from other sources		36,90,204
Add:	interest income (as discussed above)		6,557
			36,96,791
Less	Establishment expenses	14,45,815	
	Less: Depreciation (As discussed above)	4,20,932	10,24,883
	Total income		26,71,908
	Rounded off under section 288A		26,71,910

10. Aggrieved with the above order, assessee preferred appeal before the Ld. CIT(A) and made a submission that assessee has filed its return of income after the due date of filing of return i.e., 31.03.2012. However, the assessee has furnished the return of income on 13.12.2013 and audit report on 25.11.2013 in Form 10B. It was submitted before Ld. CIT(A) that the filing of the return of income without audited report is not intentional and Commissioner of Income Tax (Exemption) has power to condone the delay and relied on case law to make a plea that delay in filing the audit report in Form 10B can be condoned as well as delay in

filing the Form 10B, the exemption otherwise available to the assessee under section 11 cannot be denied.

11. After considering the submissions of the assessee, Ld. CIT(A) rejected the submissions of the assessee and by relying on the decision of ITAT Pune Bench in the case of Arya Kshatriya Samaj v. in ITA No. 175/PUN/2023 dated 23.03.2023.

12. Aggrieved, assessee is in appeal before us raising following grounds in its appeal: -

"A. The CIT (Appeals)- National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the addition made by learned A.O. of Rs.21,21,919/- for the A. Y. 2010-11 and the assessee prays to delete the said addition on the following grounds:-

1. The CIT(A) erred in understanding that belated filing of return of income by the appellant trust makes the exemption of section 11/12 not justifiable. The Ld. CIT(A) has placed its reliance on the judgment of Hon'ble Income Tax Appellate Tribunal, Pune- Bench in case of Arya Kshatriya samaj vs ITO (ITA No. 175/PUN/2023). The judgement in above cited case was delivered with regard to Assessment Year 2019-20.

1.1 The CIT(A) has concluded that exemption U/s 11 and 12 is not allowable due to belated filing of the Income Tax Return. This understanding is erroneous since the provision to disallow exemption under section 11 and 12 for belated filing of return of income was introduced in Assessment year 2018-19 by virtue of section 12(ba). The provision is not retrospective in nature. The Ld. CIT(A) has erroneously applied these provisions to A.Y. 2010-11.

2. *The Ld. CIT(A) erred in disallowing Expenditure incurred by the appellant trust to the tune of Rs.15,68,388/- and amount of Rs.5,53,531/- accumulated to the extent of 15% both claimed U/s 11 of the Income Tax Act, 1961 by the Appellant Trust while computing the taxable income for the A.Y.2010-11 on the ground that the audit report is not filed along with the return of income.*

2.1 *The Appellant trust states that the delay in filing of Audit Report was bona- fide and beyond the control of the office bearers of the appellant Trust.*

2.2 *The Appellant trust could not file the audit report in time because the earlier Chartered Accountant of the appellant trust had migrated to foreign country.*

2.3. *The Appellant trust had its Books of Accounts ready on 27.08.2010, which indicates it had no intention to escape the Income earned during P.Y. 2009-10. In fact, the appellant trust tried to file its return of Income for A.Y. 2010-11, but failed to file the same on timely basis because of lack of proper professional guidance.*

2.4 *The Appellant trust states that it had already got condonation of delay in filing of Form No. 10 i.e., for the amount accumulated U/s 11(2) of the Income Tax Act, 1961 for A.Y. 2011-12. The facts relating the delay in filing of Form 10 are exactly the same as for the Audit Report of A. Y. 2010-11. Copy of order condoning the delay in filing of Form 10 for A.Y. 2011-12 is enclosed herewith at Exhibit -A.*

The Appellant Trust prays that considering the above grounds, the addition of Rs.21,21,919/- merely on account of non-submission of Audit Report be deleted and benefit of Section 11 be granted accordingly.”

13. At the time of hearing, Ld.AR of the assessee brought to our notice Form 10AC in support of the Registration under section 12A(1) of the Act registered in the name of the assessee. A copy of the same was taken from I.T Portal was submitted before us and she also submitted assessment order relating to A.Y. 2017-18 to demonstrate that assessee

is a registered Trust under section 12A of the Act and also submitted that assessee is regular in filing the return of income. Due to some reasons assessee could not file the return of income for the assessment years under consideration i.e., A.Y. 2010-11 and 2011-12. Further, Ld.AR of the assessee submitted that due to some reasons the return of income was filed belatedly for the current assessment year under consideration on 13.12.2013 she filed a copy of the same before us. Further, she submitted that assessee has received notice under section 148 for non-filing of return issued on 31.03.2017 and assessee has brought to the notice of the Assessing Officer that assessee has already filed its return of income along with Form 10B on 25.11.2013 and the Assessing Officer has accepted the above said return of income and completed the assessment under section 143(3) r.w.s. 147 of the Act.

14. With the above submissions and facts on record she submitted that section 12A(1) of the Act is relevant to A.Y. 2010-11 [copy of the same was submitted before us at Page No. 30 of the Paper Book] and she submitted that the clause 12A(1)(ba) was amended by the Finance Act, 2017 applicable w.e.f 01.04.2018. Based on the above amendment filing of return of income and audit report beyond the period of limitation as per section 139(4A), the assessee loses the right to claim provisions of

section 11 of the Act. Further, Ld. AR submitted that Ld. CIT(A) by relying on the decision of the *Arya Kshatriya Samaj v. ITO* (supra) held that the return of income filed belatedly makes the non-applicability of exemption under section 11 / 12 of the Act to the appellant is not justifiable. She submitted that as per the pre-amended provisions of section 11 of the Act, prior to A.Y. 2018-19, the issue of non-allowability of exemption for filing the return of income belatedly was not prescribed by the statute. Therefore, by applying the amended proviso by the Ld. CIT(A) to deny the exemption. Further, the decision relied by the Ld. CIT(A) is relating to A.Y. 2019-20. Therefore, the amended proviso and the above mentioned case law cannot be applied in the case of assessee.

15. On the other hand, Ld. DR relied on the orders of the revenue authorities and objected to the submissions made by the Ld. AR.

16. Considered the rival submissions and material placed on record, we observe from the record that Assessing Officer has issued notice under section 148 of the Act with the observation that assessee has not filed its return of income for the relevant assessment year i.e., 2010-11 on 31.03.2017 and the assessment was completed on 24.11.2017. However, we observe that assessee has submitted the evidences before Assessing

Officer that assessee has filed its return of income on 13.12.2013. Assessing Officer observed that even though assessee has filed the return of income on 13.12.2013, However, the return filed by the assessee is beyond the period of limitation under section 139(4A) of the Act i.e., assessee should have filed the return of income on 31.03.2012. The Assessing Officer invoked the provisions of section 12A(1)(b) of the Act as per which assessee has failed to get its accounts audited and furnish the return of income along with the audited report, in case of failure the assessee is not eligible to get the exemption under section 11 of the Act.

17. In appeal before Ld. CIT(A), assessee has submitted that filing the audit report along with return of income belatedly can be condoned by Ld Commissioner of Income Tax (Exemption). However, Ld. CIT(A) rejected the pleas of the assessee by invoking provisions of section 12A(1)(ba) of the Act and relying on the decision of the *Arya Kshatriya Samaj v. ITO* (supra). On careful consideration of the facts on record, we observe that the Ld. CIT(A) has wrongly invoked the provisions of section 12A(1)(ba) of the Act which was introduced from A.Y. 2018-19. Since the relevant assessment year under consideration is A.Y. 2010-11 and at that point of time, there was non-existent of section 12A(1)(ba) and the case law relied by the Ld. CIT(A) also relating to A.Y. 2019-20. Therefore, the amended

proviso and the case law were not relevant for the current assessment year under consideration.

18. After careful consideration we observe that the case of the assessee was reopened under section 147 of the Act with the observation that assessee has not filed its return of income. However, the Assessing Officer himself observed in his order that assessee had in fact filed its return of income on 13.12.2013. From the above it is also clear that the reason for reopening itself fails in this case, *prima facie* the assessment was reopened with the wrong reasoning that assessee has not filed its return of income by merely observing from IT Portal. It is fact on record that assessee has filed its return of income and Assessing Officer has accepted the same. On this count itself the assessment made by the Assessing Officer with wrong reasoning is deserves to be quashed.

19. Coming to the next issue that whether the assessee is eligible to claim deduction under section 11 of the Act, Ld. CIT(A) has applied the amendment made in the provisions of section in the A.Y. 2018-19. Since the amendment was made in A.Y. 2018-19, in our view, this amendment cannot be applied for the A.Y. 2010-11. Therefore, the appellate order passed by applying provisions, which were not relevant for the

assessment year under consideration is bad in law. Accordingly, we hold that the assessment order is bad in law for reopening the assessment with the wrong reasons and appellate order passed with the amended provisions under section 12A(1)(ba) is also bad in law. With the above observations, we hold that the assessment itself is bad in law and accordingly quashed.

20. In the result, appeal filed by the assessee is allowed.

ITA No. 2182/MUM/2023 (A.Y. 2011-12)

21. Coming to the appeal relating to A.Y. 2011-12, since facts in this case are mutatis mutandis, therefore the decision taken in A.Y. 2010-11 are applicable to this assessment year also. Accordingly, this appeal is allowed.

22. To sum-up, appeals filed by the assessee are allowed.

Order pronounced in the open court on 22nd December, 2023.

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER
Mumbai / Dated 22/12/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum