

आयकर अपीलिय अधिकरण
मुंबई पीठ “एस एम सी”, मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “SMC”, MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1925/मुं/2021 (नि.व 2018-19)
ITA NO.1925/MUM/2021(A.Y 2018-19)

SAVITRI FOUNDATION,
B-601 Prasad Apartment,
Janta Market, Bhandup (West)
Mumbai 400 078.

PAN: AAFAS-9569-J

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer -26(1)(7),
National Faceless Appeal Centre,
Delhi

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Jayesh Dadia

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 01/08/2022

घोषणा की तिथि/ Date of pronouncement : 01/08/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 02/09/2021 for the assessment year 2018-19.

2. Shri Jayesh Dadia appearing on behalf of the assessee submitted that the assessee is a Charitable Trust and registered under section 12AA of the Income Tax Act, 1961 (in short ' the Act'). In the preceding assessment years and subsequent assessment years, the assessee has been granted benefit of section11 of the Act. The assessee filed its return of income for the impugned

assessment year on 30/10/2018. While filing the return of income inadvertently the assessee failed to upload audit report along with the return of income though the audit report dated 19/10/2018 was readily available with the assessee. The return was processed under section 143(1) of the Act. While processing the return of income, the assessee's claim of deduction under section 11 of the Act, was rejected in the absence of audit report. The assessee filed appeal before the CIT(A) against intimation dated 16/12/2019. The assessee also filed copy of the audit report. However, the CIT(A) without appreciating the facts dismissed the appeal of assessee merely on the ground that audit report in the prescribed form was not filed along with the return. The Id.Authorized Representative of the assessee further submitted that the assessee had uploaded the audit report in Form-10B on 18/04/2020, at the time of filing appeal before the CIT(A). The Id.Authorized Representative of the assessee submitted that if the audit report is accepted, the assessee would be able to claim the benefit of exemption under section 11 of the Act . The assessee has been denied the benefit merely on technical defect in not uploading audit report in Form No.10B along with return of income. In support of his submissions the Id.Authorized Representative of the assessee placed reliance on the decision of Hon'ble Bombay High Court in the case of CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee,378 ITR 103.

3. Per contra, Ms. Beena Santosh representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The Id.Departmental Representative submitted that furnishing of audit report along with the return of income is a pre-condition for claiming deduction under section 11 of the Act. Since, the assessee has failed to furnish audit report along with return of income, the condition as laid down under the provision of the Act has not been

complied with, hence, the Assessing Officer and CIT(A) have rightly rejected assessee's claim of deduction under section 11 of the Act.

4. Submissions made by rival sides heard, orders of authorities below examined and the case law on which the Id.Authorized Representative of the assessee placed reliance considered. The assessee is a charitable trust registered under section 12AA of the Act and has been purportedly enjoying the benefits of section 11 since 2011. In the impugned assessment year the benefit of exemption under section 11 of the Act has been denied to the assessee for the reason that assessee has failed to furnish audit report along with return of income. The contention of the Id.Authorized Representative of the assessee is that the audit report was available with the assessee at the time of filing of return of income however due to inadvertent error the assessee failed to upload Audit Report in Form 10B along with e-filing of return of income. Non-filing of Audit Report is a bonafide error. The assessee has placed on record Audit Report dated 19/10/2018 in the prescribed Form 10B at page 15 of the Paper Book. The assessee after receiving the intimation under section 143(1) of the Act uploaded the Audit Report on 18/04/2020 in First Appellate proceedings.

5. In my considered view non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same.

6. The Hon'ble Bombay High Court in the case of CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee(supra) has held that late filing of required documents would not disentitle the assessee from availing benefit of section 11 of the Act. Thus, in the facts of the case and in the light of decision

of Hon'ble Bombay High Court, I deem it appropriate to restore the file back to Assessing Officer for denovo assessment after considering the audit report filed by the assessee, in accordance with law.

7. In the result, impugned order is set aside and appeal by assessee is allowed for statistical purposes.

Order pronounced in the open Court on Monday the 1st day of August, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01/08/2022

Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai