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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 07.12.2023*

\+ **ITA 712/2023 & CM APPL. 63256/2023**

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI ..... Appellant

Through: Mr Abhishek Maratha, Sr Standing Counsel.

versus

CANARA BANK RELIEF AND WELFARE SOCIETY ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM Appl.63256/2023 [***Application moved on behalf of the appellant/revenue seeking condonation of delay of 63 days in re-filing the appeal***]

1. This is an application moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

2. According to the appellant/revenue, there is a delay of 63 days.

3. Given the period of delay involved, we are inclined to condone the delay.

3.1 It is ordered accordingly.

4. The application is disposed of in the aforesaid terms.

ITA 712/2023

5. This appeal concerns Assessment Year (AY) 2008-09. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 23.02.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

6. The broad facts that are necessary to adjudicate the instant appeal are as follows:

6.1 The respondent/assessee is a charitable society registered with the Registrar of Society while also holding a registration under Section 12A of the Income-tax Act, 1961 [in short, "Act"].

6.2 As per the Memorandum of association (MOA), the main aims and objects of the respondent/assessee include to make the best efforts to promote, protect, and advance the cause of women and girls; provide legal advice and aid to spouses involved in disputes; arrange talks; demonstrate low-cost nutritive diet; train economically weaker and destitute women under the aegis of various socio-economic schemes; and provide adult education.

6.3 In the AY in issue, the respondent/assessee filed its return of income (ROI) on 30.09.2008. It declared its income as 'nil'.

6.4. This ROI was processed under Section 143(1) of the Act.

6.5 Later on, the Assessing Officer (AO) noticed that in the preceding AY, the respondent/assessee had claimed that it had paid, as advance, Rs. 5,85,00,000/- to purchase an immovable property. The money spent was claimed as 'application of income' in AY 2007-08.

7. The record shows that the amount advanced by the respondent/assessee was returned in the assessment year in issue i.e., AY 2008-09.

8. Since the issue concerned the return of the advanced amount, i.e. Rs. 5,85,00,000/-, in the assessment year in issue, and because the respondent/assessee had not included this amount in the ROI for the AY, the case of the respondent/assessee was reopened, and notice under Section 148 of the Act was issued.

9. Pursuant to the said notice being served, the respondent/assessee submitted its ROI and also filed objections to the reopening of the case. This time around, in the ROI filed, the respondent/assessee included the amount disbursed as advance for purchasing the subject property.

10. During the assessment proceedings, the respondent/assessee was asked to explain why the amount advanced had not been shown in the original ROI, and why the said amount should not taxed in the period under consideration.

11. The respondent/assessee, *via* its reply dated 30.03.2016, submitted before the AO that Rs. 5,85,00,000/- was received back in AY 2008-09 and that this amount was kept in a fixed deposit (FD) as per Section 11(5) of the Act. Furthermore, it stated that due to an inadvertent error, the respondent/assessee had failed to show this in its original ROI. The respondent/assessee also submitted that it had revised not only its ROI but also the audit report submitted in the prescribed form, i.e., Form No. 10.

12. However, *via* the assessment order dated 31.03.2016, the revised ROI and Form No. 10 were rejected by the AO.

13. Aggrieved by the order of the AO, the respondent/assessee filed an appeal before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

13.1 The CIT(A), *via* the order dated 17.08.2018, allowed the ground

raised in the appeal that related to the amount claimed as 'application of income'. It noted that Rs. 5,85,00,000/- was offered for tax and Form No. 10 was filed during the reassessment proceedings. Furthermore, the CIT(A) also held that the AO had not returned a finding that the conditions provided in Section 11(2) of the Act, for accumulation of income, had not been fulfilled.

13.2 In the end, the CIT(A) following the decision of this Court in ***Association of Corporation & Apex Societies Handlooms v. ADIT***, 2013:DHC:158-DB, and directed the AO to recompute the income of the respondent/assessee in accordance with Section 11 of the Act, after allowing for accumulation under sub-section (2) of the said section.

14. The appellant/revenue filed an appeal against the order of the CIT(A) before the Income Tax Appellate Tribunal [in short, "ITAT"]. The Tribunal, *via* an order dated 23.02.2023, dismissed the appeal of the respondent/assessee.

15. Being aggrieved, the appellant/revenue has preferred the instant appeal.

16. Before one answers the issue, it would be useful to extract the relevant parts of Section 11 of the Act, as it would assist in concluding whether or not the impugned decision passed by the Tribunal needs interference:

> "***Income from property held for charitable or religious purposes.***
>
> *11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—*
>
> > *(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such*

income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

xxx xxx xxx

(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—]

(a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5)]:]…"

[Emphasis is ours]

17. A perusal of sub-section (2) of Section 11 would show that where 85% of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the

person in receipt of the income, subject to fulfillment of conditions given in the said provision.

18. It is not in dispute that to claim the benefit of sub-section (2) of Section 11, the respondent/assessee was required to file a statement in the prescribed format i.e., Form No. 10, as per Rule 17 of the Income-tax Rules, 1962 [in short, "Rules"].

19. The record also discloses that there is no doubt about the fact that a revised Form No. 10 was filed after the notice under Section 148 of the Act was issued, *albeit*, along with the ROI, in response to the said notice. Therefore, the point of inflection between the respondent/assessee and the appellant/revenue was whether a revised Form No. 10 could have been filed by the respondent/assessee during the reassessment proceedings.

20. As indicated above, to claim the benefit of the provisions of sub-Section (2) of Section 11, the respondent/assessee had to file a statement in the prescribed form, i.e., Form No. 10. The Tribunal has noted that there is no adverse finding by the AO concerning the fulfillment of conditions subject to which the accumulation of income was allowed under Section 11(2).

21. Insofar as the issue concerning the timing of the filing of Form No. 10 is concerned, i.e., in the course of reassessment proceedings, this stands covered by a decision of a coordinate Bench of this court rendered in ***Association of Corporation & Apex Societies of Handlooms*** case. For convenience, the relevant parts of the judgment are extracted hereafter:

> "*5. Having considered the arguments advanced by the counsel for the parties on this aspect of the matter we feel that it would be necessary to set out the reasoning adopted by the Supreme Court in Nagpur Hotel Owners Association (supra). The Supreme Court held as under:-*

> *"It is abundantly clear from the wording of sub-section (2) of section 11 that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10 of the Rules. If during the assessment proceedings, the Assessing Officer does not have the necessary information, question of excluding such income from assessment does not arise at all. As a matter of fact, this benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subjected to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time he completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, in our opinion, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules even then, in our opinion, it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of this income, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act, therefore, compliance with the requirement of the Act will have to be any time before the assessment proceedings. Further, any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. In our opinion, the Act does not contemplate such re-opening of the assessment. In the case in hand it is evident from the records of the case that the respondent did not furnish the required information till after the assessments for the relevant years were completed. In the light of the above, we are of the opinion that the stand of the Revenue that the High Court erred in answering the first question in favour of the assessee is correct, and we reverse that finding and answer the said question in the negative and against the assessee. In view of our answer to the first question, we agree with Mr. Verma that it is not necessary to answer the second question on the facts of this case."*

On going through the above extract we find that the Supreme Court observed that it was necessary that the assessing authority must have the information under Form-10 at the time he completes the assessment and in its absence it is not possible for the assessing authority to give benefit of such exclusion. Furthermore, once the assessment is so completed it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. The Supreme Court held categorically that without the particulars of this income as given in Form-10, the assessing authority cannot entertain the claim of the assessee under section 11 of the Act and therefore, compliance with the requirement of the Act will have to be at any time before the assessment proceedings are completed. The Supreme Court also observed that any claim for giving the benefit of section 11 on the basis of information supplied subsequent to the completion of assessment would mean that the assessment order will have to be reopened. The Supreme Court noticed that the Act did not contemplate such re-opening of the assessment.

6. The learned counsel for the revenue relied on this portion of the finding of the Supreme Court to contend that during re-assessment proceedings, the said Form-10 could not be furnished by an assessee. However, we have to keep in mind the fact that while reopening of an assessment cannot be asked for by the

assessee on the ground that he had not furnished the Form-10 during the original assessment proceedings, this does not mean that when the revenue re-opens the assessment by invoking Section 147 of the said Act, the assessee would be remediless and would be barred from furnishing Form-10 during those assessment proceedings. Consequently, insofar as the second question is concerned and with regard to the appeal No.s 524/2012, 525/2012 and 526/2012, the same has to be answered in favour of the assessee/appellant and against the revenue. *However, with regard to the ITA No.523/2012 because the Form-10 was filed only before the Tribunal, the question has to be decided, in that appeal, against the assessee and in favour of the revenue.*"

[Emphasis is ours]

22. Clearly, the respondent/assessee is not precluded from filing a revised Form No. 10 during reassessment proceedings.

23. The record also shows that the appellant/revenue had carried the judgment rendered in ***Association of Corporation & Apex Societies of Handlooms*** in appeal to the Supreme Court. The appeal preferred by the appellant/revenue, i.e., Civil Appeal no. 399/2015 was dismissed as withdrawn, on account of low tax effect.

24. The record also discloses that the respondent/assessee, in that case, had preferred a Special Leave Petition bearing no. 19782/2013, which has been admitted *via* order dated 09.01.2015.

25. Given this position, according to us, no substantial question of law arises for our consideration.

26. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 7, 2023/pmc