

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A. No.191 & 230/Lkw/2019
Assessment Year:2016-17
&
I.T.A. No.197/Lkw/2018
Assessment Year:2016-17

Bhalchandra Educational Trust, 32A, Chandra Lok, Aliganj, Lucknow. PAN:AABTB4504D	Vs.	CIT (Exemptions), Lucknow.
(Appellant)		(Respondent)

Appellant by	Shri Shyam Lall, C.A.
Respondent by	Shri Harish Gidwani, D.R.
Date of hearing	17/05/2022
Date of pronouncement	19/05/2022

ORDER

PER T. S. KAPOOR, A.M.

These appeals have been filed by the assessee against separate order of learned CIT(A) dated 20/02/2019, 10/01/2018 and 27/03/2019.

2. Learned counsel for the assessee, at the outset, submitted that the main issue arising in these appeals is same which is the denial of exemption u/s 11 of the Act by holding that there was a delay in filing of Form 10 u/s 119(2)(b) of the Act. Learned counsel for the assessee in this respect invited our attention to appeal in I.T.A. No.191 where the order u/s 119(2)(b) has been passed by learned CIT (Exemptions) vide order dated 20/02/2019. Learned counsel for the assessee submitted that the assessee

is a charitable organization which is enjoying exemption u/s 12A of the Act and during the year under consideration the assessee had shown an amount of Rs.92,05,719/- under amount accumulated or set apart for specified purposes but the assessee had not filed Form 10 electronically as per Rule 17(2) of the I.T. Rules which requires that Form 10 shall be furnished before the expiry of time allowed under sub section (1) of section 139 for furnishing the return of income for relevant year. Learned counsel for the assessee submitted that in view of the order passed by learned CIT (Exemptions) u/s 119(2)(b) of the Act, the assessee preferred rectification application u/s 154 of the Act which was also rejected by learned CIT (Exemptions) and which is the subject matter of appeal in I.T.A. No.230. Inviting our attention to the appeal in I.T.A. No.197, Learned counsel for the assessee submitted that this appeal has been filed against the order of learned CIT(A) by which he has confirmed the addition made by the Assessing Officer by disallowing the exemption claimed u/s 11(2) of the Act for accumulation of surplus by holding that the benefit of accumulation shall not be allowed u/s 11(2) of the Act unless Form No. 10 is filed before the due date of filing the return of income specified u/s 139(1) of the Act. Learned counsel for the assessee in this respect invited our attention to Board's Circular No. 07/2018 dated 20/12/2018 wherein the CBDT had directed its officers to condone the delay in filing of Form 10. Learned counsel for the assessee submitted that if the delay in filing of Form 10 is condoned in view of Circular No. 7/2018 then the other two appeals representing I.T.A. No.197 and 230 will become infructuous and can be dismissed as such.

3. Learned D. R., on the other hand, submitted that the Circular No.7/2018 has been considered by learned CIT (Exemptions) and he has held that the delay in filing the return of income was not due to genuine

reason and therefore, has rightly held that the delay cannot be condoned as per this circular as the assessee had not fulfilled the twin conditions of being prevented by reasonable cause for filing Form 10 within the stipulated time and also had failed to justify the reasons for not filing the return of income within stipulated time.

4. Learned counsel for the assessee, in his rejoinder, submitted that the assessee had stated before learned CIT (Exemptions) through an affidavit that assessee was prevented by reasonable cause for not filing the return of income within the prescribed period u/s 139(1) of the Act and therefore, the learned CIT (Exemptions) should have condoned the delay. On a query from the Bench regarding the investment in the specified asset, Learned counsel for the assessee filed a comparative chart of cash and bank balances and fixed deposit as on 31/03/2015 and 31/03/2016 wherein there was incremental investment of Rs.1,06,06,727/- in the specified assets against the required sum of Rs.92,07,591/- during the period ended 31/03/2016. Therefore, in view of the facts and circumstances, it was prayed that the delay in I.T.A. No.191 be allowed and the other appeals may be dismissed as infructuous.

5. We have heard the rival parties and have gone through the material placed on record. We find that assessee is a trust registered u/s 12A of the Act and had filed an application on 26/12/2018 u/s 119(2)(b) of the Act for condonation of delay in submission of Form 10. Form 10 represents notice for accumulation of income which the assessee is unable to spend during the assessment year and which is accumulated to be spent in the succeeding years. The assessee was required to file Form 10 along with return of income in assessment year 2016-17 within the stipulated time i.e. on 17/10/2016 where as these were filed electronically on 06/01/2017 and 07/01/2017 respectively. The CBDT vide Circular No. 7/2018 dated

20/12/2018 has issued directions for condonation of delay u/s 119(2)(b) of the Act in filing of Form 10 and Form 9A for assessment year 2016-17 which for the sake of completeness is reproduced below:

CIRCULAR No. 7 / 2018

F.No.197/55/2018-ITA-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

North Block, New Delhi
20, December, 2018

Sub: Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form no. 10 and Form No. 9A for AY 2016-17

Under the provisions of section 11 of the Income-tax Act, 1961 (hereafter 'Act') the primary condition for grant of exemption to trust or institution in respect of income derived from property held under such trust is that the income derived from property held under trust should be applied for the charitable purposes in India. Where such income cannot be applied during the previous year, it has to be accumulated and applied for such purposes in accordance with various conditions provided in the section.

2. The Finance Act, 2015 amended section 11 and section 13 of the Act with effect from 01.04.2016 (A.Y. 2016-17). Consequently, Income-tax Rules, 1962 (hereafter 'Rules') were also amended vide the Income-tax (1st Amendment) Rules, 2016. As per the amended provisions of the Act read with rule 17 of the Rules, while 15% of the income can be accumulated indefinitely by the trust or institution, 85% of income can only be accumulated for a period not exceeding 5 years subject to the conditions, *inter alia*, that such person submits the prescribed Form No. 10 electronically to the Assessing Officer within the due date specified under section 139(1) of the Act.

3. Further, where the income from the property held under trust and applied to charitable or religious purposes falls short of 85% of the income derived during the previous year for the reason that the income has not been received during that year or any other reason, then on exercise of the option by submitting in Form No.9A electronically by the trust/institution on or before the due date of furnishing the return of income, such income shall be deemed to have been applied for charitable or religious purpose.

4. Representations have been received by the Board/ field authorities stating that the Form No. 9A and Form No.10 could not be filed in the specified time for AY 2016-17, which was the first year of e-filing of these forms. It has been requested that the delay in filing of Form No. 9A and Form No.10 for AY 2016-17 may be condoned under section 119(2) (b) of the Act.

5. Accordingly, in supersession of earlier Circular/Instruction issued in this regard, with a view to expedite the disposal of applications filed by trusts for condoning the delay and in exercise of the powers conferred under section 119(2)(b) of the Act, the Central Board of Direct Taxes hereby authorizes the Commissioners of Income-tax, to admit belated applications in Form No. 9A and Form No.10 in respect of AY 2016-17 where such Form No. 9A and Form No.10 are filed after the expiry of the time allowed under the relevant provisions of the Act.

6. The Commissioners will, while entertaining such belated applications in Form No. 9A and Form No.10, satisfy themselves that the assessee was prevented by reasonable cause from filing of applications in Form No. 9A and Form No.10 within the stipulated time. Further, in respect of Form No. 10 the Commissioners shall also satisfy themselves that the amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11 of the Act.

V. S. Gautam
(Vinay Sheel Gautam)

Under Secretary to the Government of India

Copy to :-

5.1 The analysis of directions of CBDT vide this circular reveals that since assessment year 2016-17 was the first year where the Form 10 was to be filed electronically and there was genuine hardship and therefore, vide this circular the CBDT directed the authorities for condonation of delay in filing Form 10. However, it has been stated in the said Circular that Commissioners while entertaining such belated applications shall satisfy themselves that the assessee was prevented by reasonable cause from filing of application in Form 10 within the stipulated time. The circular further states that Commissioners shall also satisfy themselves that the

amount accumulated or set apart has been invested or deposited in any one or more of the forms or modes specified in sub-section (5) of section 11 of the Act. The order of learned CIT (Exemptions) states that the reason cited by the assessee society for not filing the Form 10 and income tax return within the due date cannot be accepted in the absence of any supporting evidence and also the assessee did not furnish any evidence regarding the investment of accumulated amount in specified modes/manner as per section 11(5) of the Act. Learned counsel for the assessee had invited our attention to an affidavit filed before learned CIT (Exemptions) wherein the reason for not filing the return of income and Form 10 were explained to be the illness of child of accountant and also due to crash of hard disk of computer. Learned counsel for the assessee had argued that these reasons were quite genuine and learned CIT (Exemptions) should have accepted these reasons and should have condoned the delay. As regards the investment in the prescribed assets, Learned counsel for the assessee had filed before us a comparative chart of investment in savings account and fixed deposits as on 31/03/2015 and 31/03/2016 wherein it has been claimed to have invested in specified assets an amount exceeding the required amount as required by the provisions of relevant section whereas the learned CIT (Exemptions) has stated that no evidence was filed before him regarding investment of accumulated amount in the specified assets. In view of these facts and circumstances, we are of the opinion that the matter requires reconsideration at the end of learned CIT (Exemptions) who should re-examine the reasons for failure on the part of the assessee to file Form 10 and return of income within the prescribed period of time and should also examine the investment of accumulated fund in the specified assets and then pass a fresh order. Needless to say, the assessee will be provided sufficient and reasonable opportunity of being heard.

6. In the result, the appeal in I.T.A. No.191 is allowed for statistical purposes. Whereas appeal in I.T.A. No.197 and 230 are dismissed as having become infructuous.

(Order pronounced in the open court on 19/05/2022)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:19/05/2022

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow