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

% **Judgment reserved on: 23 July 2024**
Judgment pronounced on: 05 August 2024

\+ W.P.(C) 10520/2023 & CM APPL. 40791/2023 (Stay)

THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA .....Petitioner

Through: Mr. Rohit Jain & Mr. Samarth Chaudhary, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. .....Respondents

Through: Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, Jr. SC, Ms. Priya Sarkar, Jr. SC with Mr. Sudarshan Roy, Advocate

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. The writ petitioner is a company registered under Section 8 of the Companies Act, 2013 and additionally holds a valid registration referable to Section 12-AA of the **Income Tax Act, 1961**[1]. It impugns the reassessment action initiated by the respondents pertaining to **Assessment Year**[2] 2016-17.

2. The respondents have essentially initiated reassessment proceedings against the petitioner on account of a failure to upload and digitally file Form 10 on or before the due date prescribed under Section 139 of the Act. Forms 10 and 10B owe their genesis to Sections

[1] Act
[2] AY

11(2) and 12-AA of the Act. The filing of Form 10 is mandated in terms of the requirement placed by Section 11(2) and where an entity engaged in charitable or religious purposes has not applied 85 per cent of the income referred to in clauses (a) and (b) of Section 11(1) towards those purposes and has chosen to accumulate the same for utilisation subsequently.

3. As those provisions stand today and post the amendments which came to be introduced in the Act and the **Income Tax Rules, 1962**[3], Form 10 is liable to be submitted electronically by virtue of Rule 17(3) thereof.

4. From the facts which have remained uncontroverted it would transpire that the petitioner had duly submitted both Forms 10 and 10B before the **Assessing Officer**[4] prior to the completion of assessment proceedings albeit after the last date for the furnishing of a return in terms of Section 139(1). The accumulations under Section 11(2) were also duly accepted in the order of assessment which ultimately came to be framed on 01 December 2018.

5. The reassessment action, however, is premised on Form 10 having not been submitted within the time prescribed under Section 139(1) and the petitioner having failed to obtain condonation of delay on account of a belated filing of Form 10.

6. The petitioners would contend that since the requisite forms had been duly submitted before the AO, the proposed reassessment action is rendered wholly arbitrary as the digital submission of Form 10 was merely a procedural requirement. It is their contention that the

[3] Rules
[4] AO

functionality issues that the assessee faced in uploading Form 10 on the online portal was also acknowledged by the **Central Board of Direct Taxes**[5] in its **Circular No. 7/2018, dated 20 December 2018**[6]. The petitioners contend that in acknowledgement of the aforesaid constraints, the Circular itself obliged the assessing authorities to examine whether the assessee was prevented by reasonable cause from electronically filing Form 10.

7. In any view of the matter, according to the writ petitioner, once the AO had duly examined the disclosures contemplated by Section 11(2), there would exist no justification for the initiation of the impugned proceedings.

8. For the purposes of considering the challenge which stands raised, we deem it apposite to notice the following essential facts. Pursuant to the return which was submitted by the petitioner on 01 October 2016 for the concerned AY, a notice under Section 143(2) came to be issued to the petitioner on 10 July 2017. The first respondent also issued notices to the petitioner under Section 142(1) of the Act along with questionnaires, dated 01 May 2018 and 15 September 2018. The petitioner furnished its response to the aforesaid notices in terms of its communications dated 15 October 2018 and 26 November 2018.

9. According to the writ petitioner, although it was unable to electronically upload Form 10 within the time stipulated under Section 11(2), the e-filing of the form was completed on 05 October 2018 and it had also filed the same before the AO alongwith its reply dated 15 October 2018. The assessment proceeding under Section 143 was

[5] CBDT/Board
[6] Circular

ultimately completed and an order of assessment drawn on 01 December 2018. It becomes pertinent to note that the accumulation of income under Section 11(2) came to be duly accepted by the AO as would be evident from a perusal of the assessment order and which appears at page 206 of our record.

10. The **Show Cause Notice**[7] under Section 148A(b) of the Act, thereafter, came to be issued on 10 March 2023. Since the reasons on the basis of which that SCN came to be issued would be of some relevance, we extract the same hereinbelow:-

> "The return of Income was e-filed on 01.10.2016 declaring NIL income. The case was selected for scrutiny under CASS. Assessment in this case was completed under section 143(3) read with section 144B of the Income tax Act on 01.12.2018 at income of Rs. 7,12,75,688/- as against nil returned income.
>
> Audit scrutiny revealed that during the year under consideration, the assessee has accumulated income of Rs.2,00,00,000/- u/s 11(2) of the I.T. Act, 1961 for "Improvement, Development, and acquisition of infrastructure of the Chamber" purpose as mentioned in Form 10 filed on 05.10.2018. However, the assessee has claimed a sum of Rs. 1,96,60,814/- accumulated u/s 11(2) in the income tax Return. The due date for filing Form 10 as per section 139(1) of the I T Act was 17.10.2016. Hence, the assessee has filed Form 10 beyond the due date prescribed u/s 139(1) of the Act. As per the submission given by the assessee it is noticed that the assessee has not obtained condonation of delay in filing Form 10 from them competent authority.
>
> Thus the assessee has failed to comply with the provisions of section 13(9)(i) of the IT Act as the assessee has filed Form 10 belatedly after the time period prescribed u/s 139(1) of the I T Act.
>
> In view of the above, the assessee should be denied the benefit of provisions of section 11(2) of the I T Act and the accumulation of income u/s 11 (2) claimed by the assessee trust during the year under consideration to the extent of Rs. 1,96,60,814/- should have been disallowed as the assessee has failed to filed the form 10 within stipulated time and failed to

[7] SCN

comply with the condition as mentioned u/s 13(9)(i) of the I T Act. Therefore, the impugned amount of Rs. 1,96,60,814/- is liable to be added in the total income the assessee."

11. The petitioner filed detailed responses to the SCN on 20 and 24 March 2024 and objected to the proposed reassessment action. Those objections, however, came to be negated with the AO coming to the following conclusions which stand embodied in that order framed under Section 148A(d) and are reproduced hereinbelow:-

"4.1 With regard to the late filing of Form 10 on 05.10.2018 the Assessee has submitted that Form 10 utility was not introduced/functional till the filing of ITR 7 for A.Y. 2016-17. Assessee further submitted that it was a new digital provision and also it was not clear how Form 10 was to be filed. It was also submitted by the Assessee that there was no option of attaching Form 10 while filing a Return of Income. The contention of the assessee is right, as the **Finance Act 2015**, was amended in section 11 and section 13 of the Act with effect from 01.04.2016 relevant to A.Y. 2016-17. Consequently, Income tax Rules were also amended and Rule 17 required to furnish the prescribed Form 10 electronically. The filing of Form 10 was made mandatory in the A.Y 2016-17. Hence the contention of the assessee that this being a new facility and late filing of Form 10 was not intentional is not accepted. The assessee can not take relief on this ground.

4.2. It is pertinent here to note that the assessee has not filed any application for Condonation of delay nor has discussed the reason for not filing the Condonation of delay in its reply. Hence, the contention of assessee that being a new facility the late filing was not intentional is not acceptable. The mandate of the provision of section 13(9) of the Act inserted by Finance Act, 2015 w.e.f A.Y.2016-17 clearly attracted in this case which is reproduced as under:-

"(9) Nothing contained in sub-section (2) of section 11 shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if—

a) the statement referred to in clause (a) of the said sub-section in respect of such income is not furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year; or

b) the return of income for the previous year is not furnished by such person on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the said previous year."

xxxx xxxx xxxx

Conclusion

8. Considering the above facts and on the basis of material available on record, there is information/document in this case that reveals that there is income to the tune of Rs Rs. 1,96,60,814/- for AY 2016-17, chargeable to tax, which has escaped assessment. Hence, the case of THE ASSOCIATED CHAMBERS OF COMMERCE AND INDUSTRY OF INDIA PAN-AAATTT4704C for the AY 2016-17, is a fit case for issuance of notice u/s 148 of the Act for A.Y. 2016-17.

This order is being issued after obtaining prior approval of the specified authority i.e. Pr. Chief Commissioner of Income Tax (Exemption), New Delhi."

12. It is pertinent to note that under Section 11(2) if an entity engaged in charitable or religious purposes be desirous of seeking a waiver of taxation on 85 per cent of the income referred to in clauses (a) and (b) of Section 11(1), and which income is not applied or deemed to have not been applied for purposes envisaged therein, it must furnish a statement to the AO disclosing the purpose for which the income is being accumulated or set apart and the details of the money being invested or deposited in the forms or modes specified in sub-section (5) thereof. The provision further postulates that the said statement should be furnished at least two months prior to the date specified in Section 139(1). Section 11(2) reads as under:-

"(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 furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating 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 five years;

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

(c) the statement referred to in clause *(a)* is furnished [*at least two months prior*] to the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause *(a)*, the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.]

[*Explanation.*—Any amount credited or paid, out of income referred to in clause *(a)* or clause *(b)* of sub-section (1), read with the *Explanation* to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA [or section 12AB] or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause *(iv)* or sub-clause *(v)* or sub-clause *(vi)* or sub-clause *(via)* of clause *(23C)* of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.] ”

13. It becomes necessary to note that prior to the said provision coming to be recast by virtue of the amendments introduced by **Finance Act, 2015**[8], clause (a) of Section 11(2) read as under:-

> “(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

[8] 2015 Act

which the income is to be accumulated or set apart, which shall in no case exceed ten years;"

14. The requirement of Form 10 being digitally filed appears to have been introduced for the first time by virtue of Rule 17 as it came to exist on the statute book pursuant to the **Income-tax (1st Amendment) Rules, 2016**[9] and which came into effect from 01 April 2016. Rule 17(3) as introduced then has remained unchanged thereafter.

15. For the sake of completeness, we reproduce Rule 17 in its entirety hereinbelow:-

"**[Exercise of option, etc., under *Explanation 3* to the third proviso to clause *(23C)* of section 10 or section 11.**

17. (1) The option to be exercised in accordance with the provisions of the Explanation to sub-section (1) of section 11 of the Act in respect of income of any previous year relevant to the assessment year beginning on or after the 1st day of April, 2016 shall be in Form No. 9A and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act for furnishing the return of income of the relevant assessment year.

(2) The statement to be furnished to the Assessing Officer or the prescribed authority under clause (a) of the Explanation 3 to the third proviso to clause (23C) of section 10 of the Act or under clause (a) of sub-section (2) of section 11 of the Act or under the said provision as applicable under clause (21) of section 10 of the Act shall be in Form No. 10 and shall be furnished before the expiry of the time allowed under sub-section (1) of section 139 of the Act, for furnishing the return of income.

(3) The option in Form No. 9A referred to in sub-rule (1) and the statement in Form No. 10 referred to in sub-rule (2) shall be furnished electronically either under digital signature or electronic verification code.

(4) The Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, shall—

[9] 2016 Amendment Rules

(i) specify the procedure for filing of Forms referred to in sub-rule (3);
(ii) specify the data structure, standards and manner of generation of electronic verification code, referred to in sub-rule (3), for purpose of verification of the person furnishing the said Forms; and
(iii) be responsible for formulating and implementing appropriate security, archival and retrieval policies in relation to Forms so furnished.**]**"

16. Of equal significance is the Circular issued by the CBDT, and which acknowledged the receipt of various representations made to the Board in light of the new e-filing obligations which had come into effect from 01 April 2016. The representations had consequently requested the CBDT to condone delays in the e-filing of Form 10 (among other forms), in exercise of the powers conferred upon the Board by Section 119(2)(b) of the Act.

17. Taking note of the above representations, the aforenoted Circular came to be promulgated and obliged the concerned assessing authorities, while entertaining delayed digital submissions of Form 10, to satisfy themselves with respect to the individual assessees having been prevented by reasonable cause from filing the same within the stipulated time. That Circular reads as follows:-

"**CIRCULAR NO. 7/2018 [F.NO.197/55/2018-ITA-I]**

SECTION 119 OF THE INCOME-TAX ACT, 1961 - 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

CIRCULAR NO. 7/2018 [F.NO.197/55/2018-ITA-I], DATED 20-12-2018

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 1-4-2016 (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."

18. According to Mr. Jain, learned counsel for the petitioner, since the factum of the petitioner having submitted Form 10 electronically on 05 October 2018 and thus prior to the completion of the original assessment was undisputed, the respondents were clearly unjustified in seeking to reopen a completed assessment based on a mere technicality of the said form having not been digitally uploaded within the stipulated time period prescribed by Section 11(2) read along with Section 139(1) of the Act.

19. According to learned counsel, the Circular is itself evidence of the functionality issues which were faced by various assessees in digitally submitting Form 10 for AY 2016-17 and which ultimately led to the CBDT providing that a belated submission of those forms may be duly accepted, subject to sufficient cause being shown. It was the submission of learned counsel that the accumulations in accordance with the mandate of Section 11(2) had also been duly accepted in the ultimate order of assessment which came to be framed on 01 December 2018 and viewed in that light the respondents would be wholly unjustified in proceeding on the premise that income liable to tax had escaped assessment.

20. Appearing for the respondents, Mr. Chandra learned counsel submitted that both Section 11(2)(c) as well as Rule 17, in unequivocal

terms, place assessees under an obligation to furnish Form 10 before the expiry of the time allowed for furnishing a return under Section 139. In view of the above, it was his contention that in light of the evident failure on the part of the petitioner to file Form 10 at least two months prior to the due date specified under Section 139(1), there was sufficient ground to invoke Section 148 of the Act.

21. Mr. Chandra also drew our attention to the following averments as contained in Paragraph 16 of the counter affidavit and which is extracted hereinbelow:-

> "**16.** The contention of the assessee regarding *"Form 10 could not be e-filed due to the non-availability of the e-filing facility*" **was clarified by the CPC through mail dated 27.12.2023 in which the CPC has communicated that as per their database, there was a flawless filing of this form for the A.Y. 2016 -17. The reply of the CPC received through mail is reproduced for ready reference:**
>
> > *"The averment made by the taxpayer regarding the non-availability of functionality for e-filing after the amendment has been subjected to verification with the details available on records. Form 10 was notified to be filed electronically vide notification no.3/2016 dated 14/01/2016 and the same was applicable w.e.f 01/04/2016. As per our database, there was a flawless filing of this form for the A. Y. 2016 -17. The total filing count of Form 10 between 01-10-2016 to 31-10-2016 for A.Y. 2016-17 is 3687. Because of the above facts, it is quite evident that* ***the taxpayer's arguments regarding the non-availability of functionality in the Income-tax portal to e-file Form10 before the due date for AY 2016-17 were found to be devoid of any merit and are baseless.*** " "

22. While evaluating the above disclosure, we find that the respondents seek to assert that at the relevant time the online portal supported a *"flawless filing"* of Form 10. They further aver that the total filing count of Form 10 between 01 October 2016 to 31 October 2016 was 3687. It is in the aforesaid backdrop that the respondents

argue that the allegation of non-availability of the functionality to upload the forms on the portal is baseless. It is the aforesaid rival contentions which fall for determination.

23. In our considered opinion, the stand as struck by the respondents, relying on Paragraph 16 of the counter affidavit, is firstly belied by the issuance of the CBDT Circular itself. The Circular itself acknowledged and took note of the grievances which were raised with respect to the non-functionality of the facility for digital submission of forms leading to a delayed e-filing of Form 10. The CBDT also appears to have taken a sympathetic view bearing in mind the fact that the requirement of digital filing had come to be introduced and become applicable for the first time in AY 2016-17. It was in that backdrop that the CBDT had hoped that assessing authorities would approach the issue bearing in mind reasonable cause being established by individual assessees in case of a delayed digital submission of Form 10.

24. We additionally note that the respondents allude to 3687 digital submissions of Form 10 in the month of October 2016. We have not been provided any further details with respect to how that number would be representative or proof of a broad or universal functionality of the filing portal when compared with the body of assessees seeking to accumulate income under Section 11(2) of the Act. We take judicial notice of the fact that the said year saw an exponential increase in the number of tax filings and with the total number being pegged at 28.2 million[10]. Similar trends were reported in other leading national

[10] https://www.livemint.com/Industry/MAhjU6GLc6BfMsYrHhfvKJ/ITR-filings-for-201617-grow-25-to-282-crore-aided-by-demo.html

periodicals[11]. The number of 3687 thus clearly fails to inspire any confidence.

25. More importantly, we note that Section 11(2) speaks of a statement in the prescribed form (which in this case is Form 10) being *"furnished"* to the AO. The change in the prescribed manner under Section 11(2)(a) for the submission of Form 10 and which moved to a digital filing was introduced for the first time by virtue of the 2015 Act and the 2016 Amendment Rules.

26. As was noticed by us hereinbefore, prior to those amendments, all that Section 11(2)(a) required was for the assessee to apprise the AO, by a notice in writing, of the purposes for which the income was sought to be accumulated and the mode of its investment or deposit in accordance with Section 11(5). The requirement of Form 10 being furnished electronically was undisputedly introduced for the first time by way of the 2016 Amendment Rules. There thus clearly appears to exist plausible cause for the petitioner having been unable to effect an online filing.

27. More fundamentally, we note that the action for reassessment is not founded on income liable to tax having escaped assessment. The respondents also do not question the acceptance of the accumulations in terms of Section 11(2) in the assessment order dated 01 December 2018. The entire action for reassessment is founded solely on Form 10 having been submitted after 17 October 2016 and which was the due date in terms of Section 139(1).

[11] https://timesofindia.indiatimes.com/business/india-business/demonetisation-effect-itr-filings-for-2016-17-grow-25-to-2-82-crore/articleshow/59956822.cms

28. In our considered opinion, an action for reassessment would have to be based on the formation of an opinion that income chargeable to tax has escaped assessment. That primordial condition would clearly not be satisfied on the mere allegation of a delayed digital filing of Form 10.

29. Quite apart from the above, we also bear in mind the underlying intent of Section 11(2) and the submission of Form 10 in connection therewith which were aspects succinctly explained by the Supreme Court in **Commissioner of Income-tax vs. Nagpur Hotel Owners' Assn.**[12]. The Bench of three learned judges in *Nagpur Hotel Owners' Assn.* rendered the following pertinent observations:-

> **"6.** It is abundantly clear from the wordings 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 10 of the Act. 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 subject 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 assessment concerned 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

[12] (2001) 2 SCC 128

> 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 reopening 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 Varma that it is not necessary to answer the second question on the facts of this case.
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> **7.** In view of the above findings of ours, the second question referred will not arise for consideration. Accordingly these appeals are allowed."

30. Of equal significance is the judgment rendered by a Division Bench of our Court in **Commissioner of Income-tax vs. Contimeters Electricals P. Ltd.**[13] and where the Court had observed:-

> **"8.** In view of this long line of decisions of various High Courts in considering the provisions of section 80J(6A) which are similar to the provisions of section 80-IA(7), we feel that the Tribunal has arrived at the correct conclusion that the requirement of filing the audit report along with the return is not mandatory but directory and that if the audit report is filed at any time before the framing of the assessment, the requirement of section 80-IA(7) would be met."

31. While we are conscious that the judgments in *Nagpur Hotel Owners' Assn.* as well as *Contimeters Electricals P. Ltd.* were rendered prior to the promulgation of the 2015 Act and the 2016 Amendment Rules, the said decisions clearly underline the importance of due disclosure as opposed to adherence to the mere procedural requirements of the digital filing of a form.

[13] 2008 SCC OnLine Del 1458

32. We further note that a Division Bench of the Gujarat High Court has in its decision rendered after the insertion of the 2015 Act and the 2016 Amendment Rules in **Association of Indian Panelboard Manufacturer vs. Deputy Commissioner of Income-tax**[14] clearly held that the electronic submission of Form 10B is essentially a matter of procedure as opposed to being a mandatory condition which may be recognized to form part of substantive law. We deem it apposite to extract the following passages from that decision:-

> "**5.4** Recollecting the relevant dates, the income was filed on 31.8.2018. On 15.3.2019 Form 10B was filed electronically. On 7.12.2019 intimation under Section 143(1) of the Act was given to the appellant that the exemptions were denied, while processing the return of income on the ground that alongwith the return of income Form 10B was not filed.
>
> **5.5** It is to be observed in the present case that the Form D- the audit report, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under Section 143(1) of the Act. The conditions for claiming exemption under Section 11 was satisfied. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under Sections 11(1) and 11(2) on the ground that the audit report was not filed.
>
> **5.6** The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy.
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> **5.7** The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position.

[14] 2023:GUJHC:27028-DB

> There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.
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> **6.** The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.
>
> **6.1** The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report alongwith return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.
>
> **6.2** Accordingly the substantial questions of law have to be decided in favor of the appellant.
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> **7.** They are accordingly decided. The appeal is allowed."

33. Though rendered in the context of Form 10B, in our considered opinion, the legal position as enunciated in the aforesaid judgment would equally apply to the submission of Form 10.

34. We, accordingly, allow the instant writ petition and quash the impugned order under Section 148A (d) dated 31 March 2023 and the consequent initiation of reassessment proceedings through notice under Section 148 of the Act of even date.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

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