

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

**BEFORE SHRI S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.2225/Mum./2022**  
**(Assessment Year : 2016-17)**

Shree Bhairav Seva Samiti  
342, Bhagwan Mahavir Road  
Khadak Road, Bhiwandi  
Thane 421 302 PAN – AAAJS1994H

..... Appellant

v/s

Income Tax Officer (Exemption)  
Thane

.....Respondent

Assessee by : Shri Himanshu Gandhi  
Revenue by : Ms. Richa Gulati

Date of Hearing – 07/12/2022

Date of Order – 08/12/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 07/07/2022, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax, National Faceless Appeal Centre, Delhi [*'learned CIT(A)'*], for the assessment year 2016-17.

2. In this appeal, the assessee has raised the following grounds:

*"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that exemption under section 11 of Income Tax Act, 1961 denied by CPC Bangalore while processing return under section 143(1) of Income Tax Act,*

*1961 on mere ground that Form 10B was electronically filed after filling return of income cannot be considered by Ld. Assessing Officer under rectification proceedings under section 154 of Income Tax Act, 1961 as the same is not a mistake apparent from record.*

*2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming denial of exemption under section 11 of Income Tax Act, 1961 on account of claim of Revenue expenditure of Rs.1,26,72,561 and Capital Expenditure of Rs.43,83,874 merely on the ground that the audit report form 10B dated 15.09.2016 was uploaded electronically on 02.07.2018 ie after the date of filling of return and therefore, appellant was not eligible for claiming exemption under section 11 of Income Tax Act, 1961.*

*3. The Appellant craves leave to add, alter, amend, modify or delete any of the aforesaid grounds of appeal."*

3. The only grievance of the assessee is against the denial of exemption under section 11 of the Act on the basis that Form 10B was filed by the assessee after filing the return of income for the year under consideration.

4. The brief facts of the case as emanating from the record are: The assessee is a trust registered under section 12AA of the Act, vide order dated 24/09/1982. For the year under consideration, the assessee filed its return of income on 24/03/2018, under section 139(4) of the Act declaring total income at Rs. nil after showing gross receipts of Rs. 1,53,09,088, and claimed an exemption under section 11 of the Act on account of revenue expenditure of Rs. 1,26,72,561, and capital expenses of Rs. 43,83,874. The CPC Bengaluru vide intimation dated 07/08/2018, issued under section 143(1) of the Act denied the exemption claimed under section 11 of the Act and raised the demand of Rs. 75,27,180. Thereafter, the assessee filed the rectification application on 03/03/2021, under section 154 of the Act on the basis that though the audit report in Form 10B was available at the time of filing of return of income, however, due to new procedural and technical requirements

of e-filing Form 10B, there was a delay on part of the auditor in uploading the same. The ITO, Exemption Ward vide order dated 09/03/2021, rejected the rectification application filed by the assessee under section 154 of the Act and held that in view of the provision of section 12(1)(b) the assessee has not fulfilled the condition to claim the exemption for the amount applied towards the object of trust on revenue and capital account under section 11 of the Act.

5. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee holding that issue of allowability of exemption under section 11 of the Act is not a mistake apparent from the record. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative submitted that the assessee trust is registered under section 12AA of the Act since the year 1982. For the year under consideration Form 10B was obtained from auditor on 15/09/2016, however, due to procedural and technical glitches, there was a delay in uploading the same. The said form was uploaded on 02/07/2018. Learned AR further submitted that these facts were submitted by the assessee in its application under section 154 of the Act. However, no relief was granted to the assessee, and the claim under section 11 of the Act was denied on a mere technical basis.

7. On the contrary, the learned Departmental Representative vehemently relied upon the order passed by the lower authorities and submitted that the rectification application under section 154 of the Act has been rightly dismissed as there was no mistake apparent from the record.

8. We have considered the rival submissions and perused the material available on record. The assessee trust is holding a valid certificate of registration under section 12AA of the Act since 24/09/1982. In its return of income filed under section 139(4) of the Act, the assessee claimed exemption in respect of revenue expenditure and capital expenses under section 11 of the Act. While processing the return filed by the assessee under section 143 (1) of the Act, CPC Bangalore denied the exemption claimed under section 11 of the Act and raised a demand of Rs. 75,27,180. It is the plea of the assessee that Form 10B was obtained from the auditor on 15/09/2016, and due to the first year of e-filing Form 10B assessee faced some technical issues causing a delay in uploading the said Form.

9. In the present case, it is undisputed that the assessee trust is registered under section 12AA of the Act for the past 40 years and the said registration is still in existence. It is also not the case of the Revenue that the assessee has ceased to be a religious or charitable institution. Further, it is also not the case of the Revenue that the accounts of the assessee have not been audited by an accountant, and an audit report in Form 10B has not been obtained. Only on the technical aspect that Form 10B was not filed along with the return of income for the relevant assessment year, the exemption claimed under section 11 of the Act has been denied to the assessee without going into the merits. Further, no relief was granted to the assessee even when the assessee filed the application under section 154 of the Act. We find that while dealing with similar facts the Co-ordinate Bench of the Tribunal in Trinity Education Trust

vs ITO, ITA No. 669/Srt./2018, vide order dated 28/02/2022, decided the issue in favour of the taxpayer by observing as under:

*"8. We have considered the rival submissions both the parties and perused the order of lower authorities carefully. We find that there is no dispute that at the time of filing of return of income, the audit report has required under Form 10B was not uploaded once uploaded on the system consequently the AO/CPC not allowed the exemption claimed under section 11. Assessing Officer/CPC brought the entire receipt as taxable income. On receipt intimation under section 143(1) of the Act the assessee uploaded in Form 10B and filed application for rectification under section 154 of the Act. The application of the assessee was rejected on the ground report in Form 10B was not furnished before due date of return of income. The Id. CIT(A) dismissed the appeal of the assessee by taking view the audit report in Form 10B was not uploaded before due date of return of income.*

*9. We find that the Hon'ble jurisdictional High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. (supra) held that in order to claim exemption under section 11, the assessee can file audit report in Form 10B even at later stage either before the Assessing Officer or before appellate authority by showing a sufficient cause. Further, Hon'ble jurisdictional High Court decision in case of Sarvodaya charitable Trust vs. ITO (Exemption) (supra) also held that where the assessee is a public charitable trust registered under section 12A of the Act and substantially satisfied condition for availing benefit of exemption as a charitable could not be denied exemption, the assessee merely on bar of limitation in furnishing audit report in Form 10B. Considering the aforesaid and legal discussion, we find that though the assessee has not filed any return of income at the time, however, it was available before the Id. CIT(A) as it was uploaded much before filing application under section 154. Therefore, respectfully following the decisions of Hon'ble jurisdictional High Court in case of CIT vs. Xavier Kalavani Mandal (P.) Ltd. (supra) and in Sarvodaya charitable Trust vs. ITO (Exemption) (supra), we find that the assessee has complied the procedural requirement, therefore, the Assessing Officer/CPC is directed to verify the claim of the assessee and grant necessary deduction under section 11 of IT Act. In the result, the appeal of the assessee is allowed for statistical purposes."*

10. As in the present case also the assessee has complied with the procedural requirement of obtaining and filing Form 10B, therefore, respectfully following the aforesaid decision of the Co-ordinate Bench of the Tribunal, the Assessing Officer is directed to decide the claim of the assessee under section 11 on merits, after accepting the Form 10B filed by the

assessee. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 08/12/2022

**Sd/-**  
**S. RIFAUR RAHMAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 08/12/2022**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai