

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 336/Srt/2022 (Assessment Year 2017-18)  
(Physical hearing)

Rang Avdhut Mandir Trust, 208, Sarvoday Nagar Society, Bardoli, Surat. <b>PAN No. AAAAR 3731 Q</b>	Vs.	I.T.O., Ward-1, Bardoli.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Kiran K Shah, CA
Department represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	12/04/2023
Date of pronouncement	12/04/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 14/09/2022 for the Assessment year (AY) 2017-18 wherein the assessee has raised following grounds of appeal:

- “1. The Id. CIT(A) grossly erred in not allowing application of income for Rs. 8,51,066/- (Expenses for the object of the Trust) merely because 10B was not filed alongwith return of income as discussed in para 5.1 of the CIT(A) order.*
- 2. The appellant reserves right to add, alter and withdraw of any grounds of appeal.”*

2. Brief facts of the case are that the assessee-trust filed its return of income for A.Y. 2017-18 on 05/08/2017. Return was processed under Section 143(1) of the Income Tax Act, 1961 (in short, the Act) by the

Central Processing Centre (CPC), Bangalore vide order dated 09/03/2019. The CPC while processing the return of income, disallowed the deduction of application of income of Rs. 8,51,066/- as Form 10B was not filed alongwith return of income.

3. Aggrieved by the disallowance made by the CPC, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee submitted that due to technical default, the assessee could not file Form-10B while filing return of income, though, it was obtained prior to date of filing of return of income. The assessee substantially fulfilled all the conditions. The disallowance of application of income is unjustified. The assessee also stated that the assessee has already filed Form-10B before processing the return of income. The Id. CIT(A) confirmed the action of Assessing Officer by holding that the assessee has filed Form-10B after due date of filing return of income. The assessee should have filed application for condonation of delay under Section 119(2)(b) of the Act. The assessee filed/uploaded Form-10B after due date of filing of return of income under section 139(1), which cannot be ignored. Further aggrieved, the assessee has filed present appeal before this Tribunal.
4. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Senior Departmental Representative (Id. Sr. DR) for the revenue and have gone through the orders of lower authorities carefully. The Id. AR of the assessee submits

that the assessee obtained audit report/Form-10B from Auditor on 09/10/2017. The return of income was filed on 27/12/2017. Due date for filing return of income was extended for the relevant financial year up to 31/03/2018. Form10B (audit report) was filed on 27/08/2018. The return of income of assessee was processed on 09/03/2019. The Id. AR of the assessee submits that on the date of processing the return of income by the CPC, the audit report/Form-10B was available on the system. The Id. AR for the assessee submits that non-filing of Form-10B before due date prescribed under Section 139(1) of the Act was a procedure lapse and the assessee should not be denied the benefit of application of income under Section 11 and 12 of the Act, when the assessee is having valid registration under Section 12AA of the Act.

5. The Id. AR of the assessee further submits that the Hon'ble Gujarat High Court in CIT Vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325 (Guj), Gujarat Paghuthan Energy Corporation (P) Ltd. Vs DCIT 225 Taxman 70 (Guj) and Zenith Processing Mills vs CIT 219 ITR 721 (Guj) held that where the assessee could not file the audit report alongwith return of income but filed it before completion of assessment by the Assessing Officer, the assessee was entitled for deduction under Section 80J of the Act. The Id. AR submits that the Hon'ble Bombay High Court in CIT Vs Sakal Relief Fund (2017) 81 taxmann.com 396 (Bombay) also held that even if Form 10 was filed during reassessment by assessee-trust, the

benefit of accumulation under Section 11(2) was available because such filing would be considered within time allowed for furnishing return of income under Section 139(4) of the Act.

6. On the other hand, the Id. Sr. DR for the revenue supported the order of Id. CIT(A).
7. I have considered the submissions of both the parties and perused the record carefully. There is no dispute that the assess-trust is having registration under section 12AA. The assessee filed return of income on 27/12/2017. In the computation of income, the assessee claimed application of income under section 11/12 of the Act. The return of income was filed within the time allowed under section 139(1). There is no dispute that the assessee filed audit report under Form 10-B on 27/08/2018. The assessee claimed that the audit report was obtained before filing return of income. There is no material to disbelieve the contention of the Id AR for the assessee that audit report was obtained well in time. Therefore, considering the decisions of Hon'ble Jurisdictional High Court in CIT Vs. Gujarat Oil & Allied Industries (supra), Gujarat Paghuthan Energy Corporation (P) Ltd. Vs DCIT and Zenith Processing Mills vs CIT (supra) and the Hon'ble Bombay High Court in CIT Vs Sakal Relief Fund (supra), I direct the Assessing Officer to verify the fact and allow appropriate relief to the assessee by following the aforesaid

decisions, Needless to direct that before passing the order, the Assessing Officer shall grant opportunity to the assessee.

8. In the result, this appeal of assessee is allowed.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 12/04/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

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By order

Sr. Private Secretary, ITAT, Surat