

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

*(Conducted through Virtual Court)*

**ITA No.403/Ind/2022**  
**Assessment Year: 2017-18**

Indore Contract Bridge Association, Yashwant Club, Race Course Road, Indore	<b><u>बनम/</u></b> Vs.	CPC, Bangalore
(Appellant / Assessee)		(Respondent / Revenue)
<b>PAN: AAAAI 1652 F</b>		
Assessee by	Shri S.S. Deshpandey, CA & AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	28.03.2023	
Date of Pronouncement	18.04.2023	

**आदेश / ORDER**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by appeal-order dated 28.09.2022 passed by learned Commissioner of Income-Tax, National Faceless Appeal Centre, Delhi [**Ld. CIT(A)**], which in turn arises out of intimation of assessment dated 09.03.2019 passed by learned CPC, Bangalore [**Ld. AO**] u/s 143(1) of Income-tax Act, 1961 [**the Act**] for Assessment-Year [**AY**] 2017-18, the assessee has filed this appeal on following grounds:

- “1. The Ld. CIT(NFAC) has erred in not Condoning the delay in filing the appeal rejecting the reasonable clause for delay in filing the appeal.

2. *The Ld. CIT(NFAC) has erred in not condoning the delay for filing Form 10B when the return was filed on the basis of the Audit Report obtained by the assessee.*
3. *The Ld. CIT(NFAC) has erred in not considering the CBDT circulars and also the judgment of the Bombay High Court.*
4. *Without prejudice to above even if the registration is not considered the income should have been assessed not on the basis of gross receipt but on the basis of net income.*
5. *The assessee has received the sponsorship for a particular cause which was fulfilled and as such the same cannot be treated as an income of the assessee.*
6. *The assessee craves to amend, alter or delete any of the ground of appeal”*

2. Heard the learned Representatives of both sides at length and case-records perused.

3. We proceed to adjudicate all grounds one by one in seriatim.

**Ground No. 1:**

4. In this ground, the assessee claims that the Ld. CIT(A) has erred in not condoning the delay in filing first-appeal before him.

5. Ld. AR representing the assessee carried us to the impugned appeal-order dated 28.09.2022 passed by Ld. CIT(A) and demonstrated that in Para No. 4.9 of the same, the CIT(A) has rejected the condonation of delay of 107 days committed by assessee in filing first-appeal before him and thus taken a view to dismiss the appeal of assessee. But, however, in the subsequent Para No. 5 to 13 running over as many as 7 pages, the same CIT(A) has decided the grounds of assessee on merit as well. Ld. AR submitted that the assessee is a charitable society engaged in advancing internationally recognized sport/game called “Bridge”. The assessee is registered u/s 12A of the Income-tax Act, 1961 and therefore entitled for exemption u/s 11/12. The assessee submitted return of income of relevant AY 2017-18 under consideration on 03.08.2017 claiming the exemption u/s 11/12. The books of account of assessee were duly audited by statutory auditors and the

return was filed on the basis of audited accounts dated 08.06.2017. But, however, the auditors did not e-file/upload the audit-report (Form No. 10B) before filing return of income; the same was done on 03.04.2019 / 04.05.2019. When the AO processed intimation u/s 143(1) on 09.03.2019, it denied exemption u/s 11/12 for the sole reason that Form No. 10B was not filed along with return of income. Immediately after receiving such intimation, the assessee filed a rectification-application u/s 154 of the Act to the very same AO on 20.03.2019 and the assessee was awaiting a favourable disposal of rectification-application by AO but finding no action from AO for a period of about 5 months and certain days (Ld. AR pointed out that the AO has not made rectification even till now), ultimately the assessee took a decision to file appeal to CIT(A); therefore the appeal could be filed only on 24.08.2019. Thus, the Ld. AR submits, the sole reason of delay in filing first-appeal to CIT(A) was the pendency of assessee's rectification-application u/s 154 before AO. Ld. AR very humbly submits that there was no lethargy, negligence or mala fide intention of assessee in making delay and the assessee does not stand to derive any benefit whatsoever because of delay. Ld. AR submitted that in such reasonable circumstance, the CIT(A) should not have taken a view to dismiss the appeal of assessee; he ought to have condoned the delay respectfully following the landmark decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**. Ld. AR also submits that the Ld. CIT(A) has made an observation "*the appellant (assessee) has not filed any rectification request*" but this observation is contrary to the factual position verifiable from the departmental database itself wherein the assessee's rectification-request dated 20.03.2019 is very much available. Ld. AR has also produced a copy of the acknowledgement generated/downloaded from departmental database to prove this essential fact. With these submissions, Ld. AR prayed that the CIT(A) has erred in taking a view to dismiss the assessee's first-appeal; his decision must be reversed.

6. Per contra, Ld. DR representing the revenue placed a heavy reliance upon the order of Ld. CIT(A) and prayed to uphold his decision.

7. We have considered rival submissions of both sides. We have also perused the documents placed by assessee before us and observe that the assessee has filed a rectification-application u/s 154 on 20.03.2019 to AO. We further note from a reading of section 154(8) that the AO was having a time-limit of 6 months to pass order on such application of assessee. Therefore, the assessee was justified in waiting for about 5 months and certain days for the outcome of rectification and thereafter filing first-appeal when there was no response from AO. Thus, there was certainly a reasonable cause on the part of assessee in filing-appeal belatedly. Ld. DR does not have any reason to negate/contradict this. As a matter of fact, we also observe that although the CIT(A) has taken a view to dismiss the first-appeal of assessee; but in the very same order he has also decided the first-appeal on merit at length. Considering all these aspects, we are of the considered view that the assessee has a strong case for condonation of delay in filing first-appeal before Ld. CIT(A). We accept assessee's submissions and reverse the decision of dismissal taken by Ld. CIT(A). The assessee succeeds in this ground.

**Ground No. 2 to 3:**

8. The exact controversy involved in these grounds is whether or not the assessee was entitled for exemption u/s 11/12 as claimed in the return of income, when the audit-report (Form No. 10B) was filed belatedly after processing of return u/s 143(1)?

9. Apropos to this issue, the precise facts are: The assessee is a charitable society registered u/s 12A of the Income-tax Act, 1961 and entitled for exemption u/s 11/12; accordingly it claimed exemption u/s 11/12 in the return of income. But when the AO processed return u/s 143(1) vide intimation dated 09.03.2019, he did not allow exemption u/s

11/12 for the reason that the audit report (Form No. 10B) was not filed by assessee with return of income. Subsequently after processing of return, the Form No. 10B was e-filed/uploaded on 03.04.2019 / 04.05.2019 before filing of first-appeal.

10. Ld. AR submitted that the assessee was engaged in charitable activities; that the registration granted to it by tax authorities u/s 12A was in force; that the assessee had been granted benefit of section 11/12 in preceding assessment-years as well as subsequent assessment-years. He further submitted that the assessee filed return of income on 03.08.2017 and prior to such filing, the accounts of assessee were duly audited on 08.06.2017, a copy of the audited-accounts is placed in the Paper-Book. However, the auditors of assessee failed to upload the audit-report alongwith the return of income. But, post-processing of return u/s 143(1) and before filing of first-appeal, the assessee arranged to get the audit-report e-filed/uploaded on 03.04.2019 / 04.05.2019. Ld. AR submitted that the CIT(A) has, without appreciating these facts, dismissed the appeal of assessee merely on a technical defect that the audit-report was not filed alongwith the return of income. Ld. AR submitted that except such technical defect, there is no other reason to deny the benefit of section 11/12 to assessee. Ld. AR submitted that the e-filing/uploading of audit-report is done by auditors and not by assessee; therefore the defect is not *per se* attributable to assessee. Ld. AR submitted that in any case, the defect is due to an inadvertent human error and the assessee should not be denied the legitimate exemption, when the assessee is genuinely doing charitable activities for the welfare of public and satisfying all conditions prescribed in income-tax law for being entitled to exemption. Ld. AR submitted that if the audit-report obtained by assessee on 08.06.2017 but filed on 03.04.2019 / 04.05.2019 is accepted, the assessee would be entitled to the benefit of exemption. Ld. AR placed a heavy reliance on the latest decision of **ITAT in Savitri Foundation Vs. ITO, ITA No. 1925/Mum/2021 (AY 2018-19) order dated 01.08.2022** wherein the AO made processing of return u/s

143(1) denying exemption u/s 11 to assessee for the very same reason of non-uploading of audit report before filing of return but subsequently the assessee uploaded audit-report during the course of first-appeal; when the matter reached ITAT, the Mumbai Bench has allowed exemption to assessee. Ld. AR submitted that the decision taken by ITAT is directly applicable to assessee. Ld. AR also submitted that the decision of **Hon'ble Supreme Court in Wipro Ltd. 446 ITR 1** relied upon by Ld. CIT(A) is quite distinguishable for the reasons that (i) the said decision involved deduction u/s section 10B whereas the present-appeal is concerned with exemption u/s 11/12; and (ii) the said decision involved interpretation of sub-section (8) of section 10B which is a negative provision i.e. it provides that if the assessee did not want to apply section 10B, then the assessee had to file a declaration but this is not a case in section 11/12.

11. Per contra, Ld. DR vehemently defended the orders of lower-authorities and submitted that furnishing of audit-report alongwith return of income is a pre-condition for allowability of exemption u/s 11. Since the assessee has not fulfilled such condition, the lower-authorities have rightly denied the assessee's claim of exemption u/s 11 and there is no infirmity in the action of lower-authorities.

12. We have heard rival contentions of both sides and examined the present controversy in the light of judicial decisions. At first, we are convinced that the controversy is directly settled in favour of assessee by decision in **Savitri Foundation (supra)** where the Hon'ble Mumbai ITAT, following the decision of **Hon'ble Mumbai High Court in CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee 378 ITR 103** has observed and held thus:

“4. Submissions made by rival sides heard, orders of authorities below examined and the case law on which the ld. Authorized Representative of the assessee placed reliance considered. The assessee is a charitable trust registered under section 12AA of the Act and has been purportedly enjoying the benefits of section 11 since 2011. In the

impugned assessment year, the benefit of exemption under section 11 of the Act has been denied to the assessee for the reason that assessee has failed to furnish audit report along with return of income. The contention of the Id. Authorized Representative of the assessee is that the audit report was available with the assessee at the time of filing of return of income however due to inadvertent error the assessee failed to upload Audit Report in Form 10B along with e-filing of return of income. Non-filing of Audit Report is a bonafide error. The assessee has placed on record Audit Report dated 19/10/2018 in the prescribed Form 10B at page 15 of the Paper Book. The assessee after receiving the intimation under section 143(1) of the Act uploaded the Audit Report on 18/04/2020 in First Appellate proceedings.

5. In my considered view non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same.

6. The Hon'ble Bombay High Court in the case of **CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee (supra)** has held that late filing of required documents would not disentitle the assessee from availing benefit of section 11 of the Act. Thus, in the facts of the case and in the light of decision of Hon'ble Bombay High Court, I deem it appropriate to restore the file back to Assessing Officer for de novo assessment after considering the audit report filed by the assessee, in accordance with law.

7. In the result, impugned order is set aside and appeal by assessee is allowed for statistical purposes.”

13. We also gainfully refer another recent decision of **ITAT, Ahmedabad Bench** in the case of **M/s Shardaben Education Trust, Gandhinagar Vs. ITO, Ahmedabad, ITA No. 2312/Ahd/2018, order dated 16.11.2022** where a similar controversy has been decided in favour of assessee, after following the decisions of **Hon'ble Gujrat High Court in CIT vs. Gujarat Oil & Allied Industries reported in 201 ITR 325** and **CIT vs. Mayur Foundation reported in 274 ITR 562**. The relevant paragraphs of the order of ITAT are as under:

“12. We have heard the rival contentions of both the parties and perused the materials available on record. As per the provisions of

section 12A(1)(b) of the Act, it is necessary for the assessee in order to claim exemption under section 11 of the Act to get the accounts audited as well as obtain the audit report in the prescribed form from the qualified chartered accountant which is to be filed along with the return of income. Admittedly, in the case on hand the assessee has not filed form 10B being the audit report along with the return of income and the same was also not filed till the completion of the assessment order as well as appellate order by the learned CIT-A. As such the order of the learned CIT(A) was passed dated 30th November 2017 whereas the Form 10B of the audit report was filed/uploaded dated 25th December 2017 which evidences that the audit report in Form 10B was filed subsequent to the appellate order by the learned CIT-A. At this juncture it is also pertinent to note that the audit report in the prescribed form was prepared and signed by the qualified chartered accountant dated 5th September 2014 much before the date of filing the return of income by the assessee. Thus, it appears that report for the audit in the prescribed form was prepared well in time but it was filed belatedly.

12.1 Now the controversy arises whether the assessee can claim the benefit of exemption under section 11 of the Act in a situation where the audit report in the prescribed form was not filed along with return of income. In this context we note that act of the assessee to file the audit report duly signed by the qualified chartered accountant is a procedural requirement and the courts have held that the assessee cannot be denied the benefit for which it is entitled in the event of any procedural contravention specified under the provisions of the Act. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in case of **CIT vs. Gujarat Oil & Allied Industries reported in 201 ITR 325**, the relevant extract of the judgment is reproduced as under:

“In our view, the aforesaid reasoning of the Allahabad High Court and the Patna High Court would squarely apply to the facts of the present case. The provision about furnishing of the auditors' report along with the return has to be treated as a procedural provision, directory in nature, and its substantial compliance should suffice, meaning thereby that such report should be made available by the assessee to the Assessing Officer latest when the question of framing of assessment is taken up by the Income-tax Officer and when he applies his mind to the claim of the assessee and if by that time, the assessee has put his house in order and has furnished the report of the auditor for supporting the return, he can be said to have satisfied the requirement of section 80J(6A) of the Act.”

12.2 In view of the above we hold that the assessee cannot be denied the benefit of exemption for which it is entitled merely on the lapse of procedural requirement i.e. delay in filing the audit report in the prescribed form. In the judgment cited above, it was provided that the audit report was filed by the assessee before the completion of the assessment. In other words, the compliance of the law was made by the assessee when the assessment proceedings was pending before the AO whereas in the case on hand the assessee complied the requirement at the stage of appellate proceeding before tribunal. Thus, a question arises before us whether the principles laid down in the judgment cited above can be applied in the given facts and circumstances. In this context we note that, in the judgment cited above it was observed that procedural requirement for filing the audit report was fulfilled by the assessee before the completion of the assessment. But the facts of the case on hand are different in so far the audit report was filed by the assessee after the completion of the assessment framed under section 143(3) of the Act. In this regard we note that the assessment remains pending if any appeal is pending before the higher forum. In other words, if any appeal is pending either before the Id. CIT-A or before the ITAT which transpires the fact that the assessment is pending. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in case of **CIT vs. Mayur Foundation reported in 274 ITR 562**, wherein it was held as under:

“Thus, the proceedings before the Tribunal are meant to correctly assess the tax liability of an assessee: If this be so, it follows that the assessment proceeding cannot be said to be complete and is pending till the appeal is heard and disposed of by the Tribunal and the order of the Tribunal is given effect to by the assessing authority by computing the correct tax liability of an assessee. In other words, whether an assessee is required to pay tax or becomes entitled to a refund, would be ascertained by the assessing authority after giving effect to the order of the Tribunal.”

12.3 Admittedly, the appeal was pending before the ITAT at the time when the audit report in form 10B was filed which transpires that the assessment has not reached to the finality and therefore principle laid down by the Hon'ble High Court of Gujarat in the case of **CIT vs. Gujarat Oil & Allied Industries (Supra)**, that the requirement for filing the audit report is a procedural requirement, can be applied in the given facts and circumstances. Therefore, the benefit for which the assessee is entitled cannot be denied.”

14. Respectfully following these decisions, we are of the view that in the present case, the assessee can't be denied the benefit of exemption u/s 11 as claimed in the return of income for mere delay in filing of audit-report. We, therefore, deem it fit to remand this matter back to the file of AO for a fresh assessment after considering the audit-report filed by assessee, in accordance with law. These grounds are accordingly allowed.

**Ground No. 4 to 5:**

15. In these grounds, the assessee claims that, without prejudice to ground No. 2 to 3, even if exemption is not allowed, the taxable income should be assessed on the basis of net income and not gross receipts.

16. These are alternative grounds of assessee which could need adjudication only if the assessee failed in Ground No. 2 to 3. Since we have already allowed Ground No. 2 to 3 and accepted the assessee's claim of exemption u/s 11 in foregoing discussion; the Ground No. 4 to 5 are not required to be adjudicated at this stage. Hence, these grounds are kept open without any adjudication.

**Ground No. 6:**

17. This last ground is general in nature and does not require any adjudication.

**18. Resultantly, this appeal of assessee is allowed in terms indicated above.**

*Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on ...../...../2023.*

*Order pronounced in the open court on 18/04/2023.*

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated :18.04.2023

Patel/Sr. PS

- Copies to:*
- (1) *The appellant*
  - (2) *The respondent*
  - (3) *CIT*
  - (4) *CIT(A)*
  - (5) *Departmental Representative*
  - (6) *Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*

1.	Date of taking dictation	
2.	Date of typing & draft order placed before the Dictating Member	
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the approved draft is placed before other Member	
5.	Date on which the fair order is placed before the Dictating Member for pronouncement	
6.	Date on which the file goes to the Bench Clerk	

7.	Date on which the file goes to the Head Clerk	
8.	Date on which the file goes to the Assistant Registrar for signature on the order	
9.	Date of dispatch of the Order	