

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DEHRADUN CIRCUIT BENCH: DEHRADUN**

**BEFORE, SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.49/DDN/2022  
(Assessment Year: 2016-17)**

Woodbridge Educational Society, DOB, Lewshal, PO-Bhowali, Distt. -Nainital, Uttarakhand	<b>Vs</b>	Income Tax Officer (Exemption), Dehradun
<b>PAN - AAATW0934H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant By	<b>Sh. Pawan Nath, CA</b>
Respondent by	<b>Smt. Poonam Sharma, Addl. CIT</b>
Date of Hearing	<b>19.06.2023</b>
Date of Pronouncement	<b>23.06.2023</b>

**ORDER**

This is an appeal by the assessee against order dated 08.07.2022 passed by National Faceless Appeal Centre (NFAC), Delhi, pertaining to assessment year 2016-17.

2. Though the assessee has raised several grounds before us, the only effective issue to be decided in this appeal is as to whether the

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filing of Form No. 10 for accumulation of income in terms of section 11(2) of the Act belatedly before the completion of assessment proceedings, would prove fatal to the proportionate claim of exemption under section 11 of the Act.

3. We have heard the rival submissions and perused the materials available on record. The assessee society is a minority educational institution and is registered charitable educational society under section 12AA of the Income-tax Act, 1961 w.e.f. 01.04.2015, as per the order passed by Commissioner of Income Tax (Exemptions), Lucknow, dated 15.03.2016. The assessee is also registered with the Registrar of Societies vide Certificate No. 639/2002-2003 dated 17.02.2003, which has been renewed from time to time. The assessee in the return of income filed had claimed accumulation of income in terms of section 11(2) of the Act for accumulation of Rs.71,75,007/-. The return of income was filed by the assessee on 29.09.2016. The due date for filing of return of income for assessment year 2016-17 under section 139(1) of the Act was 17.10.2016 (as per the extension granted by CBDT for A.Y.

2016-17). The assessee submitted the Form No.10 physically at the Income Tax Office and got the receipt thereon and got the acknowledgement thereon on 21.10.2016. With effect from assessment year 2016-17, for the purpose of assessee trust/society seeking accumulation of income in terms of section 11(2) of the Act, Form No. 10 being the prescribed form, should be filed electronically before learned Assessing Officer on or before the due date of filing the return of income. This is the first year of such mandate provided in the Act, i.e., Form No. 10 to be filed electronically on or before the due date of filing return of income. The assessee, in the instant case, being unaware of such latest development in the statute, had filed the Form No. 10 in physical mode on 21.10.2016, which is just four days delayed from the due date. Later on 24.04.2018, the assessee society has also furnished Form No. 10 in electronic mode before the learned Assessing Officer. All these facts are brought on record by the ld. AO in his assessment order itself. The learned Assessing Officer, however, held that since the Form No. 10 has not been filed by the assessee in electronic mode mandated in the Act effective from assessment

year 2016-17, he concluded that the application of income for charitable purposes fell short by Rs.71,75,007/-. Further, learned Assessing Officer also added sum of Rs.7,85,496/- representing capital expenditure being addition to fixed assets which was treated as application of income by the assessee. Finally, he concluded that the assessee had shortly applied sum of Rs.79,50,503/- (71,75,007 + 7,85,496/-) for charitable purposes and treated the same as deemed income and added to the total income of the assessee in the assessment proceeding.

4. The action of the learned Assessing Officer in concluding that the application of income fell short by Rs 71,75,007/- for want of Form No. 10 in electronic mode within due date u/s 139(1) of the Act, was upheld by learned CIT(A). However, with regard to the addition made on account of capital expenditure treated as application of income for charitable purposes in the sum of Rs.7,85,496/- by the learned Assessing Officer, learned CIT(A) set aside the issue to the learned Assessing Officer with a direction to examine the issue afresh regarding difference between capital expenditure as depicted

in the financial statements and the tax audit report in Form No. 10B and arrive at the correct excess amount of capital expenditure claimed by the assessee, if any. Against this direction, nobody is in appeal before us.

5. It is not in dispute that Form No. 10 was electronically filed by the assessee on 24.04.2018 before learned Assessing Officer, which is much before the completion of assessment proceedings by learned Assessing Officer. It is not in dispute that assessment year 2016-17 is first year in which the statute mandated the assessee trust/society to file Form No. 10 in an electronic mode on or before the due date of filing the return of income under section 139(1) of the Act. We find that CBDT has issued Circular dated 20.12.2018 conferring powers on the Principal Commissioner of Income Tax (PCIT) to consider the condonation of delay in filing Form No. 10 in terms of section 119(2)(b) of the Act. Pursuant to this circular, the assessee had indeed made an application before the learned PCIT seeking condonation of delay in filing Form no. 10 in electronic mode. This application was dismissed by the learned PCIT vide

order passed under section 119(2)(b) of the Act dated 13.05.2019 on the ground that there is no reasonable cause adduced by the assessee for belated filing of Form No. 10 in electronic mode. We find that learned CIT(A) has taken cognizance of this order and concluded that he cannot sit in judgment on the decision taken by learned PCIT.

6. In our considered opinion, this is legally wrong in view of the fact that section 119(2)(b) specifically excludes Commissioner (Appeals) as not being an Income Tax Authority for the purpose of section 119(2)(b). Hence, nothing prevents the learned CIT(A) to independently adjudicate the plea of the assessee of delayed filing of Form No. 10 in electronic mode.

7. In any case, we find that the issue in dispute before us is already covered in favour of the assessee by the decision of this Tribunal in case of *Uttrakhand Shiksha Bharti Society Vs. ITO* in ITA No.29/DDN/2021 dated 30.06.2022, wherein it was held as under:

*7. Heard the parties and perused the material available on record. We have given our thoughtful consideration to the rival claims. It is not in controversy that an amendment in section 11 and 13 of the*

*Act was made vide Finance Act, 2015 applicable from 01.04.2016 (A.Y. 2016-17 onwards), whereby filing of Form No. 10 electronically to the Assessing Officer within the due date specified u/s. 139(1) of the Act, has been made as a condition for accumulation of income u/s. 11 and 13 of the Act.*

*7.1 The CBDT while considering the representations received by the Board/Field Authorities qua delay in filing of Form No. 9A and Form No. 10 for A.Y. 2016-17, issued a Circular No. 7/2018 dated 20.12.2018 and empowered the Commissioners of Income Tax to admit belated applications in Form No. 9A and Form No. 10 qua A.Y. 2016-17 where the same are filed after the expiry of time allowed under the relevant provisions of the Act. It was further instructed to the Commissioners of Income Tax, to satisfy themselves that the Assessee was prevented by reasonable cause from filing an application in Form No. 9A and Form No. 10 within the stipulated time.*

*7.2 The Hon'ble Apex Court in the case of CIT vs. Nagpur Hotel Owners Association (supra) allowed the filing of Form No. 10 upto the stage of completion of assessment u/s. 143(3) of the Act and the Hon'ble Allahabad High Court in the case of CIT vs. Panama Chemical Works (2000) 113 taxman 717 also held that filing of the audit report during the assessment proceedings by the Assessee amounts to substantial compliance with the statutory requirement.*

*7.3 The Hon'ble Gujarat High Court in the case of Nimittaben and Bhatt vs. CIT(Exemption) Ahmedabad { R/Special Civil Application No. 8977 of 2022 decided on 22.12.2020} while considering the decision of the same high Court in the case of CIT vs. Gujarat Oil and Allied Industries Ltd., (1993) 201 ITR 325 (Guj) wherein it was held "that the provision regarding furnishing of audit report with the return has to be treated as procedural proviso. It is directory in nature and its substantial compliance would suffice. The benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the Assessee to produce the audit report during the assessment proceedings by assigning sufficient cause." condoned the delay and quashed the impugned orders wherein exemption u/s. 12 was denied on non-filing of Form No. 10 within time prescribed or filing of Form No. 10 belatedly.*

*7.4 No doubt, lack of knowledge of law is not an excuse, however, respectfully following the dictums of the Hon'ble Higher Courts and considering the peculiar facts that the provision for filing of the Form*

*No. 10 was inserted newly and made applicable from A.Y. 2016-17 onwards, which in the instant case is under consideration and therefore the Assessee committed error which prima facie seems to be bonafide and unintentional. Even otherwise the Assessee rectified its mistake by filing form No. 10 electronically along with revised return of income u/s. 139(4) of the Act, which goes to show that the Assessee has used its due diligence and made available the form No. 10 to the Assessing Officer during the assessment proceedings itself and therefore the Assessee can not be penalized. On the aforesaid analyzations, we are of the view that the Assessing Officer should have taken into consideration the form No. 10 filed on dated 24.03.2018. Consequently, the assessment order along with impugned order is set aside and the case is remanded to the file of the Assessing officer for decision afresh by taking into consideration the FORM 10 filed along with the revised return of income, suffice to say while affording proper and reasonable opportunity of being heard to the Assessee.*

*8. In the result appeal filed by the Assessee stands allowed for statistical purposes.”*

7. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, the grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of assessee is allowed for statistical purposes.

**Order pronounced in Open Court on 23<sup>rd</sup> June, 2023**

Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 23/06/2023

RK/Sr.PS

Copy forwarded to:

1. Appellant

2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI  
(Dehradun Circuit Bench, Dehradun)