

**आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE**

**BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**  
**AND**  
**SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER**

आयकर अपील सं. / ITA No.565/PUN/2023  
निर्धारण वर्ष / Assessment Year : 2018-19

Patan Education Society,  
Shikka Mension, Patan S.O.,  
Patan, Satara – 415206

PAN : AAATP8412H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer (Exemption),  
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prateek Jha  
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 08-06-2023  
घोषणा की तारीख / Date of Pronouncement : 28-06-2023

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the assessee against the order dated 31-03-2023 passed by the National Faceless Appeal Centre, Delhi ("NFAC") for assessment year 2018-19.

2. The assessee raised seven grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A), NFAC,

Delhi justified in confirming the order of AO in denying the exemption u/s. 11 of the Act for non-filing of Auditor's Report in Form No. 10B along with the return of income in the facts and circumstances of the case.

3. We note that the assessee is a charitable trust, giving its services through English Medium School at Rampur, Patan in the District of Satara, Maharashtra. The assessee filed return of income on 23-09-2018 for the year under consideration declaring a total income at Rs.Nil. The said return was processed under intimation determining the total income of the assessee at Rs.66,71,515/- u/s. 143(1) of the Act by denying the claim of exemption u/s. 11 of the Act. We note that the said denial was resulted due to non-filing of Auditor's Report in Form No. 10B with the return of income. The said denial has been affirmed by the NFAC, Delhi in its decision in para 7 of the impugned order.

4. Before us, the ld. AR, Shri Prateek Jha contended that the assessee is located in a remote village at Sarata district where there was no facility of internet services to upload voluminous Auditor's Report along with the return of income. Further, he contended that the assessee did not receive hard copies of intimations issued by the CPC, Bangalore and as such the assessee is not aware of the proceedings in denying the claim of exemption u/s. 11 of the Act. The ld. AR contended that non-filing of Auditor's Report is neither intentional nor willful.

5. The ld. AR drew our attention to the decision of Hon'ble High Court of Calcutta in the case of Rai Bahadur Bissesswarlal Motilal Malwasie Trust reported in (1992) 65 Taxman 273 (Cal) and argued that the AO

having found non-filing of audit report ought to have given an opportunity to submit the audit report before the completion of assessment. The ld. AR drew our attention at page No. 2 of the impugned order and submits that the audit report in Form No. 10B was filed on 21-11-2018 which is well within the date of raising intimation u/s. 143(1) of the Act. The filing of Form No. 10B is only procedural in nature but not mandatory as reasoned by the NFAC, Delhi.

6. Further, the ld. AR drew our attention to the decision of Hon'ble High Court of Gujarat in the case of Xavier Kelavani Mandal (P.) Ltd. reported in (2014) taxmann.com 184 (Gujarat) and submits that the benefit of exemption should not be denied merely on account of delay in filing Form No. 10B along with the return of income. The CPC, Bangalore did not give an opportunity to furnish Form No. 10B during the course of proceedings of intimation u/s. 143(1) of the Act. He vehemently argued that it is permissible for the assessee to produce the audit report at a later stage either before the Income Tax Officer or before the NFAC, Delhi. The NFAC, Delhi did not consider at all the existence of Form No. 10B on record.

7. The ld. AR placed on record the order of this Tribunal in the case of Audyogik Shikshan Mandal reported in (2022) 139 taxmann.com 28 (Pune-Trib.) and drew our attention to para 14 of the said order and argued that there was no justification on the part of NFAC, Delhi in not entertaining the audit report in Form No. 10B which is on record before it and without appreciating the same judicially confirmed the intimation passed u/s. 143(1) of the Act mechanically. He argued that the findings of Hon'ble High Courts of Calcutta, Gujarat and this Tribunal is applicable to the

facts on hand and prayed to quash the order of NFAC, Delhi consequently allow the exemption as claimed u/s. 11 of the Act. The ld. DR relied on the order of CIT(A), NFAC, Delhi.

8. We note that the decision of Hon'ble High Court of Calcutta in the case of Rai Bahadur Bissessarwarlal Motilal Malwasie Trust (supra) opined *that the provisions of section 12A are directory in the sense that the Assessing Officer is not powerless to allow an assessee to file the audit report, if not filed along with the return, any time before the completion of the assessment. Further, one has to look at the purpose of the provisions. One has to construe the provision to ensure coherence and consistency to avoid undesirable consequences, taking into account the audit report was made ready after the return was filed, there was no reason why such audit report should not be allowed to be filed before the completion of the assessment.* In the present case, as discussed above, the return was filed on 23-09-2018 and the audit report in Form No. 10B was dated 21-11-2018 was uploaded in the website. The CPC, Bangalore passed intimation denying exemption u/s. 11 of the Act on 04-03-2020 for the reason that no audit report was filed along with the return of income.

9. Further, the decision of Hon'ble High Court of Gujarat in the case of Xavier Kelavani Mandal (P.) Ltd. (supra) as relied on by the ld. AR, we note that the question raised before the Hon'ble High Court of Gujarat, *whether it is permissible to the assessee to produce the audit report at the appellate stage.* The Hon'ble High Court of Gujarat was pleased to note the said issue was already answered in the case of Gujarat Oil & Allied Industries Ltd. reported in 201 ITR 325 (Guj.) which held *that the provision regarding*

*furnishing of audit report along with the return has to be treated as a procedural provision. It is directory in nature and its substantial compliance would suffice.*

10. Further, the ld. AR placed on record the order of this Tribunal in the case of Audyogik Shikshan Mandal (supra), where we find the Tribunal by placing reliance on many decisions vide para 13, held that there was no justification on the part of the CIT(A) in not entertaining the audit report in Form No. 10B which was filed by the assessee before him i.e. without judicially appreciating the reasons that had led to the non-filing of the same at the relevant point of time.

11. After careful consideration of the case laws as relied on by the ld. AR, we note that the assessee therein filed audit report in Form No. 10B belatedly, but however, obtained before filing the return of income u/s. 139 of the Act. In the present case, as it is evident from impugned order vide submissions made through ground No. 3 at page 4 which clearly shows the audit report itself was dated 21-11-2018 which demonstrates that at the time of filing return of income audit report was not ready, consequently we can say the claim u/s. 11 was not quantified. We note that it is a substantial failure of the assessee in getting the books of account audited before prescribed due date and also before filing the return of income. Thus, there is no dispute, the audit report was not ready before filing return of income, in the absence of which the assessee however, claimed exemption u/s. 11 of the Act without auditor's quantification. Thus, ratio laid down by the Hon'ble High Court of Calcutta and Gujarat are not applicable and as such, the finding of ITAT, Pune Benches. Therefore, we

find no infirmity in the order of NFAC, Delhi in confirming the intimation issued by the CPC, Bangalore u/s. 143(1) of the Act denying the exemption u/s. 11 of the Act. Thus, the grounds raised by the assessee fails and are dismissed.

12. In the result, the appeal of assessee is dismissed.

Order pronounced in the open court on 28<sup>th</sup> June, 2023.

Sd/-  
(G.D. Padmahshali)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28<sup>th</sup> June, 2023.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The concerned CIT, Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune