

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'B' BENCH,  
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 1502/DEL/2023 [A.Y. 2016-17]

The I.T.O [Exemption]  
Ward -1(2)  
New Delhi

Vs. Indian Roads Congress  
IRC Bhawan, Kama Koti Marg  
R.K. Puram, Sector - 6  
New Delhi

PAN: AAATI 3600 C

(Applicant)

(Respondent)

Assessee By : Shri Sushil Kumar Gupta, CA  
Department By : Shri Waseem Arshad, CIT- DR

**Date of Hearing : 08.02.2024**  
**Date of Pronouncement : 08.02.2024**

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order dated  
17.03.2023 pertaining to A.Y. 2016-17.

2. The substantive grievance of the Revenue reads as under:

No.	
1	Whether on the facts and circumstances of the case and in law the Ld.CIT(Appeals), NFAC has erred in holding that the assessee is eligible for claiming exemption u/s 11/12 of the Income tax Act, 1961 (hereinafter referred to as 'the Act') which aggregates to Rs.7,18,83,658/- in this case, by accepting the reasons for delay in filing Form 10B by the assessee and directing the A.O. to consider the Form No. 10B and verify the contention of the assessee for the relevant period A.Y. 2016-17 and provide necessary relief, which is in contravention of the point No. 4(ii) of the CBDT Circular No. 2/2020 dated 03.01.2020, circulated vide F.No.197/55/2018-ITA-I, wherein Ld.CIT [the jurisdictional CIT i.e., the CIT(Exemptions), Delhi in this case] has been authorized to admit and dispose the applications for condonation of delay in Filing Form 10B U/s 119(2)(b) of the Act. The time period for such condonation application by the Ld. CIT(E) has been modified vide CBDT Circular No.7/2021 dated 26.03.2021.
2.	The appellant craves leave to add, to alter or amend any grounds of appeal raise above at the time of hearing.
	Total tax effect

3. Briefly stated, the facts of the case are that the assessee filed its return of income on 16.10.2016 declaring income of Rs. 1,42,302/- after claiming deduction of Rs. 7,63,25,506/- u/s 11 of the Income-tax Act, 1961 [the Act, for short].

4. Return was revised on 16.10.2017 declaring income as NIL after claiming deduction of Rs. 7,18,83,658/- u/s 11 of the Income-tax Act, 1961 [the Act, for short]. Return was processed by CPC on 25.9.2018 wherein exemption claimed was denied.

5. The main reason for denying the exemption is that the audit report was not filed alongwith Form No. 10B with the return of income.

6. The assessee preferred an appeal before the ld. CIT(A) and explained that the audit report and Form 10B was obtained by the assessee much before the filing of return of income and since the audit report has been obtained prior to the filing of the return, the assessee is very much eligible for claiming deduction,

7. After considering the facts and submissions, the ld. CIT(A) held that the assessee is a registered charitable trust and has been allowed exemption in earlier years. The only reason for denying exemption is delay in filing audit report, but the audit report was obtained much before the filing of return. The ld. CIT(A), accordingly, condoning the delay allowed exemption.

8. We have given thoughtful consideration of the findings of the ld. CIT(A). The undisputed fact is that the assessee has obtained audit report alongwith Form 10B prior to filing of return of income. In our considered opinion, when an appellate authority is vested with powers to condone delay, discretion of the appellate authority should not be

questioned. We, therefore, do not find any reason to interfere with the discretion of the ld. CIT(A). However, modifying the findings, we direct the Assessing Officer to admit the audit report with Form 10B and decide the issue afresh as per provisions of law.

9. In the result the appeal of the Revenue in ITA No. 1502/DEL/2023 is dismissed.

The order is pronounced in the open court on 08.02.2024.

Sd/-

**[KUL BHARAT]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 08<sup>th</sup> FEBRUARY, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	