

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM**

ITA No. 3533/Mum/2023
(Assessment Year: 2021-22)

Income Tax Officer
6th Floor, MTNL Building
Cumballa Hill, Pedder Road,
Mumbai-400 026
(Appellant)

P K Krishnan Educational Trust
Shree Siddhi Vinayak Engl.
High School, Hariyali village
Vikhroli (E), Mumbai-400 083
(Respondent)

PAN No. AAATP5026F

Assessee by : Shri Mandar Joshi, AR
Revenue by : Shri H.M. Bhatt, DR

Date of hearing: 23.04.2024
Date of pronouncement : 07.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No. 3533/Mum/2023, for A.Y. 2021-22, is filed by the The Income Tax Officer, Ward 2(2), Mumbai [the learned Assessing Officer] against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 10th August, 2023, wherein the appeal filed by the assessee against the order of Central Processing Centre, Bangalore, passed under Section 154 of the

Income-tax Act, 1961 (the Act), dated 7th March, 2023, was allowed partly.

02. Therefore, the learned Assessing Officer is aggrieved with the same and has preferred this appeal raising following grounds of appeal :-

“1. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) was justified in allowing the exemption u/s 11 of the Act ignoring the fact that there was clear cut violation in view the Form 10B (Audit report) not being filed within the extended time for the said A.Y. 2021-22 as stipulated in CBDT circular No. 01/2022 in F.No.225/49/2021/ITA-II dated 11.01.2022? 2. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) was erred in granting relief for the delay for filing of audit report within due date/extended time, when the remedy to deal with such instances lies with CIT(E) as specified in CBDT Circular No. 02/2020 dt. 03.01.2020 under the provision section 119(2)(b) of the Act?”

03. The assessee is a educational trust registered under Section 12A of the Act, who filed its return of income for A.Y. 2021-22 on 14th March, 2022, at a total income of ₹ nil. It was further revised on 29th March, 2022, at the same income. The return of income filed on 14th March, 2022, was processed under Section 143(1) of the Act on 10th August, 2022, under Section 143(1) of the Act. Subsequently, an order under Section 154 of the Act was passed on 7th March, 2023, holding that form No. 10B of the Act and 10BB of the Act has not been filed in time and accordingly, the exemption under Section 11



of the Act was denied and total income of the assessee was determined at ₹4,09,21,499/-.

04. Against this, the assessee preferred the appeal before the learned CIT (A). The claim of the assessee was that assessee filed form no.10B of the Act, prior to the filing of the return and the acknowledgement copy of the form no. 10B of the Act filed, was also shown. Accordingly, the ROI filed by the assessee claiming the exemption under Section 11 of the Act was correct and thus, rectification order passed under Section 154 of the Act was bad. The assessee also submitted that the trust was registered under Section 12AB of the Act and further, for filing form no.10B of the Act, the CBDT extended the date of filing till 25th November, 2022. Thus, the CPC completely ignored these facts. Based on this information, the learned CIT (A) held that , assessee has filed form no.10B of the Act along with original return of income on 14th March, 2022, and further along with the revised return on 29th March, 2022, the order of rectification passed on 7th March, 2023, denying exemption under Section 11 of the Act, for form no.10B and 10BB of the Act not filed in accordance with provision of section 12A (1) (b) of the act, is not correct. The learned CIT (A) considering clause (ii) of explanation to section 44AB which provided that these forms are required to be filed one month prior to the due date of furnishing of return of income under Section 139 of the Act., which was imported in section 12A (1) (b) of the Act, such time limit being directory. Though, the assessee filed those form along with their original as well as revised return is in compliance with the provision of the Act . The ld CIT (A) followed decision of Hon'ble Gujarat High Court in case of Sarvodya Charitable Trust and other judicial precedents.

Therefore, he held that assessee has complied with the condition and exemption under Section 11 of the Act cannot be denied, accordingly, he allowed the appeal of the assessee on these grounds.

05. The learned Departmental Representative vehemently submitted that according to the Provisions of Section 44AB of the Act, as per explanation (ii) the specified date means, the date of one month prior to the date of furnishing of the return of income under Section 139(1) of the Act. This time limit is also imported u/s 12A (1) (b) of the Act. Thus, form no 10 B is also required to be filed one month before the due date of filing ROI. The assessee has furnished form no.10B of the Act along with the return of income but not one month prior to the due date of filing of the return of income. For violation of these conditions, the CPC has held that assessee is not entitled to exemptions under Section 11 of the Act. He submitted that the learned CIT (A) has incorrectly relied upon the decision but ignoring statutory conditions and allowed the claim of the assessee, which is not correct.
06. The learned Authorized Representative submitted that assessee has filed form No. 10B along with the original return and revised return which is available before the CPC, therefore, CPC showing that assessee has not filed form no.10B of the Act is not correct. He further stated that the requirement of Act is to file form no.10B on or before the due date of filing return of income. Further, The Id CIT (A) has relied up on the decision of Honourable High court holding that such time limit is directory in nature and benefit of section 11 and 12 cannot be denied. Thus, there is no error in the order of the learned Commissioner of Income-tax (Appeals).



07. Learned authorised representative also submitted that it has also filed an application for condonation of delay in filing form number 10 B for assessment year 2021 – 22 with CIT (exemption) and follow-up details were also submitted on 29 March 2024. CIT (exemption) is also issued a notice on 2 April 2024 which was also responded to by the assessee.
08. We have carefully considered the rival conditions and perused the orders of the lower authorities.
09. Fact of the case is that assessee is an educational trust which file its return of income for assessment year 2021 – 22 on 14/3/2022 declaring total income at Rs. Nil. This return was revised on 29/3/2022 at Rs. Nil. Original return of income filed on 14/3/2022 was processed under section 143 (1) of The Act on 10/8/2022. This return was rectified on 7/3/23 under section 154 of the act for the reason that form number 10 B was not find in time and claim of exemption under section 11 of the act was rejected bringing to tax income of ₹ 40,921,419/ –.
010. Provision of section 12 A describes the conditions for applicability of section 11 and 12. As per provisions of section 12 A (1) (b) of the provided that

"(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation below sub-section (2) of section 288 before

the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed;"

011. thus it is clear that form number 10 B is required to be filed on or before specified date. Such date is defined under explanation (ii) of section 44AB of the act as under:-

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means ⁶⁵[date one month prior to] ⁶⁶[the due date for furnishing the return of income under sub-section (1) of section 139].]

012. The learned CIT (A) has allowed the claim of the assessee for following reasons:-

"4. I have considered the ROI filed, order u/s 143(1) of the Act, order u/s 154 of the Act, grounds of appeals raised by the appellant, submissions made by the appellant and material on record. In ground no. 1 is against the rejection of exemption u/s 11 of the Act. The appellant trust is registered u/s 12A vide registration number was TR-28707 on 24.12.1991. The appellant also got provisional registration u/s 12A vide order dated 06.04.2022 which is effective for the A.Ys. from 2022-23 to 2024-25. On consideration of the ROI filed, Form 10B filed, orders u/s 143(1) and u/s 154, following picture emerges in the case –



	<i>ORIGINAL</i>	<i>REVISED</i>
<i>Extended due date of filing of ROI</i>	<i>15.03.2022</i>	<i>31.03.2022</i>
<i>Date of filing of ROI</i>	<i>14.03.2022</i>	<i>29.03.2022</i>
<i>Date of filing of Form No. 10B</i>	<i>14.03.2022</i>	<i>29.03.2022</i>
<i>Date of processing of ROI u/s 143(1)</i>	<i>10.08.2022</i>	<i>10.08.2022</i>
<i>Date of rectification order u/s 154</i>	<i>07.03.2023</i>	<i>--</i>

4.1 In the order u/s 154 dated 07.03.2023, the reason for rejection of exemption u/s 11 of the Act has been stated to be "Suomoto for form 10b/10bb not filed." The screenshot of the reason is extracted and placed below for the sake of clarity -

4.2 As per the provisions of section 12A(1)(b) of the Act, where the total income of the trust or institution as computed under the Act without giving effect to the provisions of section 11 and 12 exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts of the trust or institution for that year have to be audited by the Chartered Accountant before the specified date referred to in section 44AB and the person in receipt of the income furnishes by that date the report of such audit in Form No. 10B. As per explanation (ii) to section 44AB states that the specified date in relation to the accounts of the assessee of the previous year relevant to assessment year, mean the date one month prior to the date of furnishing the ROI u/s 139(1).

4.3 The appellant has filed Form 10B in both the cases i.e. filing of original ROI and the filing of Revised ROI on the same date of filing of ROI. The appellant claimed that it is holding valid registration u/s 12A of the Act and had complied with the requirement of the Act by way of filing Form 10B and hence it cannot be denied exemption u/s 11 of the Act. The appellant relied on the following caselaws on the issues that though s. 12A(1)(b) provides that the exemption u/s 11 will be available only if the accounts are audited and audit report “furnished along with the return”, the same is not mandatory but is directory and when the requirements of law are complied with, exemption u/s 11 of the Act cannot be denied.

i. Sarvodaya Charitable Trust Vs ITO (Exemption) (2021) (125 com 75) (Gujarat) wherein it has been held that - exemption u/s 11 cannot be denied for delay in filing Form No 10B. Allowing the petition the Court held that since Assessee was a public charitable trust for past 30 years who substantially satisfied condition for availing benefit of exemption, Assessee could not be denied exemption merely on bar of limitation to submit Form no. 10, especially, when legislature had conferred wide discretionary powers to condone such delay on authorities concerned.

ii. CIT VS Hardeodas Agarwalla Trust (1992) (198 ITR 511) (Calcutta) wherein it has been held that - though s. 12A (1)(b) provides that the exemption u/s 11 will be available only if the accounts are audited and audit report “furnished along with the return”, the same is not mandatory but is directory. The audit report in Form 10B affirms the statements contained in the balance sheet and income-expenditure statement and is intended to enable the AO to allow the exemption by relying on the audit report and without having to ask the Assessee to furnish supporting documents in support of the claim. Such a procedural provision cannot be construed as mandatory because the defect can be cured at a subsequent stage. It is not the intention of the Legislature that the exemption u/s 11 should be denied merely because the audit report was not filed with the return. (ii) On facts, as the trust had filed, with the return, the audit report required to be given

under the Bombay Public Trust Act, the claim that the audit report in Form 10B had also been obtained but had been omitted to be filed with the return was acceptable. Also, the AO was not justified in rejecting the retraction of the trustee. The AO did not controvert the averments in the retraction affidavit nor did he cross examine the trustee. Accordingly, the claim for s. 11 exemption was upheld.

iii. Shree Bhairav Seva Samiti v. Income-tax Officer (Exemption) (ITA NO. 2225/MUM/2022) [A.Y. 2016-17] (Date of order – 08.12.2022) wherein it has been held that - We find that the Hon'ble jurisdictional High Court in case of CIT v. Xavier Kalavani Mandal (P.) Ltd. (supra) held that in order to claim exemption under section 11, the Assessee can file audit report in Form 10B even at later stage either before the Assessing Officer or before appellate authority by showing a sufficient cause. Further, Hon'ble jurisdictional High Court decision in case of Sarvodaya charitable Trust v. ITO (Exemption) (supra) also held that where the Assessee is a public charitable trust registered under section 12A of the Act and substantially satisfied condition for availing benefit of exemption as a charitable could not be denied exemption, the Assessee merely on bar of limitation in furnishing audit report in Form 10B. Considering the aforesaid and legal discussion, we find that though the Assessee has not filed any return of income at the time, however, it was available before the ld. CIT (A) as it was uploaded much

before filing application under section 154. Therefore, respectfully following the decisions of Hon'ble jurisdictional High Court in case of CIT v. Xavier Kalavani Mandal (P.) Ltd. (supra) and in Sarvodaya charitable Trust v. ITO (Exemption) (supra), we find that the Assessee has complied the procedural requirement, therefore, the Assessing Officer/CPC is directed to verify the claim of the Assessee and grant necessary deduction under section 11 of IT Act. In the result, the appeal of the Assessee is allowed for statistical purposes."

As in the present case also the Assessee has complied with the procedural requirement of obtaining and filing Form 10B, therefore, respectfully following the aforesaid decision of the Coordinate Bench of the Tribunal, the Assessing Officer is directed to decide the claim of the Assessee under section 11 on merits, after accepting the Form 10B filed by the Assessee. Accordingly, grounds raised by the Assessee are allowed for statistical purposes.

iv. Shri Shyam CharanSewa Trust Vs DCIT (I.T.A. No.214/Asr/2022) (A.Y. 2018-19) wherein it has been held that - We respectfully relied on the order of the Jurisdictional High Court for adjudication the issue. The filling of Form No. 10B is a procedural direction in the proviso. The Assessee is registered u/s 12A and followed the direction as per the Act during filing of return. For nonfiling of Form No. 10B with the return is just a failure of procedural system. Form 10B was filed within



stipulated time for removal of defect in the return. Here we respectfully refer the order of Hon'ble High Court of Gujarat in the case of Sarvodaya Charitable Trust vs. Income Tax Officer. (Exemption), [2021] 125 taxmann.com 75 (Gujarat). Full case law is enclosed for your reference. In this case also, the appellant was allowed the exemption u/s 11 and have relied on the case laws mentioned in the above paragraph and concluded that denial of exemption even if the form 10B is filed at a later stage is not justified. Thus the Assessee pleaded based on various judicial pronouncements that it is a sufficient compliance with the procedure, if the Audit Report is filed at any stage before the completion of assessment or even at the appellate stage. Thus the CPC cannot deny the exemption available u/s. 11 of the Act. The Ld. CIT(A) accepted the contention of the Assessee and held that the Assessee Trust is eligible to avail the exemption u/s. 11 of the Act as claimed in the Return of Income for the Assessment Year 2021-22, though the Assessee has filed Form No. 10B at a later stage. However in our case the form 10B is filed and whereas the order u/s 154 clearly mentions that the appellant has not filed the form 10B and thereby denied the exemption u/s 11 of the Income Tax Act, 1961. Therefore order issued should be quashed and the exemption should be granted to the appellant and the demand raised by virtue of the order issued u/s 154 should be deleted. Thus it is requested your good self to kindly consider the above contention, judgments and pronouncement that the

demand created for non-filing of form 10B is incorrect and demand raised to be deleted.

4.4 I agree with the contentions of the appellant. The appellant trust is registered u/s 12A of the Act, it had filed original and revised ROI in time and also Form 10B on the dates of filing of the ROI. Thus, the appellant had complied with the requirements of furnishing of Form 10B. I have gone through the caselaws relied upon by the appellant and came to the conclusion that the appellant cannot be denied exemption u/s 11 of the Act on the facts of its case. The AO is, therefore, directed to allow exemption u/s 11 of the Act to the appellant. Accordingly, the ground no. 1 is allowed.”

013. The impugned assessment year is assessment year 2021 – 22 , the learned CIT – A has considered the issue in earlier assessment year. However, CBDT has extended due date of filing of the return of income my press release dated 9/9/2021 as under :-

5. The duedate of furnishing of Return of Income for the Assessment Year 2021-22, which is 30th November, 2021 under sub-section (1) of section 139 of the Act, as extended to 31st December, 2021 *vide* Circular No.9/2021 dated 20-5-2021, is hereby further extended to 28th February, 2022;
6. The duedate of furnishing of belated/revised Return of Income for the Assessment Year 2021-22, which is 31st December, 2021 under sub-section (4)/sub-section (5) of section 139 of the Act, as extended to 31st January, 2022, *vide* Circular No.9/2021 dated 20-5-2021, is hereby further extended to 31st March, 2022;



014. Therefore, the extended time limit available to the assessee for the due date of filing of the return of income was 28 February 2022. Admittedly assessee filed return of income on 14/3/2022 and also furnished form number 10 B along with that. Therefore, the due date for filing of form number 10 B was one month prior to the due date of filing of the return of income i.e. 31 January 2022. As, the due date of filing of the return have been extended by the CBDT, the delay caused in filing form number 10 B is minimal and also due to the uncertainty of the due date of filing of the return which is duly extended by CBDT. Identical issue arose before the coordinate bench in case of Kedar Nath Saraf Charity Trust [2024] 161 taxmann.com 671 (Kolkata - Trib.) albeit for assessment year 2021 – 22 wherein coordinate bench held as under:-

4.1. It is an admitted fact that from March, 2020 to March, 2022, country was passing through Covid Pandemic and there were various restriction on the movements of the citizens and carrying out of the normal official works was hindered. It is also an accepted fact that many changes have been brought into the Act regarding procedure of filing of income-tax return as well as audit reports and certain technical glitches have been faced time and again. Also on account of change of the utility of furnishing the reports, the forms and change in the due dates have given rise to delay in furnishing of details and documents with the revenue authorities. Considering these aspects, CBDT firstly came up with a Notification dt. 03/01/2020 authorising the



Commissioners to admit applications of condonation of delay in filing Form No. 10B for Assessment Year 2018-19 and subsequent Assessment Years, where there is a delay of up to 365 days. Subsequently on 19/07/2022 i.e., after the end of the Covid Pandemic restrictions again a Circular 16/2022 was issued where the delays in filing of Form 10B beyond 365 days but upto three years were also directed to be considered for admitting the application for condonation of delay. This Circular in itself shows that the Income-tax Department was aware about the technical glitches and the problems faced by the tax-payers in furnishing various types of Forms including Form No. 10B is with regard to the furnishing of audit report in case of Trusts and Societies. In the instant case since, delay is merely 28 days, we find that the said delay deserves to be ignored in larger interest of justice. The assessee is thus entitled to claim exemption u/s 11 of the Act made in the Income-tax return e-filed by it. We further find support from the decisions of this Tribunal in the case of *Bangarh Educational Welfare Trust v. ITO (Exemptions)* in ITA No. 496/Kol/2021; Assessment Year 2018-19, order dt. 02/01/2022, wherein also similar issue was raised for Assessment Year 2018-19 and the return was filed within time limit prescribed u/s 139(1) of the Act but there was a delay in furnishing of the audit



report on Form 10B and this Tribunal after considering the facts of the case as well as judicial precedents allowed the benefit of Section 11 & 12 of the Act to the assessee."

015. Coordinate bench held that up to March 2022, the country was passing through pandemic. The due dates for filing of the return of income as well as compliance made by the assessee also falls during that period. In view of this, we find that the delay caused in filing of number 10 B deserves to be condoned. Accordingly, as indicated above, the learned CIT – A was correct in allowing the appeal of the assessee.

016. In the result, appeal filed by the learned assessing officer is dismissed.

Order pronounced in the open court on 07.05. 2024.

Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 07.05. 2024

Sudip Sarkar, Sr.PS/ Dragon

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai