

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “A” BENCH, BANGALORE**

**Before Shri Chandra Poojari, Accountant Member  
and  
Shri Prakash Chand Yadav, Judicial Member**

<b>ITA No. 921/Bang/2024</b> (Assessment Year: 2022-23)		
Gopala Gowda Shanthaveri Memorial Hospital Trust 870, T. Narasipura Road Ittigegud SO, Nazarbad Mysore 570010 PAN – AAATG5729L (Appellant)	vs.	The Income Tax Officer (E) 1 Room No. 209, II Floor 21/16, Aayakar Bhavan Residency Road, Nazarbad Mysore 570010 (Respondent)

Assessee by:	Shri K. Sheshadri, CA
Revenue by:	Ms. Neha Sahay, JCIT-DR

Date of hearing:	25.06.2024
Date of pronouncement:	25.06.2024

**ORDER**

**Per: Prakash Chand Yadav, J.M.**

This appeal filed by the assessee challenges the DIN & order No. ITBA/NFAC/S/2003-24/10633817118(1) of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 26.03.2024 passed under Section 250 of the Income Tax Act, 1961 (the Act) in respect of Assessment Year (AY) 2022-03.

2. The brief facts of the case are that the assessee trust could not upload Form 10B, necessary for claiming exemption of s. 12A of the Act on time. The facts of the case reveal that the last date for uploading Form 10B was 07.10.2022. However, the assessee had uploaded the audit report, i.e., Form 10B on 14.10.2022, which means there was a delay of 7 days in uploading Form 10B. Observing this the CPC, Bangalore (Assessing Officer) (AO) has

not allowed the expenses claimed by the trust for carrying out the charitable activities. It is pertinent to note that assessee has also filed an application for condonation of delay before the Concerned CIT(E) and the same was rejected by the CIT(E) vide order dated 15.11.2023.

3. Aggrieved with the order of the AO the assessee filed appeal before the CIT(A) and contended that the AO is erred in ignoring the circular of CBDT NO. 16/2022 dated 19.07,2022, extending time limit for filing Form 10B report for assessment year 2018-19 or for any subsequent assessment year. Alternatively, the Id. Counsel for the assessee argued that the AO has grossly erred in disallowing all the expenses while processing the return of income. However, the learned CIT(A) relying on the provisions of section 12A(1)(b) and rule 17B dismissed the appeal of the assessee holding that filing of Form 10B is mandatory.

4. Now the assessee has further come up in appeal before us and reiterated the submissions made before the lower authorities.

5. After considering the rival submission we observe that CBDT vide its circular no-19/2021 has delegated the power to condone the filing of audit reports with the concerned CIT(E). In the case at hand the assessee has duly filed an application praying to condone the delay, but remain unsuccessful. Now the issues which require consideration is **a)** whether non filing of any of Form 10B, would vitiate the entitlement of assessee for the benefits of section 11 and 12 **b)** whether AO can tax the entire receipts in such a situation. In respect of first issue, we find that recently the Ahmadabad Bench of the ITAT in the case of Gagan Deep Charitable Trust in ITA Number 555/Ahd/ 2023 has held that filing of Form 10B report is a mere a procedural lapse. We are conscious that decision of Gagan Deep is rendered by SMC Bench. However the SMC Bench in turn has followed the decisions of Division Benches of the

Ahmadabad in the cases of Hari Gyan Parcharak Trust ITA No 252/Ahd/2021 & Shir Visha Oswal Jain Sewa ITA no 59/Ahd/2022.

6. We think it appropriate to quote the observation made by Ahmadabad ITAT in the case of Hari Gyan Pracharak(Supra).

“7. We have carefully considered the order passed by the authorities below and the judgment passed by the Hon’ble Jurisdictional High Court in case of Association of Indian Panelboard Manufacturer (supra) on the issue involved. While passing order in favour of the assessee, the Hon’ble Jurisdictional High Court has been pleased to observe as follows:

*“5.6 The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy. 5.7 The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above. 6. The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee. 6.1 The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report along with return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.*

*6.2 Accordingly the substantial questions of law have to be decided in favor of the appellant.*

*7. They are accordingly decided. The appeal is allowed.”*

8. In view of the ratio laid down by the Hon’ble Jurisdictional High Court holding that non filing of Audit Report along with return of income is a procedural omission and cannot be an impediment in law in claiming the exemption, we allow this appeal condoning the delay in filing the Audit Report in Form No. 10B. However, we also upon condoning the delay, restore the matter to the file of the Ld. CIT(A) to pass order in regard to the exemption claimed by the assessee strictly in accordance with law”

7. Perusal of the above decision would show that coordinate Bench of Ahemdabad in the case of Hari Gyan Prachark has followed the verdict of Hon'ble Gujrata High Court, in the case of Association of Indian Panelboard Manufacturer Tax Appeal No. 655 of 2022. No contrary decisions has been brought to the notice of Bench by the Ld DR. Hence, respectfully following the above view we hereby condone the delay for filing Form 10B in the impugned case.

8. With respect to the issue of taxing of entire receipt, due to procedural lapse it is worthy to note that the coordinate bench in the case of HMV Educational Cultural & Social Trust v. ITO – ITA No. 9/Bang/2023 has held that only income portion net-off all the expenses is to be taxed not the entire receipt.

9. In view of the above, we hereby condone the delay in respect of filing the Form 10B and restored the matter to CIT(A) to allow the benefits of section 11 in accordance with law.

10. In view of the above, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 25<sup>th</sup> June, 2024.

Sd/-  
**(Chandra Poojari)**  
**Accountant Member**

Sd/-  
**(Prakash Chand Yadav)**  
**Judicial Member**

Bengaluru, Dated: 25<sup>th</sup> June, 2024  
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Bangalore*
5. *Guard File*

*By Order*

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*Assistant Registrar*  
*ITAT, Bangalore*