

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER
ITA No.640/MUM/2024
(Assessment Year :2021-22)**

Indian Analytical Instruments Association A-205, Solaris-1, 2 nd Floor, Saki Vihar Road, Marol, Powai, Mumbai-400072	Vs.	Centralised Processing Centre/Income Tax Officer (Exemption), Ward I(3) Piramal Chamber, Lalbaug, Parel, Mumbai-400012
PAN/GIR No.AAATI0718D		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajesh Athavale
Revenue by	Ms. Kakoli Ghosh
Date of Hearing	25/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 05/01/2024 passed by Addl./JCIT(A)-3, Chennai in respect of adjustment made u/s.143(1) for the A.Y.2021-22.

2. The only grievance of the assessee is that the exemption u/s.11 has been denied to the assessee on the ground that Form 10B has not been filed within the due date u/s.29 prescribed under the Act.

3. Before us, ld. Counsel for the assessee submitted that the due date for filing of return of income for A.Y. 2021-22 was 15/03/2022 as extended by the CBDT due to Pandemic of Covid-19. He drew our attention to the audit report, Form 10B which were obtained and signed on 15/07/2021. He further pointed out that assessee had tried to e-file the audit report on the ITBA portal on 11/02/2022. However, due to technical glitches, the Form 10B could not be uploaded and in support, he has also given the screen shot. Assessee then tried to upload the audit report again however, there was an error showing **“invalid JESON”**. He pointed out that assessee first tried to upload the form on 04/02/2022 then again on 11/02/2022. The Chartered Accountant then uploaded the Form 10B, however, when assessee had to authenticate the said submission made by the CA and tried to click on the portal, then there was an error showing **“something went wrong please try again after some time.”** Thereafter, assessee kept on trying to authentic the upholding for Form 10B by the Chartered Accountant, but failed. Thereafter, assessee immediately put the grievance to the ITBA portal on 15/03/2022 wherein assessee clearly stated that, **he is trying to upload the Form10B for AY 21-23 since 30 days, and since today is last day and while uploading same error is appearing on screen as invalid JESON, we are not able to upload e-form. We are uploading herewith PDF copy of physical form no.10B for AY 2021-22.** On that day assessee physically filed scanned pdf copy of Form 10B on the portal. Despite that uploading of Form 10B, portal has not

acknowledged the filing which assessee tried many ways to upload it prior to the due date of return of income i.e.15/03/2022.

5. Since on the system showed form not filed within due date it automaticall denied exemption u/s 11 and made the adjustment u/s 143(1). Aggrieved by the adjustment made by the CPC u/s. 143(1), assessee filed application for condonation of delay u/s. 119(2)(b) of the Act wherein, power to condone the delay has been given to Pr. Chief Commissioner and Commissioner of Income Tax. However, the ld. PCIT (Exemption) has refused to condone the delay after observing and holding as under:-

“Subject: Condonation under section 119(2)(b)-Order

The assessee filed application for condonation of delay in filing Form No.10B for A.Y. 2021-22 on 13.10.2022. The assessee filed its Return of income for A.Y. 2021-22 on 25.02.2022 u/s 139(4) the I.T. Act.

2. *From the perusal of submission made by the assessee and details available on record, it is noted that that assessee trust has not filed Form No.10B for A.Y. 2021-22 electronically. As per Rule 12(2) r.w. Rule 178 of the I.T. Rule, the assessee is required to furnish audit report specified under clause (b) of subsection (i) of Section 12A of the I.T. Act. The failure to fumish such report in the prescribed form along with the Return of Income results in disentitlement of the trust or institution from claiming exemption under section 11 and 12 of the Act. The question of condonation of delay arises only when Return of Income alongwith Form 10B are being furnished electronically and in the instant case, assessee has not filed Form No.10B for A.Y.2021-22 and hence there is no question of condonation of delay.*

3. *It is clear that the applicant trust has failed to fulfill the basic condition laid down by the law for condonation of delay. In view of the above, the application seeking condonation of delay in*

filing Form No.10B for AY 2021-22 is not maintainable. For statistical purposes, this application is rejected.

6. Now here is the situation where the powers has been given to the ld. PCIT to look into the grievance of the tax payers and if there is some technical glitch on the e-filing portal or ITBA portal of the department, instead of resolving the grievance, ld. PCIT in a very mechanical manner, has rejected the condonation even not bothering to look into efforts made by the assessee. Instead of realising that it is department's failure or sysrem failure due to technincal glitch, he perpetuted the hardship by refusing to look into the facts. Even the ld. JCIT(A) has stated that since CIT(Exemption) has rejected the assessee's application, therefore, he cannot condone the delay. We agree, though there is no power to the appellate authority to condone such delay which has been specifically given to the Income Tax authorities u/s.119 but such an exercise of power should be done in a justifiable manner and with responsibility and not making the assessees suffer, specifically under these facts and circumstances when there is no fault of the assessee. Assessee cannot be put into jeopardy to go into litigation for such petty matters. Accordingly, we direct the assessee to once again approach the ld. PCIT (Exemption) for condoning the delay after examining all these facts brought on record that assessee has made all the efforts and have even uploaded the PDF form in the portal on 15/02/2022 while filing its grievance. The ld. PCIT should examine its condonation this time more in a sympathetic manner looking to the fact that there was no fault on the part of the assessee and the whole fault

prima facie appears to on the e-filing portal and ITBA portal due to technical glitches and efforts should be made to resolve the problems and assessee should not be penalized in such a manner that a Charitable Institution is denied exemption u/s.11. Since Tribunal does not have authority and power to condone the delay, accordingly, the appeal of the assessee is dismissed in limine subject to out observations made above.

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

Order pronounced on 28th Jun, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 28/06/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai