

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "D", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTNAT MEMBER

ITA No.118/Ahd/2024 (By Revenue)

And

CO No.8/Ahd/2024 (in ITA No.118/Ahd/2024 - By Assessee)

Assessment Year : 2022-23

The Income Tax Officer (E) (Ward) Race Course Vadodara 390 007	Vs	Takshshila Foundation (NGO) B/15, Suhas Society Harni Road Karelibaug, Vadodara - 390 018 (Gujarat)
PAN:AAATT 5363 K		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent &amp; Cross Objector)</b>
Assessee by :	Shri D.K. Parikh, AR	
Revenue by :	Shri Atul Pandey, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 25/06/2024

घोषणा की तारीख /Date of Pronouncement: 02/07/2024

**आदेश/ORDER**

**PER SHRI MAKARAND V. MAHADEOKAR, AM:**

This appeal by the Revenue arises from the order of the Office of Commissioner of Income Tax (Appeals), Addl/JCIT (A)-6, Chennai [hereinafter referred to as "CIT(A)"] dated 08-12-2023, for the Assessment Year (AY) 2022-23 against the intimation/order passed u/s. 143(1) of the Income Tax Act, 1961 ("the Act" in short) by CPC, Bengaluru and the Assessee is in Cross Objection thereof.

**Facts of the case:**

2. The assessee is a charitable Trust registered u/s.12(1)(ac)(i) of the Act, perusing educational activities running schools, etc. The assessee was regularly filing its return as a charitable Trust claiming exemption under sections 11 & 12 of the Act and the same were accepted in the past. AY 2022-23, the assessee filed its return of income declaring NIL income.

2.1. The return was processed by CPC, Bengaluru vide Intimation u/s. 143(1) of the Act dated 31.03.2023, disallowed entire application (expenses) of Rs.1,55,49,359/- by computing total income at Gross receipts for Rs.1,69,96,054/- and raised demand of Rs.69,25,370/- including interest Rs. 10,58,885/- and after credit for TDS of Rs. 7,444/-.

2.2. The CPC, Bengaluru disallowed the claim of exemption u/s.11 of the Act concluding that the assessee failed to e-file the Audit Report in form 10B one month prior to the due date of filing the return u/s.139(1) of the Act. The assessee filed rectification application u/s.154 of the Act against order/intimation u/s.143(1) of the Act. CPC, Bengaluru, passed an order u/s.154 of the Act again rejecting the claim of exemption u/s.11 on account of assessee's failure to furnish audit report in form 10B and raised the demand of Rs. 68,66,710/-.

2.3. The assessee preferred an appeal against the order/intimation u/s. 143(1) of the Act. The Ld.CIT(A) passed an order u/s.250 of the Act rejecting the claim of assessee to allow exemption u/s.11 stating that the provisions of section 12A(1)(b) of the Act makes it compulsory and unless the Audit Report in Form 10B is filed before the prescribed time limit, the

benefit of exemption cannot be granted. However, the Ld.CIT(A) accepted the alternative ground of assessee that the assessee is eligible for exemption u/s.10(23C)(iiiad) of the Act, as it is operating educational institutions and its gross receipts are less than Rs.5 Crore for the Financial Year (FY) 2021-22.

3. Aggrieved by the order of the CIT(A), the Revenue is in appeal before us and the Assessee filed a cross objection against the same. The grounds raised by both the parties are as follows:

**Grounds raised by Revenue in the appeal:**

- “1. Whether, on the facts and circumstances of the case, Ld.CIT(A) has erred in admitting alternate claim of assessee u/s.10(23C)(iiiad) without providing opportunity of hearing to the Assessing Officer.
2. Whether, on the facts and circumstances of the case, Ld.CIT(A) has erred in allowing the exemption u/s 10(23C)(iiiad), when as per memorandum of Association (MOA) of trust, it is not existing solely for educational purpose, which is against the principle laid down by Hon'ble Supreme Court of India, New Delhi in the case of New Noble Education Society Vs. Chief Commissioner of Income tax in [2022] 143 taxmann.com276(SC).”

**Grounds raised by Assessee in the Cross Objection:**

- “1. The Id. CIT (A) erred in law and on facts in not allowing the ground of appeal regarding alleged delay in filing Form No: 10B which was uploaded but due to technical hitch and system problem same could not be downloaded and that exemption claimed u/s 11(1)(a) ought not to be rejected.
2. The Id CIT (Appeals) also erred in law and on facts in not appreciating that even if Form No: 10B is not downloaded in time, filing of form No: 10B is not mandatory but procedural requirement and hence exemption claimed u/s 11/12 of IT Act ought to have been allowed. It be so allowed now.
3. The Id CIT(Appeals) also erred in law and on facts in not accepting the alternative ground of appeal that it is the net income after deduction of expenses/ applications of income and hence addition of gross receipts was not justified. It be so held now.

4. *The Id CIT (Appeals) ought to have decided and allowed appeal in toto by allowing each of the grounds of appeal in favour of the respondent.*

*The respondent craves leave to add, amend, edit, delete, change or modify all or any of the ground before or at the time of hearing."*

4. First, we take up the grounds of Cross Objection filed by the assessee.

4.1. The Ld.Counsel for the assessee during the course of hearing pointed out that the Auditor of assessee Shri Jyotindra Ochhavlal Parikh filed the Form 10B on 06-10-2022 and 07-10-2022 as per transaction ID FOS001767378261 and FOS001772204246 respectively, however, the same could not be accepted by the assessee. The assessee raised grievance with the CPC which provided some resolution and closed the grievance, but the assessee was not able to complete the process due to some technical issues. The Ld.Counsel for the assessee also submitted the copy of screenshots and grievance acknowledgement number 8808808 dated 07-10-2022. The assessee also submitted these documentary evidence to the Ld.CIT(A), but the Ld.CIT(A) without considering these facts concluded that assessee has not furnished Form 10B before the time limit prescribed under the Act.

4.4. The Ld.Counsel for the assessee produced before us the copy of Form 10B duly signed by the auditor which clearly gives amount of income of the Financial Year 2021-22 applied to charitable purposes in India at Rs.1,69,96,053/-. He also produced copies of financial statements from which we could verify that the gross receipts of the assessee-trust and expenses claimed as application of income.

4.5. The Ld.Counsel for the assessee placed reliance on decision of Co-ordinate Bench in case of Income Tax Officer(E), Bhavnagar Vs. Ramji Mandir Religious and Charitable Trust (ITA No.374/Ahd/2023 dated 20-12-2023).

5. The Ld.Department Representative (DR), on the other hand, contented that the Ld.CIT(A) has erred in admitting alternate claim of assessee u/s.10(23C)(iiiad) of the Act without providing opportunity of hearing to the Assessing Officer.

6. We have heard the contentions of rival parties and perused the material available on record. In our considered opinion, the Ld.CIT(A) erred in admitting the alternate claim of the assessee under section 10(23C)(iiiad) of the Act without providing an opportunity of hearing to the Assessing Officer. The Ld.CIT(A) erred in not allowing the ground regarding the alleged delay in filing Form 10B, which was uploaded, but not downloaded due to technical issues. The Ld.CIT(A) erred in not appreciating that the filing of Form 10B is not mandatory but a procedural requirement, and thus, the exemption claimed under sections 11/12 of the Act should be allowed.

6.1. We have considered the reliance placed by the assessee on the decision of the Co-ordinate Bench in the case of Ramji Mandir Religious and Charitable Trust (supra), which held that procedural requirements like filing Form 10B should not override the substantive claim of exemption, when the assessee has substantially complied with the requirements. The

relevant portion of the said decision of the Tribunal is reproduced hereunder:

*“4.3.4 The question of delayed filing of audit report, after the return of income has been filed, has been scrutinized by various courts of law. It has generally been held that if the assessee submits the audit report before the assessing officer during the assessment proceedings, the assessee should not be denied the benefit of claiming exemption under section 11 and 12. Some of the case laws are detailed below.*

*(i) In the case of CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 195 ITR 825, the Calcutta High Court has affirmed that the requirement of filing the audit report with the return is merely a procedural requirement, and that exemption cannot be denied so long as the report is available to the assessing officer before the completion of assessment.*

*(ii) In the case of Calcutta Management Association vs. VTO (1992) 42 ITD 62, the Calcutta bench of the Tribunal held that the Audit Report can even be filed at the time of appeal before the Commissioner (Appeals).*

*(iii) On a similar issue the Hon`ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners Association [2001] 114 Taxman 255 (SC) held -*

*It is abundantly clear from the wordings of sub-section (2) of section 11 that it is mandatory for the person claiming the benefit of section 11 to intimate to the assessing authority the particulars required, under rule 17 in Form No. 10. If during the assessment proceedings the Assessing Officer does not have the necessary information, the question of excluding such income from assessment does not arise at all. As a matter of fact, the benefit of excluding this particular part of the income from the net of taxation arises from section 11 and is subject to the conditions specified therein. Therefore, it is necessary that the assessing authority must have this information at the time it completes the assessment. In the absence of any such information, it will not be possible for the assessing authority to give the assessee the benefit of such exclusion and once the assessment is so completed, it would be futile to find fault with the assessing authority for having included such income in the assessable income of the assessee. Therefore, even assuming that there is no valid limitation prescribed under the Act and the Rules, even then it is reasonable to presume that the intimation required under section 11 has to be furnished before the assessing authority completes the concerned assessment because such requirement is mandatory and without the particulars of the income, the assessing authority cannot entertain the claim of the assessee under section 11. Therefore, compliance of the requirement of the Act will have to be any time before the assessment proceedings.*

4.3.5 In the instant case the appellant/assessee e-filed the Form 10 on 13-3-2020. The above fact is confirmed during the appellate proceedings from CPC 2.0 portal. As per the case laws mentioned above, the Hon`ble Courts took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the audit report and it is permissible for the assessee to produce the audit report at a later stage, either before the AO or the appellate authority. This view has been reiterated by the Hon`ble Court in the recent judgement of Hon`ble Gujarat High Court in the case of Sarvodaya Charitable Trust v. Income-tax Officer. (Exemption) [2021] 125 [taxmann.com](https://www.taxmann.com) 75 (Gujarat).

4.3.6 In view of the above discussion, I am of the view that the assessing officer erred in not allowing deduction to the appellant/assessee for the amount accumulated under the provisions of section 11 of the Income-tax Act, 1961. It was merely a procedural lapse on part of assessee to not file Form 10 along with return of income. The appellant/assessee uploaded the audit report at a later stage after filing the return of income. The benefit of exemption under section 11 cannot be denied merely on account of delay in furnishing the audit report. Thus, the assessing officer is directed to allow the claim of the appellant after due verification as per the IT. Act, 1961. Hence, grounds no. 2 to 4 raised by the appellant are partly allowed."

6.2. It has been held by various Courts that the requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed u/s 139(1) of the Act cannot be so fatal so as to deny they very claim of exemption u/s.11(2) of the Act. The following judicial precedents have reiterated the aforesaid principal:

- I. Association of Indian Panelboard Manufacturer v. Dy. CIT [2023] 157 [taxmann.com](https://www.taxmann.com) 550 - TA 655 of 2022 (Guj.);
- II. Dy. CIT v. Croygas Equipments (P.) Ltd. [IT Appeal No. 415 (Ahd.) of 2020, dated 16-6-2023];
- III. True Sparrow Systems (P.) Ltd. v. Pr. CIT [IT Appeal No. 765 (Ahd.) of 2019, dated 22-4-2022];
- IV. Shardaben Education Trust v. ITO [IT Appeal No. 2312 (Ahd.) of 2018, dated 16-11-2022];

- V. CIT v. Xavier Kelavani Mandal (P.) Ltd. [2014] 41 [taxmann.com](#) 184/221 Taxman 43 (Mag.) (Guj.);
- VI. Zenith Processing Mills v. CIT [1996] 219 ITR 721 (Guj.);
- VII. CIT v. Mayur Foundation [2005] 274 ITR 562 (Guj.);
- VIII. CIT v. Gujarat Oil & Allied Industries [1993] 201 ITR 325 (Guj.);
- IX. CIT v. G. M. Knitting Industries (P.) Ltd. [2016] 71 [taxmann.com](#) 35/[2015] 376 ITR 456 (SC);
- X. CIT v. Web Commerce (India) (P.) Ltd. [2009] 178 Taxman 310/318 ITR 135 (Delhi);
- XI. CIT v. Contimeters Electricals (P.) Ltd. [2009] 178 Taxman 422/317 ITR 249 (Delhi);
- XII. Pr. CIT v. Surya Merchants Ltd. [2016] 72 [taxmann.com](#) 16/387 ITR 105 (All.);
- XIII. DIC Fine Chemicals (P.)Ltd. v. Dy. CIT [2019] 107 [taxmann.com](#) 213/177 ITD 672 (Kol.).

6.3. In light of the above facts and judicial pronouncements, we find that the delay in filing Form 10B was due to technical issues and was beyond the control of the assessee. The procedural requirement should not deny the substantive claim of exemption under section 11 of the Act. Therefore, we direct the Assessing Officer to grant the exemption under section 11 as claimed by the assessee. Hence, the Cross Objection filed by the assessee is accordingly allowed.

6.4. The appeal of the Revenue becomes infructuous as the primary ground of denying exemption under section 11 is resolved in favour of the assessee.

7. In the result, the Cross Objection filed by the assessee is allowed, whereas the appeal filed by the Revenue is dismissed as infructuous.

**Order pronounced in the Open Court on 2<sup>nd</sup> July, 2024 at Ahmedabad.**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 02/07/2024

*टी.सी.नायर, व.नि.स।T.C. NAIR, SY. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-concerned / Addl.CIT/JCIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
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आदेशानुसार/ BY ORDER,

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