

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1336/Del/2024  
(ASSESSMENT YEAR 2018-19)**

B R Hospital Research Institute 24 <sup>th</sup> Floor, E-2 Block Civic Centre Jawaharlal Nehru Marg Delhi-110 002 PAN-AAATB 9828P	Vs.	Income Tax Officer Ward Exemption-1(3) Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Basant Kumar, Adv. and Shri Anup Mukherjee, CA
Respondent by	Shri Om Prakash, Sr. DR
Date of Hearing	24/06/2024
Date of Pronouncement	31/07/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 23/01/2024 for Assessment Year 2018-19.

2. The assessee has raised the following grounds of appeal:-

*"1. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019, which is bad in law and void ab-intio as it was passed without proper assumption of Jurisdiction and application of mind.*

2. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 without appreciating that exemption available u/s 11 of the Act is dully allowable to the appellant.

3. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 without referring the matter to Jurisdiction AO for enquiry and examination.

4. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 without appreciating that he has not the power to pass such order and such power lies with Jurisdiction AO, ITO, Exemption ward 1(3), Delhi.

5. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 disallowing application of income of Rs. 7,02,026/- without appreciating that this was beyond the scope of section 143(1) in the facts and circumstances of the case of appellant.

6. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 disallowing application of income of Rs. 7,02,026/- without appreciating that details of Audit Report u/s 10B was provided in return, hence claim of appellant was correct claim. He wrongly upheld denial of exemption u/s 11 of the Act.

7. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 disallowing application of income of Rs. 7,02,026/- without appreciating that filing of Audit Report u/s 10B was directory and not mandatory. He also ignored the fact that Audit report in paper format was available with appellant.

8. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 disallowing application of income of Rs. 7,02,026/- without providing proper opportunity of the appellant.

9. Without prejudice to grounds raised herein above, Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 disallowing application of income of Rs. 7,02,026/- as expenses allowable u/s 37 which was directly linked to generated income of the trust even if exemption u/s 11 of the Act was not allowed by AO on technical ground in this year. He upheld the order

*ignoring that only income is taxable under income tax Act ie after reducing direct expense incurred in earning the total receipt.*

*10. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 wherein he has wrongly computed tax payable by the appellant ignoring the provisions of Act.*

*11. That the Ld. ADDL/JCIT (A) erred in upholding the intimation passed by Assessing Officer (Dy. CIT, CPC) u/s 143(1) dated 21.05.2019 charging interest u/s 234B and 234C of the Act.*

*12. That each grounds mentioned hereinabove are independent and without prejudice to each other.*

*13. That the Appellant craves leave to alter, amend, modify, delete, vary and/or add any grounds of appellant any time hereinafter.”*

**3.** At the time of hearing, the Ld. AR submitted that assessee is not pressing the ground No.1 to 5 at this stage. Accordingly, these grounds of appeal are dismissed as such.

**4.** With regard to ground Nos.6 and 7, the Ld. AR has submitted as under:-

*“Decision of Tribunal relied by CIT(A) in the case of Association of Indian Panelboard Manufacturer v. Deputy Commissioner of Income tax [2022] 143 taxmann.com 418 (Ahmedabad ITAT) relied by ACIT(A) was overruled by Gujrat High Court Reported in [2023 (3) TMI 1374 - Gujarat High Court) stating that condonation of delay by CIT(E) is only an additional remedy. (Pages 1-3 of case law compilation)*

*Filing of Audit Report u/s 10B was directory and not mandatory Submissions and case law regarding these grounds (Pages 66-71 of PB)*

*Audit Report was given in Return Form (Pages 31-33 of PB)*

*Application for additional evidence (Pages 41-47 of PB)*

*Association of Corporation and Apex Societies of Handlooms v. ADIT (2013) 351 ITR 287 (Del)*

*CIT v. Sakal Relief Fund, 2017 (4) TMI 772 (Bom) (Pages 21-24 of case law compilation)*  
*CIT v. Software Technologies Parks of India, 2019 (8) TMI 168(Del) (Pages 19-20 of case law compilation)*  
*CIT Vs. Contimeters Electricals P. Ltd., 317 ITR 249 (Del.)*  
*CIT Vs. Integrated Databases India 178 Taxman 432 (Del.)*

***Audit Report in Form 10CCB was submitted before CIT(A)***

*Submissions and case law regarding these grounds (Pages 67-68 of PB)*

*ACIT v. Hi-Line Pens Pvt. Ltd., [2013 (9) TMI 440-ITAT Delhi] deduction to the assessee u/s 801B (Pages 4-12 of case law compilation)*

*CIT v. Xavier Kelavani Mandal (P.) Ltd. [2012 (9) TMI 1049 Gujarat High Court]*

*"29. We have considered the submissions of both the parties and have perused the material on record of the case. The issue regarding allowability of deduction under section 801B on account of delay in submission of filing of the audit report is no more res integra in view of various decisions relied by Ld. CIT(A) noted earlier. Admittedly before Ld. CIT(A) the assessee had filed the audit report in form No. 10CCB and, therefore, the provisions of section 801A(7) being directory in nature, Ld. CIT(A), relying on various judicial decisions quoted in his order, held that the assessee was entitled for deduction under section 801B. We do not find any reason to interfere with the order of Ld. CIT(A) on this court."*

*Shri Chandraprabhuji Maharaj Jain Juna Mandir Rust v. DCIT(E) (2019) 266 TAXMAN 0399 (Madras) - Form 10 (Pages 13-16 of case law compilation).*

*An assessment proceedings which is pending in appeal before the appellate authority should be deemed to be "assessment proceedings pending before the AO*

*Submissions and case law regarding these grounds (Pages 70-71 of PB)*

*CIT (Exemptions) Vs. Shree Shyam Mandir Committee (2018) 400 ITR 466 (Raj.)*

*SNDP Yogam vs. ADIT (Exemption), (2016) 46 CCH 0736*

*Jute Corporation of India Ltd. vs. CIT 1991) 187 ITR 688 (SC)"*

**5.** On the other hand, the Ld. DR submitted as under:-

“1. A perusal of the section itself shows that the first appellate authority has been specifically excluded from the power to condone any delay u/s 119(2)(b).

2. Further, the Hon'ble Income Tax Appellate Tribunal (Ahmedabad) in the case of Association of Indian Panel board Manufacturer [2022] 143 taxmann.com 418 (Ahmedabad-ITATO [22-07-2022]) has held as under: Section 119 of the Income-tax Act, 1961- Central Board of Direct Taxes instructions to subordinate authorities (Condonation of delay in filing Form No. 10B)- Assessment year 2018-19 Assessee, a charitable institution registered under section 12AA, claimed exemption under section 11- on filing original return of Income had not filed Audit Report- immediately thereafter, assessee filed Audit Report in Form 10B by uploading same in electronic mode Central Processing Centre denied exemption under section 11 for want of submission of Form 10B. On appeal, Commissioner (Appeals) held that Form B shall be submitted electronically with effect from 1-4-2016 applicable for assessment year 2016-17 and as per CBDT Circular No. 273 dated 3-6-1970, CBDT had authorized jurisdictional Commissioner/Director of Income-tax to condone delay in filing form 10B, and Commissioner (Appeals) did not have any power under section 119(2)(b) to condone delay in filing Form 10B. Thus, Commissioner (Appeals) dismissed assessee's

appeal holding that assessee had remedy before jurisdictional Commissioner/ Pr. Commissioner/Director of Income-tax for condoning delay in filing Form B and claiming benefit of section 11. It was noted that assessee was well aware that there was a delay in filing Form 10B, however assessee seemed to have not made any application for condonation of delay in filing Form 10B before concerned Pr. Commissioner/Commissioner/Director of Income-tax as provided under section 119(2)(b). Whether there was no infirmity in order passed by Commissioner (Appeals)-hold, Yes (Paras 6.2 and 6.3) [In favour of revenue.]

3. The Hon'ble Apex Court in the case of CC v, Dilip Kumar & Company [2018] 95 taxmann.com 327/69 GST 239 has laid down following principles.

- (1) Exemption notification/provisions should be interpreted strictly, the burden of proving applicability would be on the assessee to show that his case comes within the parameters of exemption clause or exemption notification.
- (2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assesseees and it must be interpreted in favour of the revenue.

(b) Further, the Hon'ble Apex court in the case of Principal Commissioner of Income Tax- III, Bangalore and another Vs. M/s Wipro Limited (Judgment dated 11.07.2022 in the Civil Appeal No. 1449 OF 2022) has applied strict construction to reverse the findings of the Hon'ble High Court (HC) of Kamataka which had earlier allowed carry forward of such losses. The Hon'ble SC held that the requirement of filing a declaration within a timeline is "mandatory" in nature as per the language of the provision. It reiterated the age-old principle that a taxing statute should be read as it is and held that the exemption/ deduction provisions should be "strictly" and "literally complied with and, therefore, a strict interpretation should be adopted. The Supreme Court has stated as under "In view of the above discussion and for the reasons stated above, we are of the opinion that the High Court has committed a grave error in observing and holding that the requirement of furnishing a declaration under Section 10B (8) of the IT Act is mandatory, but the time limit within which the declaration is to be filed is not mandatory but is directory. The same is erroneous and contrary to the unambiguous language contained in Section 10B(8) of the IT Act. We hold that for claiming the benefit under Section 10B(8) of the IT Act, the twin conditions of furnishing a declaration before the assessing

officer and that too before the due date of filing the original return of income under section 139(1) are to be satisfied and both are mandatorily to be complied with. Accordingly, the question of law is answered in favour of the Revenue and against the assessee The orders passed by the High Court as well as ITAT taking a contrary view are hereby set aside and it is held that the assessee shall not be entitled to the benefit under Section 10B (8) of the IT Act on non-compliance of the twin conditions as provided under Section 10B of the IT Act, as observed hereinabove"

It is evident that the appellant did not file Audit Report in Form 10B before due date in violation of Rule 12A(1)(b) of Income Tax Act, 1961. It is a trite law that if a thing is said to be done in a particular manner, it shall be done in that manner and its performance in any other mode or fashion shall be of no consequence Therefore, in application of the above decisions of the Apex Court and also the mandated provisions of the statute, the Assessing Officer has rightly disallowed the exemption claimed and made addition of the same to the total income of the appellant as per the provisions of section 143(1)(a)(B).

**6.** Considered the rival submissions and material placed on record, I observed that the Assessing Officer has rejected the claim of the assessee u/s 11 of the Act by observing that assessee has not filed audit report in Form 10B along with return of income. Aggrieved with the above order, the assessee preferred an appeal before Ld. CIT(A) and Ld. CIT(A) rejected the grounds raised by the assessee with the observation that power of condonation of delay in filing Form 10B rest with CIT (Exemptions) only and not with CIT(A) by relying on the decision of ITAT, Ahmedabad in the case of Association of India Panel Board Manufacturer (supra).

**7.** Aggrieved with the above order, the assessee is in appeal before us raising the above said grounds before us, I observed that the assessee has obtained the audit report and not filed the same along with return of income. While processing the assessment u/s 143(1), the CPC has rejected the claim of the assessee u/s 11 of the Act. It is fact on record that assessee has filed the appeal before the Ld. CIT(A) and Ld. CIT(A) has rejected the same for the reason that he does not have power to condone the same. After

considering the facts on record, I observed that Ld. DR heavily relied on the decision of Hon'ble Supreme Court in the case of Wipro Limited (supra) to submit that the twin conditions of furnishing a declaration before the assessing officer and that too before the due date of filing the original return of income u/s 139(1) are to be satisfied and both are mandatorily to be complied with.

**8.** On careful consideration in the above case, the assessee was claiming the benefit u/s 10B(8) of the Act as per the provisions of section 10B, the assessee has to comply certain conditions failing which the assessee will loose the benefit, in the present case, the assessee has to file the audit report in Form 10B before the due date as per Rule 12A(1)(b) of the Rules. I observed that the above conditions of filing the Form 10B was relaxed by the CBDT in the earlier assessment years, therefore, it clearly shows that it is only directory in nature and not mandatory, since, it is in compliance with Rules framed for availing the benefit under the provisions of Sec.11. It is held that to be directory in nature. I noticed that assessee relied on the decision of Hon'ble Madras High Court in

the case of Shri Chandraprabhuji Maharaj Jain Juna Mandir Rust Vs. DCIT, Tax case Appeal No.517 of 2019, wherein held as under:

*“8. As noted by us earlier, the assessee filed the return of income for the assessment year under consideration on 02.04.2009, which was processed and intimation under Section 143(1) of the Act was issued on 21.01.2011. Thus, there was no assessment under Section 143(3) of the Act. The assessee, while filing the petition under Section 154 of the Act, on 22.03.2011, pointed out that the assessee filed the Form No.10 along with the Board Resolution along with the covering letter dated 01.04.2019. However, the mistake done by the assessee was to file hard copies before the Assessing Officer, and not filing the same along with the return of income, which they filed on 02.04.2019. Thus, on the date when the return was taken up for assessment, there was record to show that the assessee had intimated the department about the resolution passed by the Board of the assessee Trust and the statutory Form No. 10. Admittedly, the assessment was not completed under Section 143(3) of the Act and therefore, there would have been no error had the assessing officer taken up the copy of the Board Resolution and Form No.10. Thus, on the date when the return was filed, the assessee had separately filed Form No. 10 along with the Board Resolution along with a covering letter dated 01.04.2009. Thus, in our considered opinion, when the assessee was entitled to a statutory benefit, it would be incumbent upon the concerned authority to examine the admissibility of the benefit than to foreclose the assessee on technicalities.”*

Further relied on the decision of the Hon’ble Gujrat High Court in the case of CIT-IV vs. Savier Kelavani Mandal (P.) Ltd., Tax Appeal No.1362 of 2011, wherein held as under:

*“4. The question whether it is permissible to the assessee to produce the audit report at the appellate stage, has already been answered by this court in CIT v. Gujarat Oil & Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report along with the return has to be treated as a procedural provision, It is directory in nature and its substantial compliance would suffice. In that*

*case, the assessee had not produced the audit report along with the return of income, but produced before completion of the assessment. The Punjab and Haryana High Court in CIT v. Shahzadanand Charity Trust [1997] 228 ITR 292 has reiterated the same principle holding that the benefit of exemption should not be denied merely on account of delay in furnishing the same, and it is permissible for the assessee to produce the audit report at a later stage either before the Income Tax Officer or before the appellate authority by showing a sufficient cause. This decision of Punjab & Haryana High Court has been relied on by the Tribunal.*

*5. In the above view, the Tribunal is eminently justified both in law and on facts in observing and holding as under.-*

*"In this case, it is not in dispute that the audit report in prescribed form was obtained prior to filling of the return on 20/12/2006; therefore, there was no reason for the assessee to keep the audit report with it in order to loose the exemption. The assessee in the earlier as well as in the subsequent assessment years filed the audit report and got the exemption. The conduct of the assessee in earlier year and subsequent years would prove that due to the facts stated above there was delay in filing the audit report and the contention of the assessee was supported by the affidavit of Mohmad Iqbal Vohra (PB-4). The learned CIT(A) on proper appreciation of the facts and material on record in the light of the decisions of the Hon'ble Punjab & Haryana High Court and the Hon'ble Calcutta High Court rightly directed the AO to accept the audit report of the assessee and grant exemption u/s. 11 of the IT Act."*

**9.** Respectfully following the same, I am inclined to allow the claim made by the assessee and, accordingly, I direct the Assessing Officer to allow the claim of the assessee u/s 11 of the Act.

**10.** With regard to ground Nos.8 & 9, since, we allow the claim of the assessee in ground Nos. 6 & 7, I direct the Assessing Officer to assess the income of the assessee *donovo* and allow the claim of

the assessee u/s 11 & 12 of the Act as per law. Accordingly, ground Nos.8 and 9 remit back to the Assessing Officer and, accordingly, grounds raised by the assessee are allowed for statistical purposes.

**11.** In the result, appeal filed by the assessee is partly allowed as per above directions.

Order pronounced on 31<sup>st</sup> July, 2024.

Sd/-

**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 31/07/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI