

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA**

**BEFORE DR. MANISH BORAD, AM  
AND  
SHRI SONJOY SARMA, JM**

**ITA No. 691/Kol/2024  
(Assessment Year: 2018-19)**

**M/s Sikar Zilla Welfare  
Trust**

**1A, Sikar Bhawan,  
Ashutosh Dey Lane,  
Kolkata-700006**

**(Appellant)**

**PAN No. AADTS3808D**

**Vs.**

**Income Tax Officer,  
Ward 1(3), Exempt  
Kolkata-400071**

**(Respondent)**

**Assessee by** : Shri Sunil Surana, AR  
**Revenue by** : Shri Gautam Patra, CIT DR

**Date of hearing:** 20.08.2024

**Date of pronouncement:** 28.08.2024

**ORDER**

**PER DR. MANISH BORAD, AM:**

This appeal at the instance of the assessee is directed against the order of Commissioner of Income-tax (Appeals) [learned CIT (A)] dated 22<sup>nd</sup> February, 2024, which is arising out of the intimation under Section 143(1)(a) of the Income-tax Act, 1961 (the Act) dated 31<sup>st</sup> January, 2020.

01. Though, assessee has raised four grounds but the sole grievance is against the order of learned CIT (A) confirming the action of CPC Bangalore, denying the claim of exemption under Section 11 of the of the Act, solely on account of delay in filing of audit report in form 10B.
02. At the outset, the learned counsel for the assessee submitted that the return of income has been filed within

the prescribed time limit under Section 39(1) of the Act. Though, the audit was duly carried out by the auditors before filing of return of income, but due to technical glitches, the audit report on form 10B could not be uploaded on the e-portal within the prescribed time limit. Reliance placed on the decision of this Tribunal in case of *Bangarh Educational Welfare Trust Vs ITO (Exemptions), Ward 2(2), Siliguri dated 2<sup>nd</sup> January, 2023*, in ITA No. 496/Kol/2021 and *Manav Seva Trust Vs. A.O., Ward 1(4), Kolkata, in ITA No. dated 9<sup>th</sup> August, 2024*, where similar issue has been examined and filing of form 10B is consistently held to be a procedural requirement and any defect therein is curable.

03. On the other hand, learned Departmental Representative vehemently argued supporting the orders of the learned lower authorities.
04. We have heard the rival contentions and perused the records placed before us. We observe that the assessee is a trust and the return of income for A.Y. 2018-19, was furnished within the prescribed time limit under Section 139(1) of the Act on 22<sup>nd</sup> August, 2018. The assessee claimed exemption under Section 11 of the Act but CPC denied the exemption because audit report on Form 10B was e-filed belatedly on 23<sup>rd</sup> March, 2020, i.e., after filing of income tax return. The assessee also filed a condonation petition under Section 119(2)(b) to learned Pr. Chief Commissioner of Income Tax for condonation of delay. However, since the delay was not condoned until the time when the impugned order was framed, the learned CIT (A)

confirmed the action of CPC. Before us, the learned Counsel for the assessee has referred to various decision of this Tribunal as binding precedence and on going through the order of this Tribunal in case of *Manav Seva Trust (supra)*, we find that similar issue has been adjudicated where benefit of section 11 of the Act was denied for delay in filing form 10B. This Tribunal held in favour of the assessee holding that filing of form 10B is merely a procedural requirement and the defect is curable. The relevant finding of this Tribunal in case of *Manav Seva Trust (supra)* reads as under: -

"3. We have considered the submissions by both the Id. A/R and Id. D/R and also perused the orders of Id. AO and the Id. CIT(A). Id. A/R has relied on the case of *Hari Gyan Pracharak Trust vs. DCIT in ITA No. 245/AHD/2021, order dated 16.06.2023*. In this case, the Coordinate Bench has held that since filing of Form-10B is merely a procedural requirement, any defect in that is curable. It is seen that the Hon'ble Orissa High Court in the case of *Oneness Educational and Charitable Trust vs. Commissioner of Income-tax (Exemption)* reported in [2024] 161 taxmann.com 544 (Orissa) has held that the oversight in not filing Form-10B within the due date was to be condoned and the exemption was to be allowed and granted. Also, the Hon'ble Telangana High Court in the case of *Global Organization for Development vs. Commissioner of Income-tax (Exemption)* reported in [2024] 162 taxmann.com 633 (Telangana) has held that the delay on the part of the assessee in submitting Form-10B was to be condoned and the matter remanded back to the file of the AO for passing appropriate order on merits. Similarly, the Hon'ble Bombay High Court in the case of *Al Jamia Mohammediyah Education Society vs. Commissioner of Income-tax (Exemptions)*

*reported in [2024] 162 taxmann.com 114 (Bombay) has held that where the assessee Trust belatedly submitted Form-10B, along with return, on account of oversight by the Chartered Accountant, the delay in filing of Form-10B deserves to be condoned. In fact, some relevant portions from the said order deserves to be extracted as under:*

*"■ Admittedly, Petitioner is a charitable trust and had been filing its returns and Form 10B for AY 2015-16, for AY 2017-18 to AY 2021-22 within the due dates. On this ground alone, delay condonation application should have been allowed because the failure to file returns for AY 2016-17 could be only due to human error. Even in the impugned order, there is no allegation of mala fide. As held by the Gujarat High Court in Sarvodaya Charitable Trust v. ITO (Exemption) [2021] 125 taxmann.com 75/278 Taxman 148, the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, Respondent No.1 might be justified in denying the exemption by rejecting such condonation application, but an assessee, a public charitable trust with almost over thirty years, which otherwise satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. [Para 6]*

*■ Moreover, the Petitioner does not appear to have been lethargic or lacking in bona fides in making the claim beyond the period of limitation which should have a relevance to the desirability and expedience for exercising such power. Such routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, if*

*such powers are routinely exercised without considering its desirability and expedience to do so to avoid genuine hardship.*  
[Para 7]

■ *In a similar matter in Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (Exemptions) [2024] 161 taxmann.com114 (Bombay) was also a case where auditor had due to oversight not filed Form 10B. The Court held that the error on the part of auditor cannot be rejected but should be accepted as a reasonable cause shown by the trust management. In that case also, Petitioner did not suo moto realize its mistake and filed a condonation request only after Centralised Processing Centre ("CPC") sent an intimation about non-filing of Form 10B. [Para 8]*

■ *Having considered the matter in its entirety, one is satisfied that the delay was not intentional or deliberate. Petitioner cannot be prejudiced on account of an ignorance or error committed by professional engaged by Petitioner. Respondent No.1 ought to have exercised the powers conferred. [Para 9]*

■ *In the circumstances, this Writ Petition has to be allowed and is hereby allowed in terms of prayer clause.*

■ *Since the delay has been condoned, Respondent shall process Petitioner's returns in accordance with law by giving effect to this order on the basis that Form No.10B has been filed within time. [Para 11]"*

*4. Considering the discussions made above, the delay in filing of Form10B is hereby condoned and it is directed that the appellant be allowed exemption as would be due to him as per law. The Id. AO is directed accordingly."*

05. Similar issue was also deal with by this Tribunal in *Bangarh Educational Welfare Trust (supra)*, where also the facts are almost identical and the assessee was given relief by this Tribunal observing as under: -

*"12. Now, the second reason for which lower authorities have denied the deduction u/s 11 of the Act is of filing the belated audit report on form 10B of the Act. Now, clause (b) of section 12A(1) of the Act provides for a condition that if the income of a trust exceeds a maximum amount which is not chargeable to tax in the previous year the account have to be audited and the person in receipt of such income furnishes the audit report before the specified date. In the case of the assessee, Form No.10B was to be filed and the relevant rule is rule 17B of the Income Tax Rules which provides that the report of audit of the accounts of a trust or institution which is required to be furnished under Clause (b) of section 12A, shall be in Form No.10B.*

*13. Now, on perusal of the Form 10B, we notice that the same is required to be submitted electronically, one month prior to the due date of the filing of return of income. Admittedly, in the case in hand, the audit report on form 10B has been uploaded on 30.03.2019 which is even after the date of filing the return of income on 15.11.2018. Now, before us, it has been contended by the Id. counsel for the assessee that filing of audit report is directory in nature and even if report is submitted in time before the conclusion of the assessment proceedings, the same needs to be considered. Though the assessee referred to the various decisions, we find it pertinent to refer to the judgment of the Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust vs. ITO(Exemption) (supra) wherein Para 32 of the said judgment reads as follows:*

"32. We may also refer to the decision of this Court in *CIT v. Gujarat Oil and Allied Industries Ltd.* [1993] 201 ITR 325 (Guj), wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. 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 the same before the completion of the assessment. This Court took the view 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 assigning sufficient cause."

14. In the above judgment, Hon'ble Court has held that filing of audit report is directory in nature and its substantial compliance would suffice. The Id. Departmental Representative failed to place before us any other binding precedents of Hon'ble Jurisdictional High Court or the Hon'ble Apex Court. Therefore, considering the ratio laid down in the Hon'ble Gujarat High Court in the case of *Sarvodaya Charitable Trust vs. ITO(Exemption)* (supra), we find that though the audit report has been uploaded after the filing of return of income but the said report has been signed by the auditor on 28.10.2018 and the copy of this report is placed at 40- 41 of paper book and the date of audit report is prior to the filing of the return of income, therefore, it is presumed that conducting of audit for preparation of audit report is before e-filing of the return of income but as claimed by the assessee due to technical glitches, the report was uploaded after filing the return of income.

15. Though the Hon'ble Court holds that the report should be considered even filed in the course of assessment proceedings,

*or before in appellate authority, however, we notice that in the instant case, the case of the assessee was not selected for scrutiny assessment and it was mere processing of return by the computer with the set program. Had it been the case of scrutiny proceeding u/s 143(3) of the Act, the case could have been different. The Id. A.O may had an opportunity to go through the audit report. But still when the issue came before Id. CIT(A) who also possesses co-terminus power with that of A.O and as per section 251(1)(a) of the Act, the Id. CIT(A) in disposing the appeal against order of assessment has the power to confirm, reduce, enhance or annul the assessment, therefore, though, it was not possible to entertain the audit report while processing the return u/s 143(1)(a) of the Act, but the Id. CIT(A) was well within its power to have entertained the said report and examined the same as could have been done by the A.O.*

*16. We, therefore, in the given facts and circumstances and respectfully following the judgment of Hon'ble Gujarat High Court in the case Sarvodaya Charitable Trust vs. ITO(Exemption) (supra) , we are of the considered view that since the case of assessee is for A.Y 2018-19 and CBDT came up with a circular dated 23.04.2019 specially for A.Y 2018-19 providing that return of income to be filed within the time allowed u/s 139 of the Act, the assessee has complied with the conditions provided in sub-clause (b) and (ba) to section 12 and there is no dispute at the end of the revenue authorities that the assessee is carrying on charitable activities, for which it has been granted registration u/s 12A of the Act, the benefit of section 11 and 12 should be given to the assessee and deductions claimed by the assessee are, therefore, allowed. Thus, Ground Nos.1 to 4 of the assessee are allowed."*



06. Going through the above decision, we find that the same are applicable on the facts of the instant case and respectfully following the decision of this Tribunal and taking a consistent view, we hereby hold that since filing of audit report is procedural requirement and assessee has e-filed the report post prescribed due date and delay was on account of technical glitches, therefore, condone the delay in filing of audit report on form 10B and direct the jurisdictional Assessing Officer to give benefit of Section 11 of the Act if the assessee is otherwise found eligible. Finding of the learned CIT (A) set aside and the grounds of appeal raised by the assessee are hereby allowed.
07. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28<sup>th</sup> August, 2024.

Sd/-  
(SONJOY SARMA)  
(JUDICIAL MEMBER)

Sd/-  
(DR. MANISH BORAD)  
(ACCOUNTANT MEMBER)

Kolkata, Dated: 28.08.2024  
*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

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