

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

**BEFORE: SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 3167/MUM/2024
(Assessment Year : 2017-18)**

Patel Engineering Company Charity Trust Patel Estate, Off S V Road, Jogeshwari West S.O, Mumbai-400102.	Vs.	DCIT, CPC Bengaluru Room No. 616, 6 th Floor, ITO Exemption Ward 2(2), Piramal Chamber, Mumbai-400020.
PAN/GIR No. AAATP0132A		
(Appellant)	..	(Respondent)

Assessee by	Shri. Anuj Kisnadwala
Revenue by	Shri. R. R. Makwana, Sr. DR
Date of Hearing	29/08/2024
Date of Pronouncement	29/08/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 17.04.2024 passed in Appeal no. CIT(A) 1, MUMBAI/10162/2019-20 by the Ld. Commissioner of

Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2017-18.

2. The brief facts related to the appeal state that assessee is a registered charitable trust and is in possession of valid registration certificate u/s. 12A of the Act. Assessee inadvertently could not file audit report u/s. 12A(b) in form 10B before due date of filing of return of income u/s. 139(1) of the Act. Appellant could not file form 10B on or before 21.09.2017 i.e the date on which its original return of income was filed, declaring total income of Rs.2,64,480/. The return was processed u/s. 143(1) of the Act on 06.05.2018. Form 10B could be filed on 12.09.2018 by a delay of 12 months. Being aggrieved, appellant filed an appeal before learned CIT(A), who partly allowed first appeal, directing the assessing officer to verify the validity of certificate u/s. 12A of the Act and on verification of timely filing of audit report in form 10B, appropriate action be initiated.

3. Aggrieved by the impugned order, assessee has, in addition to the grounds, touching the merits of the case, filed this second appeal on the ground that the learned CIT(A) erred in directing to verify the timely filing of form 10B and validity of 12A certificate.
4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.
5. We have perused the records and heard learned representatives for both the parties.
6. Learned DR has supported the impugned order.
7. Learned representative for the assessee submitted at par with the aforesaid grounds taken in the appeal and referred CIT V Xavier Kalavani Mandal (P) Pvt. Ltd., [2014] 41taxmann.com 184, wherein Hon'ble Gujarat High Court has held that in order to claim exemption u/s. 11, the assessee can file audit report in form 10B even at later stage either before the assessing officer or before appellate authority by showing a sufficient cause. Appellant assessee has further referred Sarvodaya Charitable Trust V ITO (Exemp.), [2021] 125 taxmann.com 75, wherein Hon'ble Gujarat High Court has held that where the assessee is a public charitable trust,

registered u/s. 12A of the Act and substantially satisfied condition for availing benefit of exemption as a charitable trust, could not be denied exemption merely on bar of limitation in furnishing audit report in form 10B. Learned AR, thus, prayed to condone the delay in filing form 10B and dismiss the impugned order.

8. We notice that the assessee failed to file the audit report in form 10B before filing his return of income for the A.Y. 2017-18. It is well established principle of law that substantial justice cannot be denied on mere technicalities. Procedural law is always subservient to and is in aid to justice, processual law is not to be tyrant but is servant, not an obstruction but an aid to justice. A procedural prescription is a handmaid and not the mistress, lubricant not a resistance in the administration of justice. Learned CIT(A) has failed to appreciate the legal position and seems to have ignored the fact that the exemption to assessee was denied merely for non filing of form 10B. In view of law laid down in *Xavier Kalavani Mandal (Supra)* and *Sarvoday Charitable Trust (Supra)*, the impugned order is liable to be set aside and the appeal is liable to be allowed.

9. In the result, the appeal is allowed. Impugned order dated 17.04.2024 is set aside. The case is restored back to the file of the learned assessing officer for deciding the matter afresh, treating the delay in uploading the form 10B as condoned. Needless to say that learned assessing officer shall observe the substantial compliance of the principles of natural justice.

Order pronounced on 29.08.2024.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/08/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

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

//True Copy//

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai