IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No.1110/Bang/2023
Assessment Year : 2018-19

M/s. Arham Mitra Mandal, No.27/28, Old No.991/990, Arham, Hampinagar, 30 Feet Service Road, RPC Layout, Vijayanagar, Bengaluru – 560 104. **PAN : AAATA 8438 Q**	Vs.	ITO, Ward – 1, Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Kumar Jain, Advocate
Revenue by	:	Shri. Ganesh R. Gale, Standing Counsel for Department.

Date of hearing	:	18.06.2024
Date of Pronouncement	:	27.06.2024

O R D E R

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 03.08.2022, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2018-19.

2. There is a delay of 442 days in filing this appeal. Assessee has filed a condonation application and also supporting affidavit of the Managing Trustee of the assessee Trust. In the condonation application, it is stated that assessee was pursuing alternative remedy and when the same was dismissed by the PCIT(E)

under section 119(2)(b) of the Act on 22.09.2023, the assessee trust immediately filed an appeal before the Tribunal on 11.12.2023. The relevant portion of the condonation application reads as follows:

- *The CIT(A)NFAC passed an order on 03.08.2022, under section 250 of the Act, dismissing the Appeal filed the Petitioner.*
- *The Petitioner filed an application for condonation of delay in filing audit report under section 119(2)(b) of the Income Tax Act, before the CBDT through speed post on 26.08.2020 vide acknowledgement vide Ack No. EK078008789IN.*
- *The CBDT issued circular 16/2022 dated 19th July 2022 delegating the power to condone delay in filing Form 10B beyond 365 days to PCCIT or CCIT.*
- *Therefore, the Petitioner filed a condonation Petition on 13.03.2023 before the Commissioner of Income Tax (Exemptions) Bangalore, requesting to forward the application to Principal Chief Commissioner of Income Tax (Exemptions) New Delhi as the delay was beyond 365 days for AY 2018-2019.*
- *The Petitioner was hopeful that PCCIT would condone the delay in filing Form 10B. Also delay has been condoned in similar circumstances in case of other Trusts.*
- *The Learned Principal Commissioner of Income Tax, (Exemptions) Delhi, passed an order dated 22.09.2023, under section 119(2)(b) of the Act, rejecting the condonation petition filed by the Appellant on the ground that the Appellant has not been able to establish and make out a case of genuine hardship nor bring out reasonable cause for delay in filing audit report.*
- *Against the CIT(A) order, the Petitioner is filing this appeal before the Honorable Income Tax Appellant Tribunal, Bangalore. In the normal course, the Petitioner should have filed the appeal before the Income Tax Appellant Tribunal on or before 60 days from the date of receipt of the order passed under section 250. The CIT(A) order was passed on 03.08.2022. 60 days expired on 03.10.2022. There is a delay of 442 days in filing the appeal. The delay is for the reason that the Petitioner had filed a condonation petition before PCCIT and was waiting for the disposal of the condonation petition. The Petitioner was hopeful of a favorable order as the delay in filing Form 10B was 378 days. The Principal Commissioner of Income Tax (Exemptions), Delhi, passed an order under section 119(2)(b) on 22.09.2023 rejecting the condonation petition. Since the*

Condonation Petition is rejected, the Petitioner is filing this Appeal before the Honourable Tribunal.

- *Post the rejection of condonation petition, the Petitioner was evaluating whether appeal can be filed before the Honourable ITAT since condonation petition u/s 119 was rejected or writ has to be filed before the Honourable High Court. Due to contrary views on the legal matter, the filing of appeal before the Honourable ITAT further got delayed. However, since the appeal before the Honourable ITAT lies on different aspects of the same issue, it was decided to file appeal before the Honourable ITAT after consultation with the tax experts.*
- *The Petitioner submits that delay in filing appeal is not deliberate or intentional but due to bonafide and reasonable cause. The Petitioner was pursuing the alternate remedy and was hopeful of condonation of delay by PCCIT.*

3. The learned Standing Counsel submitted that the delay is inordinate and the same need not be condoned.

4. We have heard the rival submissions and perused the condonation application. Regarding the impugned Order of the CIT(A) dated 03.08.2022, assessee admits that the same was served on it on the same day i.e., 03.08.2022. Therefore, the appeal before the Tribunal ought to have been field on or before 03.10.2022. However, the same has been filed only on 11.12.2023. Even before the CIT(A)'s Order, assessee had filed an application for condonation of delay in filing the audit report under section 119(2)(b) of the Act before the CBDT on 26.08.2020. In view of the Board's Circular No.16/2022 dated 19.07.2022 which had delegated the power to condone the delay in filing Form 10B beyond 365 days before PCCIT or CCIT, assessee had filed a condonation application on 13.03.2023 before the CIT(E), Bengaluru, requesting to forward the application to PCCIT, New Delhi, as the delay in filing the audit report was beyond 365 days for the relevant Assessment Year. It is submitted that petitioner was hopeful that PCCIT would condone the delay in filing Form 10B since in similar circumstances in the case of other Trusts, he had condoned the delay. However, PCCIT passed

an order on 22.09.2023 rejecting the condonation application filed by the assessee. Post the rejection of application, assessee filed the present appeal before the Tribunal on 11.12.2023.

5. The issue raised in the appeal before the Tribunal is with regard to the denial of section 11 of the Act on account of delay in filing the audit report within the due date prescribed. For identical issue, assessee had raised the application before the PCCIT which was rejected as mentioned earlier on 22.09.2023 and the present appeal has been filed within a reasonable time from the date of rejection of Order passed under section 119(2)(b) of the Act on 22.09.2023. It is a settled law that the time taken for pursuing the remedy before another appellate forum is to be excluded for the purpose of computation of period of limitation for filing an appeal. In this context, we rely on the following judicial pronouncements :

i) Union Carbide India Ltd. Vs. CC 1998 (77) ECR 376
ii) Karnataka Minerals & Mfg. Co. Ltd. Vs. CCE 1998 (101) ELT 627
iii) Bethala Petropacks Pvt. Ltd [TS-363-ITAT-2024(Bang)]

6. In the case of Bangalore Bench Order of ITAT cited supra, delay of more than 2,500 days was condoned since assessee was pursuing an alternative remedy (Page 12 of the Order). Further, we rely on the judgment of the Hon'ble Apex Court in the case of Collector of Land Acquisition and Others Vs. MST Katiji and Others reported in (1987) 167 ITR 471 wherein the Hon'ble Apex Court had held that a liberal interpretation is to be taken in a delay condonation application. The Hon'ble Apex Court had laid down the following principles to be kept in mind while condoning the delay application:

- *substantial justice should prevail over technical considerations;*
- *a litigant is not benefitted by lodging the appeal late;*

- *explaining every day's delay does not mean that a pedantic approach should be taken;*
- *the doctrine must be applied in a rational common sense and pragmatic manner.*

7. In light of the aforesaid reasoning and the judicial pronouncements cited supra, we condone the delay of filing this appeal and proceed to dispose off the same on merits.

8. Brief facts of the case are as follows:

Assessee is a Public Charitable Trust registered under section 12A of the Act w.e.f. 28.02.2002. Assessee is helping the poor by providing food, conducting medical / health camps, etc. For the Assessment Year 2018-19, the assessee Trust had filed the return of income on 28.09.2018 by declaring 'Nil' income, after claiming exemption under section 11 of the Act for Rs.42,690,910/- (including Rs.8 lakhs claimed under section 11(2) of the Act towards amount set apart for specified objects). Form 10 statement under section 11(2) of the Act was filed electronically on 27.09.2018. Subsequently, the assessee Trust filed revised return on 02.01.2019. It is stated that revised return was filed by the assessee presuming it had not given the details of registration under section 12A of the Act in the original return filed.

9. An intimation under section 143(1) of the Act was passed by the CPC on 31.01.2020. In the said intimation, exemption claimed under section 11 of the Act was denied on the ground that (i) statement in Form 10 was not filed electronically (ii) return of income was not filed within the due date prescribed and (iii) audit report has not been e-filed before the filing of the return. It is to be noted that in the intimation issued under section 143(1) of the Act, the original return filed on

29.09.2018 was not processed, instead the revised return was treated as original return in the intimation passed under section 143(1) of the Act.

10. Aggrieved by the intimation issued under section 143(1) of the Act, assessee preferred an appeal before First Appellate Authority. The CIT(A) passed the impugned order dated 03.08.2022 under section 250 of the Act dismissing the appeal filed by the assessee Trust.

11. Aggrieved by the Order of the CIT(A) dated 03.08.2022, assessee has preferred this appeal before the Tribunal raising the following grounds:

1. *The learned Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT(A)" for brevity) has erred in passing the order in the manner passed by him and the order is bad in law.*
2. *The learned CIT(A) and learned AO have erred in denying the exemption under section 11 of the Act on the ground that Return of Income, Form 10 and Form 10B are not filed within prescribed due date.*
3. *The learned CIT(A) and learned AO have erred in not appreciating that the original return of income was filed within the prescribed due date and there is no delay in filing return of income.*
4. *The learned CIT(A) and learned AO have erred in concluding that Form 10 is not filed before filing the return, which is contrary to facts on record.*
5. *The Learned CIT(A) has erred in not appreciating that filing of Audit Report along with return of income is directory and not mandatory requirement and therefore denying exemption under section 11 on that ground is bad in law.*
6. *Without prejudice to above, the learned CIT(A) and learned AO have erred in levying tax on gross receipts of Trust without appreciating that what can be taxed is only net receipts post expenditure.*
7. *The Learned CIT(A) and learned AO have erred in taxing the corpus donation of Rs 1,86,000/-, which is contrary to provisions of Law.*
8. *On the facts and in the circumstances of the case, interest under section 234A and 234B is not leviable, being consequential in nature.*

12. Assessee has also raised application dated 31.01.2024 for admission of additional grounds. The additional grounds raised read as follows:

> *"9. The lower authorities have erred in disallowing the claim of exemption under section 11 while processing the return under section 143(1) of the Act without appreciating that the adjustments u/s 143(1) are only restricted to arithmetical errors and incorrect claims and there is no power to deny exemption u/s 11 for delay in filing audit report while processing return u/s 143(1) of the Act."*

13. Assessee has filed three sets of Paper Books. Paper Books 2 and 3 are compilations of case laws. In Paper Book-1, assessee has enclosed audited financial statement for the Assessment Year 2018-19, copy of the acknowledgment of the original return filed, statement of computation, copy of the submissions made, copy of the condonation application before the PCCIT for delay in filing the audit report, copy of Form 10 filed under section 11(2) of the Act on 27.09.2018, copy of the revised return, copy of the audit report in Form 10B filed on 13.11.2003, etc.

14. The learned AR submitted that there is factual error in the Order of the CIT(A). The learned AR by referring to the Paper Book-1 submitted that assessee had submitted the original return well within the due date prescribed and therefore the CIT(A) has erred in concluding that the return of income has not been filed within the due date. It was further contended by the learned AR that Form 10 has also been electronically filed within the prescribed due date i.e., on 27.09.2018. As regards the delay in filing the audit report, the learned AR submitted that the same is directory in nature and not a mandatory requirement and thus denying the exemption under section 11 of the Act is bad in law. In this context, the learned AR relied on the Hon'ble Gujarat High Court judgment in the case of CIT(E), Ahmedabad Vs. Gujarat Energy Development Agency in R/Tax Appeal No.35 of 2024 (order dated 15.01.2024).

15. The learned DR, on the other hand, submitted that the issue in question is covered against the assessee by the Order of the Tribunal in the case of Navodaya Educational Trust V. DCIT reported in (2021) 130 taxmann.com 256 (Bangalore Tribunal). The learned DR also relied on the judgment of the Hon'ble Apex Court in the case of PCIT Vs. Wipro Ltd., in Civil Appeal No.1449 of 2022 (Order dated 11.07.2022) to contend if there is delay in filing the audit report, only the administrative PCCIT or the CBDT has got the power to condone the delay.

16. In rejoinder, the learned AR submitted the case laws relied on by learned Standing Counsel is distinguishable to facts of instant case. It was submitted that in the case of Novodaya Educational Society Vs. DCIT (supra), assessee in that case has neither filed Form 10 electronically or manually before the passing of the intimation under section 143(1) of the Act. Assessee in that case filed Form 10 for the first time along with the rectification application under section 154 of the Act. However, in the instant case, it is submitted that assessee had filed audit report in Form 10B before passing intimation under section 143(1) of the Act. Further, it was contended that in the case of Novodaya Educational Society Vs. DCIT (supra), assessee did not argue that filing of Form 10 is only procedural in nature and not mandatory in requirement for claiming exemption under section 11 of the Act. It was further stated that the Tribunal Order is mainly dealing with the mistake apparent from record for the application passed under section 154 of the Act whereas in the instant case, the appeal is filed against the intimation issued under section 143(1) of the Act and Form 10B was available with the AO when intimation was passed.

17. As regards the Hon'ble Supreme Court judgment in the case of Wipro Ltd., (supra) relied on by the learned Standing Counsel, it was submitted that the said judgment did not deal with the issue of delay in filing audit report. It was further submitted that the Hon'ble Gujarat High Court in the case of CIT(E) Vs. Gujarat

Development Agency reported in TS-47-HC-2024 (Guj HC) had distinguished the Hon'ble Apex Court judgment in the case of Wipro Ltd., (supra) and observed that the said judgment does not affect the assessee's claim of exemption under section 11 r.w.s. 12A(1)(b) of the Act which has nothing to do with application under section 10B of the Act.

18. We have heard the rival submissions and perused the material on record. There are some factual errors in the order of the CIT(A). In the impugned order of the CIT(A) at page 13, it has been stated that the return of income was not filed by the assessee within the prescribed due date. In this regard, we notice that the original return of income was filed on 28.09.2018. The acknowledgment and original return of income filed has been placed on record from pages 55-85 of the Paper Book submitted. Thus, the statement of the CIT(A) that return of income was not filed on time is incorrect. So non-filing of return within the due date prescribed cannot be a ground for denying the claim of exemption under section 11 of the Act. Further, we notice at page 14 of the CIT(A)'s Order, it has been stated that Form 10 is not filed before filing the return of income. This conclusion of the CIT(A) is contrary to the facts on record (refer Pages 101 and 102 of Paper Book submitted by assessee). The assessee had filed Form 10 electronically on 27.09.2018. So, this reasoning of the CIT(A) for denying the benefit of exemption under section 11 of the Act is also not correct.

19. Therefore, the only surviving reason for denying claim of exemption under section 11 of the Act, is that audit report has not been filed along with the return of income. It is the contention of the assessee that the above requirement is only directory in nature and not mandatory requirement. It was contended that denying exemption under section 11 of the Act is bad in law. Admittedly, in this case, audit report was available before the AO when the return of income was processed vide intimation under section 143(1) of the Act. The Hon'ble Apex Court in the

case of Mangalore Fertilizers and Chemicals Vs. Deputy Commissioner 1991(55) ELT 437 (SC) had held as follows:

> *"The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

20. Further, the Hon'ble Supreme Court in the case of Sambhaji and Others Vs. Gangabai and Others reported in (2008) 17 SCC 117 held that procedure cannot be a tyrant but only a servant. It is not an obstruction in the implementation of the provisions of the Act, but an aid. The Hon'ble court further held that the procedures are handmaid and not the mistress. It is a lubricant and not a resistance. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice.

21. The Hon'ble Gujarat High Court in the case of Association of Indian Panelboard Manufacturer vs. DCIT [2023] 157 taxmann.com 550 (Gujarat) on identical facts had held that amendment by Finance Act, 2015, w.e.f. 01.04.2016 has not changed the legal position. The gist of Hon'ble Court's findings from Paras 5 to 6.2 are as follows :

i. In the present case, the audit report in Form 10B, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under section 143(1) of the Act. Thus, the conditions for claiming exemption under section 11 was satisfied.

ii. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect.

iii. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under sections 11(1) and 11(2) on the ground that the audit report was not filed.

iv. The remedy under section 1192(b) of the Act is only additional remedy for the assessee, which could not be said to be compulsorily resorted to by the assessee and it cannot take away the appellate remedy.

v. The Tribunal misdirected itself in yet another way when it observed that the Finance Act, 2015 with effect from 1-4-2016, that is from AY 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income-tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.

22. We also rely on the following judicial pronouncements wherein it has been held that filing of audit report is procedural in nature :

i. CIT vs. Shahzadanand Charity Trust [1998] 96 TAXMAN 494 (PUNJ. & HAR.)

ii. Sarvodaya Charitable Trust vs. ITO (Exemptions) [2021] 125 taxmann.com 75 (Gujarat)

iii. CIT v. Mayur Foundation [2005] 274 ITR 562 (Guj.)

iv. CIT v. Xavier Kelavani Mandal (P.). Ltd. [2014] 41 taxmann.com 184]/221 Taxman 43 (Mag) (Guj.)

v. CIT v. Andhra Pradesh State Road Transport Corporation [2006] 285 ITR 147(A.P) and

vi. CIT v. Rai Bahadur Bissesswarlal Motilal Malwasie Trust [1992] 65 Taxman 273/195 ITR 825 (Cal.)

vii. CIT(Exemptions) v Gujarat Energy Development Agency TA No. 35 of 2024.

viii. Sri Vetri Vinayagar Educational Trust v ITO (Exemptions) ITA No. 903/Chny/2023.

ix. DCIT (Exemption) vs. State Institute of Health & Family Welfare 1[2023] 153 taxmann.com 740 (Jaipur - Trib.)

x. Sindhi Youth Association Ladies Wing v ITO (1994) 48 ITD 6 (Bang ITAT)

23. The courts in various cases in the context of deduction under section 80IA(7), 10A(5) etc., have held that filing of audit report is directory and not mandatory and the assessee should be given time to file the same. In this context, we rely on the following case laws:

i. Sutures India (P.) Ltd. vs. CIT, Bangalore [2021] 125 taxmann.com 226 (Karnataka)

ii. CIT vs ACE Multitaxes Systems (P.) Ltd [2009] 317 ITR 207 (Karnataka)

iii. CIT, Central Circle vs American Data Solutions India (P.) Ltd [2014] 45 taxmann.com 379 (Karnataka)

iv. CIT vs Axis Computers (India) (P.) Ltd [2009] 178 Taxman 143 (Delhi)

v. PCIT, Kanpur vs Surya Merchants Ltd [2016] 72 taxmann.com 16 (Allahabad)

vi. CIT-II vs Mantec Consultants (P.) Ltd [2009] 178 Taxman 429 (Delhi)

24. The reliance by the learned Standing Counsel on the Order of the Bangalore Bench of the Tribunal in the case of Navodaya Educational Trust Vs. DCIT (supra) is misplaced. The said order is not applicable to the instant case for the following reasons :

i. In the case of Navodaya Educational Trust V. DCIT (supra), the assessee had neither filed Form 10B electronically nor manually before passing of Intimation under Section 143(1) of the Act. The assessee in that case, filed Form 10B for the first time along with rectification application under section 154. However, in the instant case, the Appellant has filed audit report in Form 10B before the passing of intimation under section 143(1).

ii. In the case of Navodaya Educational Trust V. DCIT (supra), the assessee did not argue that filing of Form 10B, is only procedural in nature and not a mandatory requirement for claiming exemption under section 11. There is no discussion on this aspect in the Tribunal Order.

iii. In the case of Navodaya Educational Trust V. DCIT (supra), the Assessee had filed appeal against the order under section 154, which only deals with 'mistake apparent from record'. In the instant case, the appeal is filed against the intimation under section 143(1) and Form 10B was available with the AO, when intimation was passed.

25. During the course of hearing, the learned Standing Counsel had also relied on the judgment of the Hon'ble Apex Court in the case of PCIT Vs. Wipro Ltd., (supra) to contend that filing of audit report in Form 10B before the due date is mandatory in nature. In the case of Wipro Ltd., (supra), the assessee filed its return for Assessment Year 2001-02 declaring loss of Rs. 15.47 lakh and claimed exemption under Section 10B. With the return of income filed on October 31,

2001, the assessee also annexed a note to the computation that since assessee was a 100% EOU entitled to claim exemption under Section 10B, no loss was being carried forward. Subsequently, assessee filed a declaration dated Oct 24, 2002 with the AO stating that it did not want to avail the benefit under Section 10B (opt out of section 10B claim), and furnished a revised return on Dec 23, 2002 without claiming the exemption under Section 10B, but claiming the carry forward of losses for the first time. Revenue rejected assessee's withdrawal of exemption on the grounds that assessee did not furnish the declaration in writing for opt out before the due date of filing return, i.e., Oct 31, 2001, and thus denied the claim for carry forward of losses. On appeal, CIT(A) upheld the AO's order, whereas ITAT allowed assessee's claim for carry forward of losses. Revenue's appeal before the Hon'ble High Court was dismissed, against which Revenue preferred appeal before Hon'ble SC. The Hon'ble Supreme Court held as follows:

- For claiming the benefit under Section 10B(8), the twin conditions are required to be complied with. The Hon'ble Supreme Court held that assessee was required to fulfil the twin conditions, (i) furnishing a declaration to the assessing officer in writing that the provisions of Section 10B (8) may not be made applicable to him; and (ii) the said declaration to be furnished before the due date of filing the return
- The Hon'ble Supreme Court also held that filing a revised return under Section 139(5) and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible.
- The Hon'ble Supreme Court further observed that, if an assessee claimed exemption under Section 10B, then the correctness of claim was verified under section 10B (5). Therefore, if the claim is withdrawn post the date of filing of return, the accountant's report

under section 10B (5) would become falsified and would stand to be nullified.

26. The judgment of the Hon'ble Supreme Court in the case Wipro Ltd., (Supra) is not applicable in the instant case for the following reasons:

- In case of *Wipro (supra)*, claim of carry forward of loss was made for the first time in the revised return and such claim was made post due date prescribed under section 139(1).
- Revised return was completely contrary to stand taken in the original return and the SC held that same is beyond the ambit of section 139(5).
- The option to opt out of section 10B exemption was made for the first time in the revised return and such claim was made post due date prescribed under section 139(1).
- The decision did not deal with the issue of delay in filing of audit report. In fact, the revised return was contrary to audit report.

27. Further, the judgment of the Hon'ble Apex Court in the case of Wipro Ltd., (supra) has been discussed and held not applicable in the context of delay in filing audit report in Form 10B for Assessment Year 2018-19 by the Hon'ble Gujarat High Court in the case of CIT(Exemptions) Vs. Gujarat Energy Development Agency TS-47-HC-2024 (Guj HC). The Hon'ble High Court rejected Revenue's reliance on Hon'ble Supreme Court judgment in the case of Wipro Ltd., (supra) and observed that it would not be applicable since the said case pertains to claiming deduction under Section 10B due to which Hon'ble Supreme Court held that twin conditions prescribed under Section 10B(8) i.e., filing of declaration before Revenue and filing before due date of filing of return under Section 139(1) were mandatory. The Hon'ble High Court held that in the present case, the assessee has claimed exemption under Section 11 r.w.s. 12A(1)(b) of the Act,

which has nothing to do with application under Section 10B of the Act. Reliance on the case of Wipro Ltd., (supra) has also been rejected, amongst others, by the Order of the Tribunal in the case of Aprameya Engineering Limited Vs. ITO TS-411-ITAT-2024 (Ahd ITAT) and DCIT v Croygas Equipments P Ltd in ITA No 415/Ahd/2020. Even otherwise, various non-jurisdictional Hon'ble High Courts have held that filing of Audit report in Form 10B is procedural in nature and delay in filing of Audit Report is not fatal to claim of exemption under section 11 of the Act. The judgment of non-jurisdictional High Court is binding on the Tribunal. In this regard, we rely on the decision of Siro Clinpharma Private Limited v ITA in ITA No. 847/Mum/2016. Relevant findings in this regard read as under:

> *"8. No specific reasons for not following the non-jurisdictional High Court decision in Redington's case (supra) have been pointed out to us. It is not even the case of the assessee, and rightly so, that the issue decided by Hon'ble Madras High Court is not the same as we are called upon to decide in this case, that there are conflicting decisions of Hon'ble nonjurisdictional High Court on the issue or that there are any other good and sufficient reasons for not following this judicial precedent. There is nothing more than Bank of India decision (supra) to justify our taking a decision at variance with the decision of a non-jurisdictional High Court, but then this decision by the coordinate bench is on its own unique facts and it recognizes the fundamental principle that it is more of an exception that the decisions of the non-jurisdictional High Court are not followed. At one place, this decision, inter alia, states that "To a forum like us, following a jurisdictional High Court decision is a compulsion of law and absolutely sacrosanct that way, but following a non-jurisdictional High Court is a call of judicial propriety…..-which can…be, in deserving cases, deviated from". Implicit in this observation is the fact that not following non-jurisdictional High Court decision is more of an exception than the rule. There have to be very strong and good reasons not to follow even non jurisdictional High Court decisions. It is not, therefore, open to us in the present situation, as has been contended by the learned counsel, to simply disregard this judicial precedent from Hon'ble Madras High Court, and follow the decision of the coordinate bench, in assessee's own case, in favour of the assessee. The fact that the decisions in assessee's own cases were authored by one of us, the claim that these decisions elaborately deal with certain aspects which may or may not have been examined by Hon'ble High Court and the apprehension that it may not have been argued on*

certain important facets, are wholly irrelevant. Once Their Lordships of a higher judicial forum express their esteemed views on any subject, the views expressed by us, in the past, on that issue, have to make way for the higher wisdom of Their Lordships. As for the facets not argued nor not considered, even if any, as is laid down by the apex Court in the case of Ambika Prasad Mishra v. State of UP AIR 1980 SC 1762 : (1980) 3 SCC 719 (p. 1764 of AIR 1980 SC) "Every new discovery nor argumentative novelty cannot undo or compel reconsideration of a binding precedent.....A decision does not lose its authority merely because it was badly argued, inadequately considered or fallaciously reasoned...." Similarly, in the case of Kesho Ram & Co. v. Union of India (1989) 3 SCC 151, it was stated by the Supreme Court thus: "The binding effect of a decision of this Court (as indeed any superior court) does not depend upon whether a particular argument was considered or not, provided the point with the reference to which the argument is advanced subsequently was actually decided in the earlier decision". The more we ponder upon the correct course to be adopted in such matters as is before us, the more we are convinced with respect to the binding nature of decisions of even Hon'ble non-jurisdictional High Courts, unless there are specific good reasons not to do so. The doubts, if at all, and somewhat nightmarish doubts at that, arise about the manner in which Bank of India decision (supra) could be interpreted so as to destabilize the well settled norms of judicial discipline, but neither do we need to perpetuate an error, even if there be any, nor do we need to examine to that aspect any deeper at this stage. There is, thus, no legally sustainable justification, on the facts of this case, to disregard the views expressed by Hon'ble Madras High Court in Redington's case (supra). Given the important judicial developments by way of a binding legal precedent, directly on the issue, even if from a non-jurisdictional High Court, we cannot simply treat this issue as covered by decisions of the coordinate bench, and thus disregard the esteemed views expressed by a higher judicial forum."

28. In view of the aforesaid reasoning and judicial pronouncements cites supra, we hold that filing of audit report along with return of income is directory in nature and not mandatory and exemption under section 11 of the Act, cannot be denied when the audit report is available before the AO while passing the intimation under section 143(1)(a) of the Act. Since we have held that filing of audit report though not filed within the due date, but has been filed prior to passing of the intimation under section 143(1) is not fatal to the claim of exemption under section 11 of the

Act, the other grounds / additional grounds raised are not adjudicated. Therefore, the matter is remanded to the AO to examine whether other conditions for claiming exemption under section 11 of the Act are satisfied in this case (since at the very threshold the claim of exemption was denied by the AO for the reason that there was belated filing of the audit report). It is ordered accordingly.

29. In the result, appeal filed by the assessee is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(WASEEM AHMED)	**(GEORGE GEORGE K)**
Accountant Member	**Vice President**

Bangalore.
Dated: 27.06.2024.
/NS/*

Copy to:

1. Appellants
2. Respondent
3. DRP
4. CIT
5. CIT(A)
6. DR, ITAT, Bangalore.
7. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.