

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.697/Ahd/2024  
(Assessment Year: 2017-18)

Indian Redcross Society Anand District Branch, Red Cross Bhavan, Nr. Sardargunj Samiti, Opp. Municipal Office Sardarganj Road, Anand-388001	Vs.	Income Tax Officer, Ward Exemption, Vadodara
[PAN No.AAATI9551L]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Ms. Kaushani Shah, A.R.
<b>Respondent by:</b>	Shri Sanjay Kumar, Sr. D.R.

<b>Date of Hearing</b>	23.10.2024
<b>Date of Pronouncement</b>	23.10.2024

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre, (in short “NFAC”), Delhi vide order dated 12.02.2024 passed for A.Y. 2017-18.

2. The Assessee has taken the following grounds of appeal:-

“1. Your appellant is a trust engaged in running a NGO and is a branch of India red cross society.

2. The appellant is an independent charitable trust mainly running a blood bank and registration u/s. 12A as well as 80G was granted on 17.11.2018 and 29.11.2018 respectively.

3. As per CBDT guidelines the approval granted u/s 12A applies to all pending assessments and accordingly your appellant is eligible for all the benefits of section 11 and 12.

4. Form 10B was physically submitted as well as uploaded before the completion of assessment, return was uploaded before 12A registration was granted and hence filing of 10B

*after filing return of income with some delay but before completion of assessment should not be taken adversely.*

5. *The institute is running for a noble cause has complied to the law before completion of assessment.*

6. *Appellant has submitted form 10 and 10B before completion of assessment and accordingly considering the spirit of CBDT circular and the noble activity of appellant benefit of sec 11 and 12 be granted to the appellant.”*

3. Heard the arguments of both the parties and examined the record before us.

4. The assessee is a public trust granted registration by the Department under Section 12A and 80G of the Act. During the year the assessee claimed revenue expenditure of Rs. 1.67 crores which includes 52 lakhs towards transfer to maintenance fund. The A.O. has also observed that the assessee has not filed Audit Report in Form No. 10B. After examination of the details the A.O. disallowed the amount of 52 lakhs claimed as revenue expenditure towards transfer and maintenance fund and also defuses to accord exemption under Section 11 of the Act.

5. Aggrieved the assessee filed appeal before the Ld. CIT(A), the Ld. CIT(A) affirmed the addition on the ground that the additions made by the A.O. were consequential to the order of Ld. CIT(E) passed under Section 119(2)(b) of the Act which has not been contested by the assessee. The Ld. CIT(E) held that any relief granted to the assessee would tantamount to negate in the order of the Ld. CIT(E).

6. The issue before us to be adjudicated is whether delay in filing of Form 10B leads to denial of exemption to an eligible assessee or not. This issue stands covered by the order of the Gujarat High Court in the case of **Shri 108 Parshwanath Bhakti Vihar Jain Trust 166 taxmann.com 732 (Gujarat),**

wherein the Assessee, a public charitable trust, was registered under section 12A of the Act. The assessee Trust had claimed exemption under section 11 of the Act. The Assessing Officer rejected exemption claimed on ground that assessee had failed to file Form No. 10B within due date. Thereafter, assessee filed Form No. 10B belatedly and sought to condone delay, however the same was rejected. The Gujarat High Court held that since assessee-trust for past many years had substantially satisfied conditions for claiming exemption which should not be denied for non-filing of Form 10B in time and had also explained reason for delay in filing Form 10B due to illness of Accountant who was on leave for long time. Accordingly, the High Court remanded the matter to CIT(Exemptions) to condone delay in filing Form 10B. While passing the order, the Gujarat High Court made the following observations:

*“35. In the decision of this Court in case of Sarvoday Charitable Trust (supra), it is held that furnishing of audit report along with refund filed is to be treated as procedural requirement though it is mandatory in nature but substantial compliance is required to be made. It was further observed that the approach of the authority in such type of case should be equitable and judicious. It is also not in dispute that the petitioner trust for past many years has substantially satisfied the conditions for claiming the exemption which should not be denied for non filing of Form 10B in time. The petitioner has explained the reason for delay in filing Form 10B due to illness of the Accountant who was on leave for a long time due to medical reasons.*

*36. In view of foregoing reasons, the petition is allowed. The impugned orders are quashed and set aside. The matter is remanded back to the respondent to pass appropriate order to condone the delay in filing the Form 10B for AY 2018-2019 by the petitioner. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.”*

7. Again, the Gujarat High Court in the case of **Social Security Scheme of GICEA v. CIT (Exemptions) [2023] 147 taxmann.com 283 (Gujarat)** in similar facts, has held as under:

*“5. Having heard learned advocates for the respective parties and having gone through the material on record, the only question which falls for consideration is whether respondent committed an error in passing the order by not condoning the delay in filing Form No.10B along with the return filed. In the decision of this Court in Sarvodaya Charitable Trust v. Income Tax Officer (Exemption), this Court has observed that furnishing of audit report along with return filed is to be treated as a procedural requirement. It is though mandatory in nature*

*the substantial compliance is required to be made. In the case of Sarvodaya Charitable Trust v. Income Tax Officer (Exemption) the assessee had produced the audit report after processing the return under Section 143(1). This Court in the said order has observed that the approach of the authority in these type of cases should be equitable, balancing and judicious. Technically speaking, respondent No.2 might be justified in denying the exemption under Section 11 of the Act by rejecting such condonation application, but an assessee, which is a public charitable trust for past 30 years which substantially satisfies the conditions 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. Applying the said principle, the petition is allowed. The impugned order passed by respondent dated 12.3.2021 is quashed and aside. The impugned order of rectification under Section 154 of the Act dated 25.1.2019 is also quashed and set aside. The application for condonation of delay filed by the petitioner before the respondent is allowed.*

6. *The respondent is now directed to process the return in accordance with law. It is noticed that no assessment is framed and only an intimation under Section 143(1) of the Act was issued. No scrutiny could be carried out by the respondent since the audit report under Section 10B was not on record. Learned advocate for the petitioner Mr. B.S.Soparkar fairly submitted that the issue of benefit of exemption may be examined by issuance of notice u/s 143(1)/ 143(2) and the petitioner shall not object to the said proceedings by taking the ground of limitations."*

8. Further, in the case of **Shakuntalam Bal Vikas Society 166 taxmann.com 132 (Delhi - Trib.)**, the Tribunal held that where Assessing Officer disallowed exemption under section 11 claimed by assessee-trust on ground that Form 10B was not submitted within due date i.e. under section 139(1), since audit was completed well before due date fixed for filing Form 10B and assessee had provided a reasonable cause of lapse on part of auditors in filing Form 10B, Commissioner (Appeals) was supposed to take into consideration that non-filing of audit report along with return of income was a procedural omission, and accordingly, he should consider Form 10B and pass an order afresh on merits as per law.

9. In the case of **Shree Bhairav Seva Samiti 149 taxmann.com 478 (Mumbai - Trib.)**, the Tribunal held that Where assessee-trust had complied with procedural requirement of obtaining and filing Form 10B, exemption under section 11 could not be denied to it merely on technical ground of non-filing of Form 10B along with return of income.

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10. In the case of **Bhagwant Kishore Memorial Educational Society vs. ITO in ITA No. 3657/Del/2023** vide order dated 14.08.2024, the Delhi Tribunal held that non-filing of Audit Report in Form 10B alongwith return of income is a procedural lapse only and cannot be an impediment in law in claiming the exemption under Section 11 of the Act.

11. Since no other issue has been raised by the Revenue and Ld. CIT(A) confirmed the addition solely on the basis that the order under Section 119(2)(b) has not been contested by the assessee, keeping in view the specific facts of the instant case, the appeal of the assessee is hereby allowed.

12. In the result, the appeal of the assessee is allowed.

**This Order is pronounced in the Open Court on 23/10/2024**

**Sd/-**  
**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 23/10/2024

*TANMAY, Sr. PS*

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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)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad