

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER AND  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No. 2750/DEL/2024 [A.Y 2018-19]

Mental Research Society [REGD]  
2/6 Sarvopriya Hauz Khas  
New Delhi

Vs.

The Income-tax Officer  
Ward Exemption -1(4)  
New Delhi

PAN - AACAM 1606 P

(Applicant)

(Respondent)

Assessee By : Shri Ayush Garg, CA  
Shri Ved Jain, Adv

Department By : Shri Amit Katoch, Sr. DR

**Date of Hearing : 16.12.2024**  
**Date of Pronouncement : 18.12.2024**

**ORDER**

**PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A), Mumbai dated 30.04.2024 pertaining to A.Y 2018-19.

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

“1. On the facts and circumstances of the case, the order passed by the Additional/ Joint Commissioner of Income Tax, Appeal(Addl/JCIT (A)-2, Mumbai) is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned Addl/JCIT(A) has erred both on facts and in law in confirming the adjustment of Rs. 1,88,11,663/- made by the AO(CPC) in the intimation order passed under section 143(1) of the Act.

3. On the facts and circumstances of the case, the learned Addl/JCIT(A) has erred both on facts and in law in confirming the abovesaid adjustment despite the fact that the same has been made by the AO(CPC) by exercising its powers beyond the scope of section 143(1) of the Income Tax Act and does not fall in any of the sub-clauses of clause (a) in the Explanation to 143(1) of the Act.

4. (i) On the facts and circumstances of the case, the learned Addl/JCIT(A) has erred, both on facts and in law in confirming the action of AO(CPC) in denying the exemption under section 11/12 of the Act holding that the return of income and Audit report in Form 10B were filed beyond the due date prescribed under the Act.

(ii) That learned Addl/JCIT(A) has erred both on facts and in law in confirming the above said action of AO(CPC) despite the fact that the assessee trust has filed the return of income within the

time allowed under section 139 of the Act in view of the provisions of section 12A(1)(ba) of the Act and exemption has been denied ignoring the Circular F.No. 173/193/2019-ITA-I dated. 23.04.2019 issued by the CBDT in this regard.

(iii) That learned Addl/JCIT(A) has erred both on facts and in law in confirming the above said action of AO(CPC) despite the fact that the Auditor has conducted the Audit and issued the audit report in Form 10B on 30/08/2018 before the due date prescribed under the Act

(iv) That learned Addl/JCIT(A) has erred both on facts and in law in confirming the above said action of AO(CPC) ignoring the settled position of the law that requirement of filing the audit report along with the return is merely a procedural requirement, and that exemption cannot be denied to the assessee on account of delay in filing of audit report.

5. Without prejudice to the above and in the alternative, the learned Addl/JCIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that AO(CPC) has brought gross receipts to tax which is against the basic principles of law where only the real income which is determined after deducting expenses from gross receipts can be brought to tax.

6. That the appellant craves leave to add, amend or alter any of the grounds of appeal."

3. Briefly stated, the facts of the case are that the assessee is a resident Charitable Trust registered u/s 12AA of the Income-tax Act, 1961 [the Act, for short]. The assessee is running a hospital for treating patients with mental diseases and also runs various health care centers.

4. The return of income of the assessee was filed on 31-12-2018 declaring NIL income claiming refund of Rs.1,53,400/-. Return was processed u/s 143(1) of the Act. Proposed intimation was issued proposing denial of exemption u/s 11 of the Act for non-filing of audit report in Form 10B of the Act within the prescribed time limit.

5. The assessee preferred an appeal before the ld. CIT(A) and explained that the audit report was signed on 30.08.2018 and return was filed on 31.12.2018 and the assessee was under the bonafide belief that the auditors have uploaded the said audit report and since the audit report has been signed prior to the filing of the return, the assessee is very much eligible for claiming deduction,

6. After considering the facts and submissions, the ld. CIT(A) denied exemption since there was delay in filing audit report in Form 10B and beyond the due date prescribed under the Act.

7. Before us, the ld. counsel for the assessee vehemently stated that the Assessing Officer has never raised the point that the assessee has failed to file the return within the due date as prescribed as the reason for the disallowance of exemption u/s 11 of the Act. Moreover, the ld. counsel for the assessee contended that the case of the assessee is covered in its favour by Circular F. No. 173/193/2019 dated 23.04.2019.

8. The ld. counsel for the assessee has relied upon various judicial pronouncements to support his submissions including the case of Bangarh Educational Welfare Trust TMI 1321 dated 02.01.2023 and in the case of Debendra and Rohini Memorial Trust.

9. The ld. DR strongly supported the findings of the ld. CIT(A) and read the operative part.

10. We have heard the rival submissions and have perused the relevant material on record. The main reason for denying the exemption is that the audit report was not filed alongwith Form No. 10B with the return of income. The undisputed fact is that the audit report alongwith Form 10B was signed prior to filing of return of income. It is true that while

denying exemption u/s 11/12 of the Act, no intimation was given to the assessee.

11. As mentioned elsewhere, this issue is squarely covered by the Circular [supra]. However, for the sake of verification, we direct the Assessing Officer to verify the details and decide the issue accordingly after affording reasonable and adequate opportunity of being heard to the assessee.

12. In the result, the appeal of the assessee in ITA No. 2750/DEL/2024 is allowed for statistical purposes.

The order is pronounced in the open court on 18.12.2024.

Sd/-

**[YOGESH KUMAR]  
JUDICIAL MEMBER**

Sd/-

**[NAVEEN CHANDRA]  
ACCOUNTANT MEMBER**

Dated: 18<sup>th</sup> DECEMBER, 2024.

VL/

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	