

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**(VIRTUAL COURT)**

**BEFORE SH. VIKRAM SINGH YADAV, ACCOUNTANT MEMBER  
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

**I.T.A. No. 408/Asr/2024**  
Assessment Year: 2022-23

Income Tax Officer,  
Aayakar Bhawan  
Jammu, J&K 180012

Vs.

Ms. Chandar Bhaga Educational  
Charitable Trust, Akhnoor Road  
Purkhoo Camp Domana, Jammu  
181206, J & K

[PAN: AAATC 5566D]

**(Appellant)**

**(Respondent)**

Appellant by : Sh. Vinay Jamwal, C.A.  
Respondent by : Sh. Sunil Gautam, CIT-DR  
Date of Hearing : 03.12.2024  
Date of Pronouncement : 09.01.2025

**ORDER**

**Per Udayan Dasgupta, J.M.:**

This appeal is preferred by the Revenue against the order of the Id. Addl. Commissioner of Income Tax (Appeal) Addl/JCIT(A)-2, Coimbatore dated 24.05.2024 passed u/s 250 of the Income Tax Act, 1961 which has arisen out of the order passed by the CPC, Bengaluru u/s 143(1) dated 31.03.2023, disallowing the

claim for exemption u/s 12A of the Income Tax Act, 1961 for non-filing of the audit report in Form No. 10B within the stipulated time frame of at least one month prior to the due date for furnishing the return u/s 139(1).

2. Grounds of appeal taken by the Revenue are as under:

*“1. That the ld. CIT(A) has erred in fact in allowing relief to the assessee on the basis of timely filing of Audit report whereas the assessee has e-filed its Audit report in Form 10B belatedly after the extended due date of October 7, 2022.”*

3. The facts of the case are that that assessee trust was incorporated on 30.07.1993 as an Educational Trust and was registered u/s 12A sub-Section (1) of Clause (ac) sub-Clause (i) vide order dated 24.09.2021 for the assessment years 2022-23 to 2026-27. For the assessment year 2022-23, the appellant had e-filed the audit report in Form 10B vide acknowledge No. 742744500211022 and the said Form was uploaded and verified by the Auditor concern on 26.09.2022 which was prior to the one month from the due date of filing of the return u/s 139(1), the time for which was extended till 07.11.2022.

4. The return was processed u/s 143(1) on 31.03.2023, but the exemptions claimed u/s 12A was denied by the CPC, Bengaluru, on the grounds that the audit report in Form 10B has been filed on 21.10.2022 which is less than one month from the extended due date of furnishing of the return u/s 139(1) on 07.11.2022.

5. The matter was carried in appeal before the Id. CIT(A) and the Id. appellate authority allowed the appeal of the assessee by observing as follows:

*“8. The appellant had e-filed Form-1 OB vide acknowledgement number 742744500211022 and the form 10B was e-filed, furnished and verified by the Auditor on 26.09.2022 which was one month prior the due date of filing of Income Tax Return under section 139(1). Due date for filing return of income for the year under-consideration was 31/10/2022. The extended due date of furnishing was 07.11.2022.*

*8.1 The return of income has been filed before the extended time allowed. The appellant has fulfilled the conditions for claiming exemption under section 12A of the IT Act. The claim of the appellant is therefore allowed and the AO is directed to allow claim of appellant under section 12A of the Income Tax Act.”*

6. The Revenue challenged the said order on the grounds contained in the Memorandum of Appeal. In course of hearing, the Id. DR submitted that in the instant case, the audit report in Form 10AB might have been uploaded by the Auditor on 26.09.2022 but the said audit report has been accepted (approved) by the assessee on 21.10.2022, as evident from the acknowledgement receipt no. 742744500211022 which according to him is less than the stipulated the time frame as prescribed by the CBDT Circular No. 19/2022 dated 30.09.2022 which has extended the due date for furnishing of audit reports till 7<sup>th</sup> October, 2022 and in the instant case, it is not the date of uploading the audit report, but the date of acceptance of the said audit report by the assessee in the online portal will be considered as the date of furnishing, and

the date of acceptance of the report was 21.10.2022, as evident from the acknowledgement receipt. He further submitted that the ld. first appellate authority has mistakenly considered the date of 26.09.2022 as the date of furnishing of the report, is in fact, the said date was the date of uploading of the report by the Auditor and the acceptance date by the assessee was much later i.e., 21.10.2022. As such, he prayed that the order of the ld. first appellate authority is erroneous and the order of the CPC, Bengaluru should be sustained.

7. Per contra, the ld. AR of the assessee submitted that the audit report in Form 10B was already e-filed and verified by the auditor on 26.12.2022 which was one month prior to the due date of filing of the return and the same is always available in the portal and subsequently the income tax return has also been filed within the extended due date before 07.11.2022, which means that the audit report was already before the Assessing Officer before the return has been filed and such the exemptions claimed by the assessee u/s 12A could not have been disallowed by the Assessing Officer and he relied on the order of the first appellate authority.

8. We have heard the rival submissions and considered the materials on record and we find that the tax-audit report was uploaded and verified by the auditor on 26.09.2022 which has been accepted by the assessee on 21.10.2022 (as per the acknowledgement) and thereafter the return has been filed which again was filed

within the time u/s 139(1), within the extended period of 07.11.2022. On this issue, we refer to the judgment of the *Hon'ble Gujarat High Court in the case of Association of Indian Penal Board Manufacturers v. DCIT in Appeal No. 655 of 2022* where it has been observed as follows:

*“6. The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.*

*6.1 The appellant assessee has to be held to be eligible and entitled to exemptions under [Section 11\(1\)](#) and [11\(2\)](#) of the Act and the alleged ground of non-filing of audit report along with return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.*

*6.2 Accordingly the substantial questions of law have to be decided in favour of the appellant.*

9. Similarly the ITAT ( Mumbai ) in the case of *Savitri Foundation Vs ITO (ITAT Mumbai) Appeal Number : ITA NO.1925/MUM/2021 Date of Judgement/Order : 01/08/2022 , Assessment Year : 2018-19*, relying on Bombay High Court in the case of *CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee(supra)* held as under :

*“wherein it is held that the benefit of exemption u/s 11 cannot be denied if otherwise assessee is eligible to claim the same . In the first appeal before CIT(A), the case was*

*dismissed merely on the ground that the audit report in the prescribed form was not filed along with the return.”*

10. On appeal before ITAT Mumbai, in the operative part at Para 5, 6 & 7 observed as under:

- 1. In my considered view non-filing of Audit Report in Form 10B along with Return of Income is merely a procedural defect which is rectifiable. If the Audit Report was available with the assessee at the time of filing of Return of Income and was not filed due to bonafide reasons the benefit of exemption under section 11 cannot be denied if otherwise assessee is eligible to claim the same.*

11. The Hon'ble Bombay High Court in the case of CIT vs. Mumbai Metropolitan Regional Iron & Steel Market Committee(supra) has held that late filing of required documents would not dis-entitle the assessee from availing benefit of section 11 of the Act. Thus, in the facts of the case and in the light of decision of Hon'ble Bombay High Court, I deem it appropriate to restore the file back to the Assessing Officer for denovo assessment after considering the audit report filed by the assessee, in accordance with law.

As such, we are of the opinion that once the audit report in Form 10B is already uploaded by the Auditor on 20.09.2022 which is available in the portal and the same is accepted by the assessee on 21.10.2022 and thereafter the return of income has been filed within stipulated time framed before 07.11.2022 u/s 139(1) of

the Act and the Audit Report in Form 10B is before the AO on the date of assessment, the claim for exemptions u/s 12A cannot be denied to the assessee and respectfully the following observations of the Hon'ble High Courts referred to above, we hold that the claim for exemptions u/s 12A should be allowed to the assessee. We upheld the order of the first appellate authority and the appeal of the Revenue is hereby dismissed being devoid of merits.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 09.01.2025

**Sd/-**  
**(Vikram Singh Yadav)**  
**Accountant Member**

**Sd/-**  
**(Udayan Dasgupta)**  
**Judicial Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

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By Order