

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'A': NEW DELHI)**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER,**

**ITA No:- 3734/Del/2024
(Assessment Year: 2022)**

Income Tax Officer, New Delhi.	Vs.	Ascent Educational Foundation, New Delhi.
PAN No: AABTA6097N		
APPELLANT		RESPONDENT

Revenue by : Sh. Rajesh Mahajan, Sr. DR
Assessee by : Ms. Sanya Adv.

Date of Hearing : 18.12.2024
Date of Pronouncement : 27.12.2024

ORDER

PER Mahavir Singh, VP:

This appeal by Revenue is arising out of the order of the Commissioner of Income Tax Appeals NFAC, Delhi, in appeal no. – NFAC/2021-22/10267082, order dated 24.07.2024. The return of income was processed by CPC Bangalore vide intimation dated 31.03.2023 issued U/s 143(1) of the Income Tax Act, 1961

(hereinafter referred to as 'the Act'), thereby making disallowance of the following items:

"a) Disallowance of Rs. 1,68,18,233/- claimed as application of income u/s 11,

b) Disallowance of Rs. 3148297/- accumulated or set apart @ 15 Percent of the gross income u/s 11(1)(a) of the Act and

c) Disallowance of Rs. 8,00,000/- accumulated or set apart for charitable purposes u/s 11(2) and invested as per u/s 11(5) of the Act, for the alleged reason that the assessee trust registered u/s 12A/12AA/12AB has not E-filed the audit Report in Form 10B at least one month prior to the due date for furnishing return u/s 139(1)."

2. The assessee moved rectification application before CPC Bangalore, which was rejected by CPC Bangalore on 08.08.2023 U/s 154 of the Act. The assessee preferred an appeal before the CIT(A) and raised the issue that the CPC Bangalore, while processing the return and also while deciding the rectification application of the assessee U/s 154 of the Act, not considered the application of income of Rs. 1,68,18,233/-, by not allowing the accumulation of Rs. 31,48,297/- being 15% of income, and also not allowing Rs. 8,00,000/-, being amount accumulated and set apart for specific purposes U/s 11(2) of the Act, for the reason that the delay in filing the Audit Report in Form No. 10B.

3. The assessee filed return of income on 07.11.2022. The assessee also filed the Audit Report in Form No.- 10B, as per the provisions of section 12A(b) of the Act, as required in the case of Charitable and Religious trust or Institution along with the return of income on 07.11.2022. The filing of Audit Report in Form 10B, which was required to be filed by 30.09.2022, which was delayed and ultimately filed along with the return of income on 07.11.2022. The CIT(A), after considering the decision of Hon'ble Gujarat High Court and noting the facts of the case, directed the AO to allow deduction of application of income and accumulation of income by condoning the delay in filing the Audit Report by observing as under:

“the due date of filing return of income was 31st October, 2022 which has been fulfilled by appellant as return was filed on 07.11.2022. the due date of filing Form 10B was 30.09.2022, being one month prior to the due date for furnishing the return of income u/s 139(1)/139(4A) which was 31.10.2022. As such the Form 10B was filed late by about 38 days. It has been held by various Courts that the requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due-date prescribed u/s 139(1) of the Act cannot be so fatal so as to deny their very claim of exemption u/s 11(2) of the Act especially when Form 10/10B was available on record when the intimation was passed by CPC u/s 143(1) of the Act. Assessee has relied on various judicial precedents including the case of Shardaben Education Trust vs. ITO ITA 2312/Ahd/2018. In recent judgment of Ahmedabad High Court in the case of Social Security scheme of GICEA VS. CIT (Exemption) (2023) 147 taxman.com 283 Gujarat wherein the Lordship has held that it would be sufficient compliance if the audit report is furnished at a later stage either before the A.O during the

assessment proceedings or before the learned CIT (A) in the appellate proceedings. Here the Hon'ble court has further held that in the matter of exemption provisions contained in section 11/12 of the Act, requiring filing of Form 10B along with return of income for claiming exemption, held the requirement of furnishing of report to be a mandatory requirement while that of filing the report along with return of income to be a procedural requirement.

Reference is also invited to the judgement of Gujarat High Court [CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.)] that provisions regarding furnishing of audit report with the return have to be treated as a procedural provision. It is directory in nature and its substantial compliance would suffice. The Hon'ble Court also took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the audit report and it is permissible for the assessee to produce the audit report at a later stage, either before the AO or the appellate authority. This view has been reiterated by the Hon'ble Court in its recent judgement In Sarvodaya Charitable Trust v. Income Tax Officer. (Exemption) (2021) 125 taxmann.com 75 (Gujarat). Respectfully following the ratio given by the Hon'ble Gujarat High Court (which is jurisdictional High Court), I am of the view that the CPC Bangalore erred in not allowing deduction to the appellant/assessee for the amount applied for the charitable purpose on revenue account as well as capital account. It was merely a procedural lapse on part of assessee to not file Form 10B along with return of income. The appellant/assessee uploaded the audit report within a week of filing return of income. It cannot be denied the benefit of exemption under section 11 merely on account of delay in furnishing audit report.

Respectfully following the judicial pronouncements of various courts it is held that appellant cannot be denied benefit of claiming deduction of application of income of Rs 46,92,777/- and also accumulation of Rs. 3,23,632/- being 15% of income. The requirement of filing Form 10B in time is exempted as it has been filed before order passed u/s 143(1) as the same was filed alongwith return of income. The AO is directed to allow deduction of application and accumulation of income as per provisions of the IT Act.”

Aggrieved, now the Revenue is in appeal before us.

4. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that there is delay in

filing of Audit Report U/s 10B of the Act by 38 days. We also noted that this issue has been dealt with by this Tribunal, the Co-ordinate Bench of Delhi, in the cases of *Bhagwant Kishore Memorial Educational Society v. ITO, Ward Exemption 1(3), Delhi [2024 (9) TMI 142-ITAT Delhi]* and *BR Hospital Research Institute v. ITO, Ward Exemption 1(3), Delhi [2024(9) TMI 1508-ITAT Delhi]*, wherein it was observed as follows:

“8. The impugned order exhibits that the Ld. CIT(A) dismissed the appeal simply due to want of jurisdiction by stating that both he and the Ld. AO not empowered to condone the delay in question. It is established by law that the requirement of filing Audit Report in Form 10B is procedural in nature and therefore exemption claimed by u/s 11 of the Act may be given in certain circumstances. Not filing of Audit Report alongwith the return of income is a procedural omission only and cannot be impediment in law in claiming the exemption. So far the reason for condonation of delay is concerned, the Ld. AR submitted that the Auditors who conducted the audit of the society, bonafidely believed that society was not required to obtain and file the audit report in form 10B as the total income being NIL was less than Rs. 2,50,000/- and due to confusion in interpretation of law, filed audit report in form 10B dated 08.10.2022.

9. In this context, similar matter has decided in the favour of assessee in the case of Hari Gyan Pracharak Trust vs. DCIT vide ITA No. 245/Ahd/2021 order dated 16.06.2023 by observing as under:

6. The moot aspect that 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 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

8. In view of the ratio laid down by the Hon'ble Jurisdictional High Court holding that non filing of Audit Report along with return of income is a procedural omission and cannot be an impediment in law in claiming the exemption, we allow this appeal condoning the delay in filing the Audit Report in Form No. 10B. However, we also upon condoning the delay, restore the matter to the file of the Ld. CIT(A) to pass order in regard to the exemption claimed by the assessee strictly in accordance with law.

10. On the basis of foregoing discussion, legal position and order of the Co- ordinate Bench as cited above, we inclined to allow this appeal for condoning the delay in filing the Audit Report in Form 10B and restore the matter to the file of the Ld. CIT(A) to allow exemption u/s 11 of the Act to assessee and pass order in accordance with law.

5. A similar view was also taken by this **Hon'ble Tribunal in BR Hospital Research Institute v. ITO, Ward Exemption 1 (3), Delhi [2024 (9) TMI 1508 - ITAT DELHI]** wherein it was observed as follows:

6. Considered the rival submissions and material placed on record, I observed that the Assessing Officer has rejected the claim of the assessee u/s 11 of the Act by observing that assessee has not filed audit report in Form 10B along with return of income. Aggrieved with the above order, the assessee preferred an appeal before Ld. CIT(A) and Ld. CIT(A) rejected the grounds raised by the assessee with the observation that power of condonation of delay in filing Form 10B rest with CIT (Exemptions) only and not with CIT(A) by relying on the decision of ITAT, Ahmedabad in the case of Association of India Panel Board Manufacturer (supra).

.....

8. On careful consideration in the above case, the assessee was claiming the benefit u/s 10B(8) of the Act as per the provisions of section 10B, the assessee has to comply certain conditions failing which the assessee will lose the benefit, in the present case, the assessee has to file the audit report in Form 10B before the due date as per Rule 12A(1)(b) of the Rules. I observed that the above conditions of filing the Form 10B was relaxed by the CBDT in the earlier assessment years, therefore, it clearly shows that it is only directory in nature and not mandatory, since, it is in compliance with Rules framed for availing the benefit under the provisions of Sec.11....

9. Respectfully following the same, I am inclined to allow the claim made by the assessee and, accordingly, I direct the Assessing Officer to allow the claim of the assessee u/s 11 of the Act.”

Similarly, Hon'ble Gujarat High Court, in the case of *Sarvodaya Charitable Trust vs. Income Tax Officer (Exemption) [2021] 125 taxmann.com 75 (Gujarat)*, has taken exactly identical view. In view of the above judicial precedents and the fact that the delay in filing Audit Report in Form No. -10B of the Act by 38 days, in the given facts and circumstances, is on the basis of reasonable cause of merely a procedural lapse, which should not disentitle the assessee from the substantial benefit provided by the Act, hence, we confirm the order of CIT(A) and, the appeal of Revenue is dismissed.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 27.12.2024

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Dated: 27/12/2024.

Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

1.	Date of dictation of Tribunal order	19.12.2024
2.	Date on which the typed draft Tribunal Order is placed before the Dictation Member	19.12.2024
3.	Date on which the typed draft Tribunal order is placed before the other Member	
4.	Date on which the approved draft Tribunal order comes to the Sr. PS/PS	
5.	Date on which the fair Tribunal order is placed before the Dictating Member for pronouncement	
6.	Date on which the signed order comes back to the Sr.PS/PS	
7.	Date on which the final Tribunal order is uploaded by the Sr.PS/PS on official website	
8.	Date on which the file goes to the Bench Clerk alongwith Tribunal order	
9.	Date on which the file goes to the Supervisor (Judicial)	
10.	The date on which the file goes to the Assistant Registrar for endorsement of the order	
11.	Date of Despatch of the order	