

आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता

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

श्री राजेश कुमार, लेखा सटस्य एवं श्री प्रदीप कुमार चौबे, न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Pradip Kumar Choubey, Judicial Member]

I.T.A. Nos. 2200 & 2201/Kol/2024
Assessment Years: 2021-22 & 2022-23

Maa Vaishno Education Trust (PAN: AACTM 2919 M)	Vs.	ITO, Ward-1(4)(Exemption), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	10.02.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	25.02.2025
For the assessee / निर्धारिती की ओर से	Shri C. M. Roy, CA
For the revenue / राजस्व की ओर से	Shri Ankur Goyal, JCIT, Sr. DR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

These are the appeals preferred by the assessee against the separate orders of Commissioner of Income Tax (Appeal)- Addl./JCIT(A)-1, Guwahati (hereinafter referred to as the Ld. CIT(A)] dated 19.09.2024 for AY 2021-22 & 2022-23 respectively. Both the appeals, issues are similar, taken up together for disposal.

2. Brief facts of the case of the assessee are that the assessee is a society and registered u/s 12A of the Act return of income for AY 2021-22 & 2022-23 was filed by

the assessee within extended due date for filing of return u/s 139(1) of the Act. In that return the assessee claimed the entire income as an exempt u/s 11 of the At and he filed form no. 10B. Since assessee filed Form 10B belatedly, his claim has been disallowed by CPC while processing the return.

3. Aggrieved by the said order the assessee preferred an appeal before the Ld. CIT(E) wherein the appeal of the assessee has been dismissed on the ground that audit report in Form 10B has belatedly been filed.

Being aggrieved and dissatisfied the present appeals have been preferred by the assessee before us.

4. The Ld. Counsel appeared on behalf of the assessee has challenged the very impugned order thereby submitting that the assessee has filed return of income on the extended due date and form no. 10B has been filed prior to the return of income. The Ld. Counsel for the assessee by filing an order passed by the Kolkata tribunal in ITA no. 411/2021 has submitted if the assessee was entitled to statutory benefit, it would be incumbent upon the concerned authorities to examine the admissibility of the benefit than to foreclose the assessee on technicalities. The assessee has filed a summary chart which is as follows-

AY 2021-22	
Return filed on	08.03.2022
Form 10B filed on	15.02.2022

AY 2022-23	
Return filed on	29.10.2022
Form 10B filed on	22.10.2022

5. Contrary to that the Ld. D.R supports the impugned order.

6. Upon hearing the submission of the counsel of the respective parties, we have perused the facts of the assessee and find that there is no dispute that the assessee is a society of ex-service man, registered under West Bengal Societies Act, 1961. The assessee has claimed exemption u/s 11 being a charitable society, that has been rejected by the AO by saying that no form filed. The learned CIT(A) in its order has written thus- **as discussed in foregoing paragraph the appellant had filed Form 10B on 15-02-22. Therefore, it is apparent that the said form has not been filed one month prior to the due date for furnishing return. Appellant was required to file form 10B on or before 14-02-2022 for entitlement of deductions. Hence there was a delay.**

7. Hon,ble Kolkata high court has held that filing of form no. 10B is procedural in nature that can be condoned. We have gone through the order passed by the Co-ordinate Bench of Kolkata and find that the Co-ordinate Bench, Kolkata in Manav Seva Trust Vs. AO, Ward-1(4), Kolkata in ITA No. 940/Kol/2024 dated 9.8.2024 has discussed this issue and held thus:

“3. We have considered the submissions by both the ld. A/R and ld. D/R and also perused the orders of ld. AO and the ld. CIT(A). Ld. A/R has relied on the case of Hari Gyan Pracharak Trust vs. DCIT in ITA No. 245/AHD/2021, order dated 16.06.2023. In this case, the Coordinate Bench has held that since filing of Form-10B is merely a procedural requirement, any defect in that is curable. It is seen that the Hon'ble Orissa High Court in the case of Oneness Educational and Charitable Trust vs. Commissioner of Income-tax (Exemption) reported in [2024] 161 taxmann.com 544 (Orissa) has held that the oversight in not filing Form-10B within the due date was to be condoned and the exemption was to be allowed and granted. Also, the Hon'ble Telangana High Court in the case of Global Organization for Development vs. Commissioner of Income-tax (Exemption) reported in [2024] 162 taxmann.com 633 (Telangana) has held that the delay on the part of the assessee in submitting Form-10B was to be condoned and the matter remanded back to the file of the AO for passing appropriate order on merits. Similarly, the Hon'ble Bombay High Court in the case of Al Jamia Mohammediyah Education Society vs. Commissioner of Income-tax (Exemptions) reported in [2024] 162 taxmann.com 114 (Bombay) has held that where the assessee Trust belatedly submitted Form-10B, along with return, on account of oversight by the Chartered

Accountant, the delay in filing of Form-10B deserves to be condoned. In fact, some relevant portions from the said order deserves to be extracted as under:

“■ Admittedly, Petitioner is a charitable trust and had been filing its returns and Form 10B for AY 2015-16, for AY 2017-18 to AY 2021-22 within the due dates. On this ground alone, delay condonation application should have been allowed because the failure to file returns for AY 2016-17 could be only due to human error. Even in the impugned order, there is no allegation of mala fide. As held by the Gujarat High Court in Sarvodaya Charitable Trust v. ITO (Exemption) [2021] 125 taxmann.com 75/278 Taxman 148, the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, Respondent No.1 might be justified in denying the exemption by rejecting such condonation application, but an assessee, a public charitable trust with almost over thirty years, which otherwise satisfies the condition 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 on the authorities concerned. [Para 6]

■ Moreover, the Petitioner does not appear to have been lethargic or lacking in bona fides in making the claim beyond the period of limitation which should have a relevance to the desirability and expedience for exercising such power. Such routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, Page 3 of 5 I.T.A. No.: 940/KOL/2024 Assessment Year: 2018-19 Manav Seva Trust. if such powers are routinely exercised without considering its desirability and expedience to do so to avoid genuine hardship. [Para 7]

■ In a similar matter in Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (Exemptions) [2024] 161 taxmann.com114 (Bombay) was also a case where auditor had due to oversight not filed Form 10B. The Court held that the error on the part of auditor cannot be rejected but should be accepted as a reasonable cause shown by the trust management. In that case also, Petitioner did not suo moto realize its mistake and filed a condonation request only after Centralised Processing Centre (“CPC”) sent an intimation about non-filing of Form 10B. [Para 8]

■ Having considered the matter in its entirety, one is satisfied that the delay was not intentional or deliberate. Petitioner cannot be prejudiced on account of an ignorance or error committed by professional engaged by Petitioner. Respondent No.1 ought to have exercised the powers conferred. [Para 9]

■ In the circumstances, this Writ Petition has to be allowed and is hereby allowed in terms of prayer clause.

■ Since the delay has been condoned, Respondent shall process Petitioner’s returns in accordance with law by giving effect to this order on the basis that Form No.10B has been filed within time. [Para 11]”

4. Considering the discussions made above, the delay in filing of Form 10B is hereby condoned and it is directed that the appellant be allowed exemption as would be due to him as per law. The ld. AO is directed accordingly.

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

8. Keeping in view the above decision and considering the facts of the present case delay in filing form 10B is here by condoned. A.O is directed that the appellant be allowed exemption as would be due to him as per law. Accordingly, case of the assessee is restored in the file of the A.O. for fresh consideration.

In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order is pronounced in the open court on 25th February, 2025

Sd/-

Sd/-

(Rajesh Kumar/राजेश कुमार)

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)

Accountant Member/लेखा सदस्य

Judicial Member/न्यायिक सदस्य

Dated: 25th February, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Maa Vaishno Education Trust, 44/1/1/Italgachha Road, Dumdum, Kolkata-700028
2. Respondent – ITO(Exemption), Ward-1(4), Kolkata
3. Ld. CIT(A)-Addl./JCIT(A)-1, Guwahati
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata