

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
“ D ” BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
And  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 1912/AHD/2024  
निर्धारण वर्ष/Asstt. Year: 2021-22

Shri Saraswati Kelavani Mandal, Patel Jivabhai Dhulabhai, Katulal, Kheda-387630.  PAN: AAJTS0827Q	बनामVs	The Income Tax Officer, Ward-1, Nadiad.
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(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)
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Assessee by :	Shri Girish B. Mehta, AR
Revenue by :	Shri Prathvi Raj Meena, CIT.DR

सुनवाई की तारीख/Date of Hearing : 05/03/2025  
घोषणा की तारीख /Date of Pronouncement: 10/03/2025

**आदेश/O R D E R**

**PER NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the assessee against the order dated 04.09.2024 passed by the Additional/Joint Commissioner of Income Tax(Appeals), Mumbai, (hereinafter referred as JCIT(A)) relevant to the Assessment Year 2021-22.

2. The brief facts of the case are that the assessee is a trust running educational institutions. The return of income for A.Y 2021-22 was filed on 09.02.2022, declaring total income at Rs. Nil. In the return of income, the assessee had claimed exemption of Rs.2,42,88,361/- u/s.10(23C) of the Act. The return of assessee was processed by the CPC on 09.12.2022 u/s.143(1) of

the Act. While processing the return of income the exemption claimed u/s. 10(23C) of the Act was disallowed by the CPC.

3. Aggrieved with the intimation u/s.143(1) of the Act, the assessee had filed an appeal before the First Appellate Authority which was decided by Ld. JCIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. Now the assessee is in second appeal before us. The following grounds have been taken in this appeal.

*1. The Commissioner(Appeals) has arbitrarily, non-judiciously and summarily dismissed the appeal of assessee charitable Trust, running schools( Grant in aid and Non Grantable) in rural area, on the sole ground of limitation, therefore to be set aside.*

*2. The Commissioner (Appeals) has on the facts and in the circumstances of the case and in law, erroneously dismissed the appeal of the assessee without liberally appreciating the facts demonstrating good and sufficient cause for delay in filing of appeal of merely 27 days.*

*3. The Commissioner(Appeals) has, erroneously denying the request for condonation of delay (27 days only) without appreciating the facts of the case, by nonspeaking order, therefore to be set aside.*

*4. The Commissioner (Appeals) has, erroneously dismissed the appeal of the assessee without controverting the documents/material furnished by the appellant, therefore to be set aside.*

*5. That on the facts and in the circumstances of the case and in law, the CPC has erred in making addition of Rs.2,42,88,361/ on account of non-allowing exemption u/s 10(23C), in an intimation order u/s 143(1) of the Income Tax Act, 1961 for AY: 2021-22. deserves to be set aside to the file of Ld Commissioner(Appeals) for deciding issue on merits.*

*6. The Appellant craves leave to add/amend /alter any of the grounds of appeal before or at the time of hearing.*

5. Shri Girish B. Mehta, Ld.AR appearing for the assessee explained that the assessee is a charitable Trust running in total seven schools in rural areas. Out of seven educational institutions, two are State Government grant-in-aid schools and remaining five schools are self-financed schools. He explained that the gross receipt of each school was less than Rs.1 crore and was eligible for exemption u/s.10(23C) of the Act. However, in the return the gross receipt of all the seven schools was inadvertently mentioned without submitting individual institution-wise receipt. Since, the gross receipt of all the seven schools was consolidated shown in the ITR, the claim of deduction u/s.10(23C) of the Act was disallowed by the CPC, as the gross receipt exceeded Rs.1 crore. The Ld. AR explained that the assessee was unable to rectify this mistake online and, therefore, an appeal was preferred before the First Appellate Authority, which was however, not decided by the ld. JCIT(A) on merits. The Ld.AR submitted that the Ld. JCIT(A) had dismissed the appeal of the assessee on the ground of delay of 56 days in filing of the appeal. He further submitted that the actual delay was of 27 days only, the reason for which was duly explained in Form No.-35, but the same was not condoned by the Ld. JCIT(A) and the appeal was dismissed without examining the merits of the case. He, therefore, requested that matter be set-aside to the file of Ld. CIT(A), with a direction to examine the matter on merits.

6. Per Contra Shri Prathvi Raj Meena, CIT. DR had no objection if the matter was set-aside to the file of First Appellate Authority.

7. We have carefully considered the rival submissions. The Ld. JCIT(A) has observed that there was delay of 56 days in filing of appeal by the assessee, the reason for which was not explained. The assessee has pointed

out that there was delay of 27 days only and not 56 days as observed by the Ld. JCIT(A). The assessee had explained that on receiving the intimation the matter was referred to the tax consultant, who first tried to rectify the mistake in the original return and also tried to file a revised return. However, as the issue could not be sorted out, it was finally decided to file the appeal and in the process there was delay of 27 days in filing of the appeal. The delay of 27 days in filing the appeal was not such a long delay, which necessitated the outright dismissal of the appeal. Considering the facts that the assessee is a Trust engaged in charitable activities, the Ld. JCIT(A) was not correct in dismissing the appeal on account of limitation without examining the issue on merits. It has been held by the Hon'ble Gujarat High Court in the case of *Vareli Textile Industries (284 ITR 238) (Gujarat)* that meritorious cases should not be thrown out on ground of limitation. Therefore, it was incumbent upon the First Appellate Authority to also examine as to whether there was any merit in the grounds as raised by the assessee, which was not done. In the interest of justice, we, therefore, set-aside the matter to the file of the Id. CIT(A)/JCIT(A) with a direction to examine the grounds raised by the assessee on merits and thereafter decide the appeal.

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

**Order pronounced in the Open Court on 10<sup>th</sup> March, 2025 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(NARENDRA PRASAD SINHA)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 10/03/2025

आदेश की प्रतिलिपि अद्येषित/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)-(NFAC)
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजोकट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad