



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



**BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**AND**

**SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER**

**ITA No. 0270/PAN/2024**

**Assessment Year : 2022-23**

Raja Bhat And Kumuda Foundation

Plot No. 4, RS No1368,

Kumudini, Sadashiv Nagar,

Belgavi-590001

PAN:AAJCR6351B

*..... Appellant*

**V/s**

Income Tax Officer,

Exemption, Belagavi.

*..... Respondent*

**Appearances**

Assessee by : Mr Pramod Vaidya ['Ld. AR']

Revenue by : Mr S Manikandan ['Ld. DR']

Date of conclusive Hearing : 06/03/2025

Date of Pronouncement : 19/03/2025

**ORDER**

**PER G. D. PADMAHSHALI, AM;**

This appeal is instituted u/s 253(1) of the Income-tax Act, 1961 [for short 'the Act'] by the assessee challenging order passed u/s 250 of the Act by the National Faceless Appeal Centre, Delhi [for short 'Ld. CIT(A)/NFAC'] which in turn upheld the order of intimation passed u/s 143(1) of the Act by the Central Processing Centre, Bengaluru [for short 'Ld. CPC'] in relation to assessment year 2022-23 [for short 'AY'] whereby claim of assessee for exemption is denied.



2. ***Tersely stated facts of the case are that;***

2.1 The assessee is company incorporated u/s 8 of the Companies Act, 2013. Vide DIN & Order No. ITBA/EXM/F/EXM44/2024-25/1067093532(1) the assessee is registered u/s 12AB(1)(b) of the Act for a period 2022-23 to 2026-27. The assessee for the year under consideration filed a return of income [for short 'ITR'] declaring income of ₹5,070/- along-with audit report Form-10B on 14/10/2022.

The return was summarily processed by the Ld. CPC whereby claim for exemption u/s 11 & 12 of the Act was denied for defaulting in filing audit report within the prescribed time. As a result, taxable income was determined at ₹5,42,033/- being the sum of voluntary contribution and income derived from the property held under Trust.

2.2 Aggrieved assessee assailed denial of exemptions in an appeal u/s 246A(1) of the Act. Reiterating assessee's failure to furnish the audit report within the due date prescribed u/s 12A(b)(ii) r.w.s. 44AB of the Act, the said appeal was dismissed by the Ld. NFAC.

2.3 In aforesaid circumstances, the assessee brought up its grievance in present appeal with a substantive grounds directed against denial of exemption for belated filing of audit report.



3. During the course of hearing, the Ld. AR appearing on behalf of appellant submitted that, belated filing of Form-10B is the sole reason behind denial of exemption by the Revenue. The assessee filed its return within the extended due date along-with audit report as prescribed under the statute. It was assessee's first year of operation hence the assessee was under bonafide belief that filing of audit report along-with its ITR satisfies the requirement of law for claiming exemption u/s 11 & 12 of the Act. Although there was a minor delay in filing audit report but admittedly the said report was already on record before Ld. CPC at the time of processing of ITR, therefore there was no logic in denying the exemption merely for belated filing of report. To cut the denial to corner, the Ld. AR averred that, since the filing of audit report is a procedural requirement therefore directory in nature and hence such belated filing cannot be fatal so as to take away the lawful exemption. To drive home this contention the Ld. AR relined on '*CIT(E) Vs Anjana Foundaton*' [2024, 168 taxmann.com 462 (Guj)], and decision of co-ordinate benches in '*ITO Vs Takshshila Foundation*' [2024, 208 ITD 677] and '*Sirur Shikshan Prasarak Mandal Vs ACIT*' [2024, 166 taxmann.com 525]



4. *Per contra* the Ld. DR professed that, claim for exemption u/s 11 & 12 of the Act is subject to fulfilment of certain conditions and not automatic. The one of such condition requires furnishing of Form-10B within the prescribed due date u/s 12A(b)(ii) r.w.s. 44AB r.w.s. 139(4A) r.w.s. 139(1) of the Act. Here the due for filing audit report was extended to 07/10/2022, whereas the same was filed on 14/10/2022. There was clear violation of stipulated mandatory condition. Therefore, once the condition subject to fulfilment of which the exemption available is faulted, then the exemption no longer available to the assessee. Further, the CBDT instruction 267/428/77-IT(Part) dt. 09/02/1978 relied in this case cannot be applied because the assessee missed the boat in explaining sufficient reasons behind such delay by filing condonation petition. On the other hand, there is no evidence to suggest that the assessee was vigilant in complying the provisions of section 12A(b)(ii) of the Act. Therefore, in the absence of sufficient reasons, there is much less scope for condonation and allowing the exemption now. Placing reliance on the orders of tax authorities below, the Ld. DR prayed for dismissal of the assessee's appeal *in limine* tenaciously on same reasons.



5. We have heard the rival party's submission and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on records and considered the facts of the case in the light of settled position of law.

6. Before we advance to settle the dispute, let us first indurate the factual matrix in clear terms; in the case of the appellant, originally the due date for filing audit report and return of income for the year under consideration respectively were 30/09/2022 and 31/10/2022. However, the CBDT vide circular 19/2022 extended the due date for filing audit report electronically to **07/10/2022** and similarly vide circular 20/2022 the due for filing return of income was also extended to **07/11/2022**. It is an admitted fact that, vide audit report dt. 24/08/2022 the books of account of the appellant were duly audited within the stipulated time period. Thereafter, audit report and return of income were filed together by the appellant electronically on **14/10/2022**. Thus, although the return of income in the instant case was filed within the extended due date(supra), the audit report in Form-10B was however filed after the expiry of extended period within which it was required to be filed u/s 12A(b)(ii) r.w.e (ii) to section 44AB of the Act, so in default compliance thereof.



7. We note that, non-compliance of provisions of sub-clause (ii) of clause (b) of section 12A was the solitary reason which persuaded the Revenue to deny the exemption to the appellant. In doing so the Revenue contends that, the audit report subject to extension (if any) was required to be filed by the appellant within **specified period** as prescribed u/s 44AB of the Act i.e., date one month prior to the date of furnishing return of income u/s 139(1) of the Act. It is the case of the Revenue that, since the belated filing of audit report is unsalvaged by condonation in terms of CBDT circular 16/2022 (supra) therefore the said non-compliance of clause (ii) of s/s (b) of section 12A is fatal and thus extinguished the claim for exemption irreversibly.

8. We note that, for the purpose of claiming exemption u/s 11 & 12 of the Act, the appellant assessee is required to comply with certain pre-conditions which are laid in section 12A of the Act. The lone condition relevant to present case in hand is worthy to note here;

(a) . . .

(b) where the **total income of the trust or institution** as computed under this Act without giving effect to the provisions of sections 11 and 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year,—



(i) the books of account and other documents have been kept and maintained in such form and manner . . . . and

(ii) the **accounts of the trust or institution** for that year have been **audited by an accountant** defined in the Explanation below sub-section (2) of section 288 **before the specified date referred to in section 44AB and the person in receipt** of the income **furnishes by that date the report of such audit** in the **prescribed form** duly signed and verified **by such accountant and setting forth such particulars, as may be prescribed;]]** **(Emphasis supplied)**

9. Since the relevant portion of section 12A(b)(ii) treads on a section 44AB of the Act, therefore in advancing adjudication it is imperative to look into such relevant part of section 44AB of the Act. This section 44AB of the Act predominately deals with audit of accounts in general as;

**44AB Every person,—**

(a) carrying on business shall . . . (b) . . . . . (c) . . . . .

(d) carrying on the [profession] shall . . (e) carrying on the business shall. . . .

**get his accounts** of such previous year **audited** by an accountant **before the specified date** and **furnish by that date the report of such audit** in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

**Explanation.—For the purposes of this section,—**

(i) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288;



**(ii) "Specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means [date one month prior to] [the due date for furnishing the return of income under sub-section(1) of section 139] (emphasis supplied)**

10. Let's first deal with ground number 2 relating to substantive verses procedural lapses on the part of appellant in complying with the provisions; a mindful reading of provision of s/c clause (ii) of clause (b) of section 12A of the Act reveals that, the obligation to cause & get the accounts/books audited is on the trust or the institution whereas the duty of filing the audit report is casted upon the person who is in receipt of income on behalf of such Trust. It goes without saying that, the secretary being the principal officer of trust/institution causes & gets the accounts audited for the trust/institution and then places audit report before the trustee for their perusal & approval for general body meeting before same is circulated to members of the Trust. Thus, the trustees in turn are responsible for filing the audit report as they, on behalf of the Trust or for the benefit of any other person under such trust, are in receipt of income & are assessed to tax as such in a representative capacity. This is for the solitary reasons



that no income or part thereof is distributed in case of charitable trust/institution. As in law, a trust is not a juristic person and, therefore, not an assessable unit or entity even for the purpose of assessment under the provisions of the Act as well as under the provisions of then Wealth Tax Act, 1957. There are the trustees who are assessed in respect of the income of the trust u/s 161 or u/s 164 (as the case may be) of the Act in a representative capacity. Thus, duty to cause & get account/books audited although casted upon the trust/institution and the obligation to file the audit report however continues to be on the trustees.

11. As noted earlier that, the accounts/books of the appellant trust was audited and report thereof was obtained much before the expiry of specified date as defined by explanation (ii) to section 44AB of the Act. Thus, the appellant trust ensured substantive compliance by getting its books audited timely u/s 12A(b)(ii) r.w.e. (ii) of section 44AB of the Act. However, the person in receipt of income has procedurally failed to file the report thereof in Form-10B before the expiry of extended period within which it was required to be filed u/s 12A(b)(ii) of the Act.



12. The procedural lapse on the part of appellant in law is not terminal but curable by condonation if it is proved to the satisfaction that for sufficient reasons the appellant could not file the same within the prescribed time. Insofar as the condonation of delay is concerned, we note that, admittedly this is first year of appellant's operation/existence, hence the appellant's bonafide belief that filing of audit report along-with return was sufficient compliance of law for claiming exemption cannot be suspected. It is a well-accepted proposition that the delays in relation to compliance under any law are required to be condoned in the larger interest of justice where no gross negligence or deliberate inaction or lack of bonafide is imputable to the party seeking condonation of delay. ['Collector, Land Acquisition Vs Katiji'[AIR 1987 SC 1353]. In view of the former judicial precedents (supra), the bonafide belief of the appellant in our view forms a sufficient reasons for pardoning the delay and the default. Thus once the substantive compliance of clause (ii) of 12A(b) of the Act is made before the expiry of specified time (supra), then delay in uploading the report being procedural cannot be so fatal take away the legal entitlement.



13. The aforestated proposition has been fostered by catena of judicial precedents including '*CIT(E) Vs Anjana Foundation*' (supra), '*Nav Chetna Charitable Trust Vs CIT(E)*' [2024, 169 taxmann.com 543 (Bom)], '*Shree Bhairav Seva Samiti Vs ITO*' [2023, 101 ITR 708(Mum)] & '*Sirur Shikshan Prasarak Mandal Vs ACIT*' (supra). In absence of anything contrary brought on record by the Revenue, there is no reasons to divert from settled legal position. Therefore, respectfully following judicial precedents (supra), we set-aside the impugned order on this count and direct the Ld. AO to condone the delay & default and re-process the ITR for allowing exemption u/s 11 & 12 of the Act in accordance with law. The appellant assessee thus succeeds and in result the second ground of the appeal stands allowed.

14. Now coming to the legal ground of appeal; it is mindful to state that, the bare but conjoint reading of provisions of section 12A and 44AB of the Act largely reveals that, a twofold obligation is casted upon the assessee viz; (a) to get books audited and (b) to furnish report thereof. The aforestated duty also additionally burdens assessee with twofold riders such as; (i) it stipulates that, the auditor for auditing the books must be an accountant within the meaning of



explanation to s/s (2) of section 288 of the Act i.e., must be a chartered accountant holding a certificate of practice, **and** (ii) it also stipulates time limit or due date for audit & due date for furnishing such audit report. It is appropriate here to underline that, the legal ground to be adjudicated hinges around later part of this second (ii) stipulation i.e., time limit for furnishing such audit report once it is obtained from the auditor within 'specified date' as per explanation (ii) (supra).

15. The provisions prescribing due date for audit & time limit for furnishing audit report as contained in s/c (ii) of clause (b) of section 12A of the Act are parametria to the provisions of section 44AB of the Act. Insofar as the due date for audit is concerned there is no dispute between the rival parties that, the accounts are to be audited by the trust/institution by specified date as defined in explanation (ii) to section 44AB of the Act. Which clearly and explicitly sets the time clock of ***one month prior to the due date of furnishing the return*** of income u/s 139(1) of the Act. The rival parties are in complete agreement to aforesaid position of law and the Revenue solidified that, the appellant has substantively complied with this provision by obtaining the audit report well before the expiry of specified date.



16. Now coming to later part of second stipulation of s/c (ii) (supra); that is furnishing of report after it is obtained from the auditor, the rival party reads the word '*by that date*' occurring in section 12A(b)(ii) of the Act with a diverse reference. The Revenue sees it with reference to 'specified date' (supra), *au contraire* the appellant see it with reference to 'section 139(4A) r.w.s. 139(1) of the Act unlike the Revenue. The appellant claimed that, filing of audit report is the duty of the person in receipt of income on behalf of trust/institution therefore filing of such report any time before the expiry of due date prescribed u/s 139(4A) r.w.s. 139(1) of the Act ensures the compliance for section 12A(b)(ii) of the Act. Thus, the time for filing audit report was available to appellant till 07/11/2022 being extended due date for filing of return and not 07/10/2022 being extended specified date. Thus the Revenue's claim go on fire on the appellant's assertion that, the time limit set for audit of accounts and time limit allowed for filing such audit-report after such audit report is obtained cannot be one & the same.

17. We concur to the proposition that, once accounts/books are audited and financial statement are attested by the auditor, the audit



report is placed for perusal & approval of trustees. Once it is approved, the observations & prescribed details therefrom are pulled into Form-10B for reporting and its authentication by the auditor. The procedure from completion of audit till preparation of Form-10B by the auditor is a time-consuming task as it not only necessitates approval from trustee, but passes through a process of (a) auditor's attestation by assigning Unique Document Identification Number ['UDIN' for short] as mandated by the Institute of Chartered Accountants of India & (b) affixation of Digital Signature Certification ['DSC' for short] for the purpose faceless digital/online submission and subsequent online filing approval by the appellant.

18. On the other hand, in our considered view prescribing due date for filing of audit report much before the filing of return serves no purpose, because the only purpose of audit report or the altimeter of audit report is to enable the Revenue to compute the taxable income of the appellant in accordance with law in the light of return of income filed. We say so because sub-rule (3) of rule 6G of IT-Rules, 1962 extends the time limit for furnishing the audit report till the closure of assessment year where it necessitates to revise it owing to changes



in claim for deduction triggered by recalculation of disallowance u/s 40 or u/s 43B of the Act. We also see eye to eye to the proposition that, the ‘specified date’ as defined in explanation (ii) to section 44AB of the Act sets time clock for audit and is not sacrosanct because it stands erected on the borrowed shoulders of section 139(1) of the Act, which in turn stipulates due date for filing of original return of income. It is to be noted that, as and when due date of filing of return of income (for any reasons) is extended by the CBDT, then such extension robotically influences the time clock set by ‘specified date’ thus necessitating no explicit communiqué by the Revenue.

19. This specified date as defined u/e (ii) to section 44AB of the Act is hooked to section 139(1) of the Act, therefore nothing can further be tied to such variable or mutable time limit. The word ‘*by that date*’ occurring in clause (ii) of s/s (b) of section 12A of the Act is therefore tied to navel due date of filing of return u/s 139(4A) r.w.s. 139(1) of the Act and not to specified date as defined by explanation (ii) to section 44AB of the Act. The another reasons that, this pushed time limit accords reasonable period to the person receipt of income on behalf of trust/institution in ensuring the compliance of filing of



report only after due discharge of duty casted upon the Trust/institution of getting the accounts audited by specified date.

20. In view of the aforestated discussion, we hold that, the expression used '**by that date**' is used in s/c clause (ii) of clause (b) to section 12A of the Act is with reference to due date prescribed u/s 139(4A) r.w.s. 139(1) of the Act. In view thereof, audit report filed by the due date prescribed u/s 139(1) of the Act ensure the compliance of law and therefore we set-aside the impugned order on this score as well and direct the Ld. AO to consider the Form-10B of the appellant as filed within the prescribed time limit and allow the exemption in accordance with law. The legal ground raised thus also stands allowed.

**21. In result, the appeal of the assessee is ALLOWED.**

In terms of rule 34 of ITAT Rules, the order pronounced in the open court the date mentioned hereinbefore.

**-S/d-**

**PAVAN KUMAR GADALE  
JUDICIAL MEMBER**

Panaji, 19th March, 2025.

**Copy of the Order forwarded to :**

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|-------------------|-----------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent.                | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File                |

**-S/d-**

**G. D. PADMAHALI  
ACCOUNTANT MEMBER**

By Order,  
Sr. Private Secretary / AR ITAT, Panaji.