

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &  
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 1278/SRT/2024  
(Assessment Year: 2019-20)

Shree Suigam Khodadhor Panjara Pole, 301, Kumudchandra Krupa Society, Sonifalia, Gopipura, Surat-395001	Vs.	Assistant Director of Income Tax, CPC, Bengaluru Jurisdictional Assessing Officer, Income Tax Officer, Exemption Ward, Surat
[PAN No. AACTS5485R]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Sapnesh Sheth, C.A.
<b>Respondent by:</b>	Shri Mukesh Jain, Sr. DR

<b>Date of Hearing</b>	26.03.2025
<b>Date of Pronouncement</b>	21.04.2025

ORDER

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeal), (in short "Ld. CIT(A)"), ADDL/JCIT(A), Udaipur vide order dated 29.10.2024 passed for A.Y. 2019-20.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the case as well as law on the subject, the Ld. ADDL/JCIT Commissioner of Income Tax (A), Udaipur, has erred in confirming the action of Asst. Director of Income Tax, CPC, Bengaluru in making huge disallowance of expenses of Rs. 60,10,845/- claimed u/s 11 of the I.T. act on the ground that form 10B was not e-filed at the time of filing of return of income.

2. *On the facts and circumstances of the case as well as law on the subject, even otherwise also the addition if any can be made in respect of net income i.e. after allowing the expenses and that gross amount cannot be charged to tax.*

3. *It is therefore prayed that the above addition made by Asst. Director of Income Tax, CPC and confirmed by Ld. ADDL/JCIT Commissioner of Income Tax (A) is prayed to be deleted.*

4. *Appellant craves leave to add, alter or delete any ground(s) either before of in the course of hearing of the appeal.”*

3. The brief facts of the case are that the assessee is a society registered under Societies Registration Act 1860 and also Public Trust registered under Bombay Public Trusts Act 1950. The assessee is engaged in running various educational colleges imparting diploma & degree courses in the field of engineering, management, pharmacy etc. The assessee is registered u/s 12A of the Income Tax Act & also u/s 80-G of the Income Tax Act 1961. For A.Y.2020-21 assessee filed its return of income on 18/02/2021 after the prescribed due date of 15/02/20021 declaring NIL total income. The Income & expenditure A/c of assessee showed a net surplus income of Rs. 18,19,839/- for the Financial Year 2017-18. The Audit report in Form 10B as required u/s 12A(1)(b) was also filed on 18-02-2021 along-with the return of income. The return of Income was processed u/s 143(1) and intimation dated 24/12/2021 was passed by Asst. Commissioner of Income Tax, CPC, Bengaluru at total income of Rs.26,70,63,238/- by disallowing the exemption claimed by assessee u/s 11 of the Act, amounting to Rs.26,70,63,238/-.

4. Aggrieved by the said order of the assessing officer, the assessee preferred appeal before Ld. CIT(Appeals).

5. During the course of appellate proceedings before Ld. CIT(Appeals), the assessee submitted that assessee trust is eligible to claim deduction u/s 11 of the Act. Further copy of audit report in form 10B which could not be submitted electronically due to inadvertence was also enclosed before Ld. CIT(Appeals). The assessee submitted that assessee should not suffer for procedural mistakes which are beyond assessee's control. The assessee submitted that if a public charitable trust registered u/s 12A of the Act had substantially satisfied conditions for availing benefit of exemption as a trust, it could not be denied exemption merely on account of bar of limitation in furnishing audit report in Form no. 10B. The assessee submitted here that donation received by assessee is eligible for exemption u/s 80G(5) of Act granted by CIT-II, Surat vide certificate dated 05.10.2010. The assessee further submitted that the accounts of the trust are also audited, not only under the IT Act but also under Bombay Public Trust Act. Copy of the Audit report dated 29.09.2019 for above year issued under Bombay Public Trust Act was also submitted before Ld. CIT(Appeals). Further, the assessee submitted that copy of Audit Report in Form 10B which could not be submitted electronically due to inadvertence and the same was filed before Ld. CIT(Appeals).

6. However, Ld. CIT(Appeals) dismissed the appeal of the assessee, with the following observations:

*“The AO cannot allow the deductions u/s. 11 on facts and in circumstances of the law except when a Court directs under alternative remedy or CIT(Exemptions) condones the delay u/s 119(2)(b) of the Act. Keeping in view of the above, I am of the opinion that the AO has rightly denied exemption u/s 11 of the I.T. Act and rightly made addition of Rs.60,10,845/- to the income of the appellant.”*

7. The assessee is in appeal against the order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee. On going through the rival contentions, we observe that both for the earlier as well as subsequent years, the assessee has e-filed Form 10B within the stipulated time frame. Further, for this year as well, we observe that the Form 10B contained a specific UDIN mentioning the date on which the Audit Report was prepared as 29-09-2019 (enclosed at pages 5-6 of Paper-Book submitted before us). Therefore, it is not the case that Auditor's Report in Form 10B had not been prepared by the Auditors but there was a procedural delay in e-filing of the same.

8. In the case of **Brahmchari Wadi Trust vs. Commissioner of Income-tax (Exemption) [2025] 173 taxmann.com 54 (Gujarat) [17-03-2025]**, the High Court held that where delay in filing Form No. 10 by assessee-trust had occurred due to internal administrative problems of assessee-trust, since assessee-trust for past many years had substantially satisfied conditions for claiming exemption under section 11, exemption under section 11 could not be denied for non-filing of Form No. 10 in time.

9. In the case of **Shri Parshwanath Bhakti Vihar Jain Trust vs. Commissioner of Income-tax (Exemption) [2024] 166 taxmann.com 732 (Gujarat)[13-08-2024]**, the High Court held that where assessee-trust for past many years had substantially satisfied conditions for claiming exemption under section 11 and had also explained reason for delay in filing Form No. 10B due to illness of Accountant who was on leave for long time, matter was to be remanded to respondent to condone delay in filing Form 10B.

10. In the case of **Sarvodaya Charitable Trust vs. Income Tax Officer. (Exemption) [2021] 125 taxmann.com 75 (Gujarat)/[2021] 278 Taxman 148 (Gujarat)[09-12-2020]**, the High Court held that where assessee, a public charitable trust registered under section 12A, had substantially satisfied condition for availing benefit of exemption as a trust, it could not be denied exemption merely on bar of limitation in furnishing audit report in Form no. 10B.

11. In the case of **Vardhman Stanakvasi Jain Shrivak Trust vs. Income-tax Officer [2025] 172 taxmann.com 165 (Ahmedabad - Trib.) [14-02-2025]**, the ITAT held that delay in submission of Form No. 10B is a procedural defect, hence, where assessee had filed Form No. 10B before Commissioner (Appeals) before conclusion of appellate proceedings, exemption under sections 11 and 12 could not be denied to assessee only on account of late filing of Form No. 10B.

12. In the case of **Shiksha Foundation vs. Income Tax Officer (Exemption) [2024] 164 taxmann.com 757 (Ahmedabad - Trib.) [14-06-2024]** the ITAT made the following observations in this regard:

*“We have heard the rival contentions and perused the material on record. In this case, on going through the facts of the case, what transpires from the records is that the audit report for assessment year 2018-19 was duly signed by the auditor on 21-09-2018, though the same was omitted to be filed on the income tax portal. The due date of filing of income tax return for assessment year 2018-19 was 26-09-2018. Notice under section 143 (1) (a) was issued on 19-12-2019. The audit report of the assessee trust was filed on the income tax portal by the auditors of the assessee trust on 20-01-2020. Intimation under section 143 (1) denying the claim of the application of income was issued by CPC, Bengaluru on 8-02-2020. Therefore, what can be seen is that as on the date on which the intimation/order under section 143(1) of the Act was passed by CPC, Bengaluru, the auditor of the assessee trust had already filed the audit report in form 10B, before such order/intimation under section 143 (1) of the Act was issued.*

*From the facts placed on record before us, we see no deliberate/mala fide intention on the part of the assessee or it's auditor to file the audit report in form 10 B belatedly.*

*7.1 In the case of Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (Exemptions) [\[2024\] 161 taxmann.com 114 \(Bom.\)](#), the High Court held that where assessee-trust filed Form No. 10 beyond due date and assessee's auditor admitted to oversight that he did not consider provisions of Rule 17 and was under bona fide impression that since factum of accumulation of receipts was reported in audit report in Form No. 10B a separate statement in Form No. 10 was not required, in view of fact that delay was not intentional, assessee could not be prejudiced on account of an ignorance of rules admitted by professional engaged by assessee and thus, delay was to be condoned.*

*7.2 In the case of Social Security Scheme of GICEA v. CIT (Exemptions) [\[2023\] 147 taxmann.com 283 \(Guj.\)](#), the Assessee a Public Charitable Trust had been filing returns of income in time along with audit report under section 12A(1)(B). For relevant assessment year 2016-17, assessee obtained audit report from Chartered Accountant well before time, however, same could not be uploaded along with return of income inadvertently. In absence of any audit report, Central Processing Centre had not granted exemption under section 11 which otherwise was available to it since many years and resultantly demand was raised. The Assessee therefore filed a rectification application under section 154, seeking to place on record audit report to Central Processing Centre but same was rejected on ground that Form No. 10B audit report, was not filed in time. The Assessee filed an application before CBDT to condone delay in filing Form No. 10B audit report, however same was rejected. The High Court held that since assessee was a public charitable trust for past 30 years and substantially satisfied conditions for availing exemption under section 11 it should not be denied exemption merely on bar of limitation especially when legislature had conferred wide discretionary powers to condone such delay. Accordingly, the Gujarat High Court directed that the order of rectification under section 154 be quashed*

*7.3 In the case of Jt. CIT (OSD) v. Gujarat Energy Development Agency [\[2023\] 154 taxmann.com 348/202 ITD 733 \(Ahd. - Trib.\)](#), the ITAT held that where assessee, a charitable trust, filed audit report in Form No. 10B during assessment proceedings, Assessing Officer could not have denied exemption under section 11 on ground that audit report was not e-filed along with return.*

*7.4 In the case of Sarvodaya Charitable Trust v. ITO (Exemptions) [\[2021\] 125 taxmann.com 75/278 Taxman 148 \(Guj.\)](#), the High Court held that where assessee, a public charitable trust registered under section 12A, had substantially satisfied condition for availing benefit of exemption as a trust, it could not be denied exemption merely on bar of limitation in furnishing audit report in Form no. 10B.*

*7.5 In the case of CIT v. Gujarat Oil & Allied Industries [\[1993\] 201 ITR 325 \(Guj.\)](#), the High Court held that where an assessee could not file audit report along with return but filed it later before completion of assessment by ITO, he was entitled to deduction under section 80J of the Act.*

*7.6 Accordingly, in light of the above judicial precedents cited above and the assessee's set of facts, we are of the considered view that the claim of application of income cannot be denied to the assessee only on the ground that the assessee/the auditor of the assessee omitted to file form 10B (auditor's report) along with return of income, when the same was submitted to the tax authorities before the order/intimation under section 143 (1) of the Act was issued.*

*8. In the result, the above ground of appeal of the assessee is allowed.*

13. It would be useful to reproduce the relevant extracts of the decision of jurisdictional Surat Tribunal dealing with an identical issue in the case of **Premprakash Ashram Trust vs. ITO in ITA No. 284/Srt/2024 for A.Y. 2018-19 vide order dated 17.05.2024:**

*“4. We have considered the submissions of both the parties and perused the record carefully. There is no dispute that the assessee-trust is having registration under section 12A/12AB of the Act. The assessee filed return of income on 29/08/2018. In the computation of income, the assessee claimed application of income under section 11/12 of the Act. The return of income was filed within the time allowed under section 139(1) of the Act. The return of income was processed by CPC Bangalore vide order dated 26.09.2019. The CPC while processing return of income disallowed exemption of Rs. 15,48,619/-. We find that the assessee uploaded audit report under Form 10B dated 28/08/2018, on ITBA portal on 12/12/2019. The assessee claimed that the audit report was obtained before filing return of income. There is no material to disbelieve the contention of the ld AR for the assessee that audit report was obtained well in time. We also find that audit report was filed/ uploaded on ITBA portal before adjudication of appeal by ld CIT(A). Therefore, considering the decisions of Hon'ble Jurisdictional High Court in CIT Vs. Gujarat Oil & Allied Industries (1993) 201 ITR 325 (Guj), Gujarat Paghuthan Energy Corporation (P) Ltd. Vs DCIT 225 Taxman 70 (Guj) and Zenith Processing Mills vs CIT 219 ITR 721 (Guj) and the decision of Hon'ble Bombay High Court in CIT Vs Sakal Relief Fund (2017) 81 taxmann.com 396 (Bombay) that uploading of audit report is a procedural provision and should not be construed as mandatory, hence, we direct the Assessing Officer to verify the fact and allow appropriate relief to the assessee by following the aforesaid decisions. Needless to direct that before passing the order, the Assessing Officer shall grant opportunity of hearing to the assessee. In the result, the grounds of appeal raised by the assessee is allowed.*

*5. In the result, this appeal of assessee is allowed.”*

14. Before us, the Ld. DR for the Revenue placed reliance on the decision of **Pr. CIT v. Wipro Ltd. [2022] 140 taxmann.com 223/288 Taxman**

491/446 ITR 1, wherein the Supreme Court has held that where assessee claimed benefit under section 10B(8) by **furnishing declaration in revised return much after due date prescribed under section 139(1)**, same was to be denied as requirement of furnishing declaration before AO before due date of filing original return under section 139(1) was a mandatory condition not directory. In our view, the aforesaid decision is not applicable to the assessee's facts and would not preclude / prohibit the assessee from claiming deduction under Section 11 of the Act, for the following reasons:

(i) Firstly, in the case of Wipro Limited supra, the issue for consideration before the Hon'ble Supreme Court was that **in the original return of income, the assessee had claimed deduction under section 10B of the Act**, whereas in the revised return filed under section 139(5) of the Act, assessee **did not claim deduction under section 10B of the Act, and instead claimed benefit of carry forward of losses**. It was in light of these facts that the Hon'ble Supreme Court held that on a plain reading of section 10B(8) of the Act, it is clear that for claiming the benefit under section 10B, the twin conditions of furnishing the declaration to the assessing officer in writing and that the same must be furnished before the due date of filing of return of income under sub-section (1) of section 139 are required to be fulfilled/satisfied. Therefore, the facts in the decision of Wipro were on a different footing and further, the issue for consideration in the Wipro case was also distinguishable, **wherein the issue for consideration was that once the assessee had claimed benefit of section 10B in the original return of income, whether such benefit could be foregone by way of filing of revised return of income u/s 139 (5) of the Act (and the assessee could,**

**in turn, avail the benefit of carry forward losses in the revised return of income).**

(ii) Besides the above, in the case of **Commissioner of Income-tax, Maharashtra vs. G. M. Knitting Industries (P.) Ltd. [2016] 71 taxmann.com 35 (SC)/[2015] 376 ITR 456 (SC)/[2015] 279 CTR 534 (SC)[24-07-2015]**, Hon'ble Supreme Court held that even though necessary certificate in Form 10CCB along with return of income had not been filed but same was filed before final order of assessment was made, assessee was entitled to claim deduction under section 80-IB of the Act. Therefore, in light of the decision of Yokogawa Supreme Court (which is held that section 10A of the Act is a “**deduction provision**” not an “**exemption provision**”) and the decision of G. M. Knitting Industries case supra, which have been rendered on a similar facts as that of the assessee i.e. **claim of deduction was claimed in the original return of income itself**, in our view, the ratio laid down in the Wipro Ltd. case would not disentitle assessee to claim benefit of deduction under Section 11 of the Act, **once such claim has been made in the original return of income and assessee has also furnished Form 10B during the course of appellate proceedings**. It is a well settled principle of law that if there is any ambiguity regarding interpretation of a Statutory provision, an interpretation favourable to the assessee may be taken, especially when we are dealing with Statutory provisions aimed at giving some incentive to the assessee.

15. Respectfully following the aforesaid decisions, we are of the considered view that the claim of application of income cannot be denied to the assessee only on the ground that the assessee/the auditor of the assessee

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omitted to file Form 10B (auditor's report) along with return of income, when the same was submitted to the Tax Authorities and the same being a procedural defect.

16. In the result, appeal of the assessee is allowed.

**Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 21/04/2025**

**Sd/-**  
**(BIJAYANANDA PRUSETH)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 21/04/2025

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat