

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH MUMBAI  
BEFORE: SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 1244/MUM/2025(A.Y: 2022-23)

(Physical hearing)

Shree 1008 Shantinath Digamber Jain Trust 75, Bombay mutual Bldg. 1 <sup>st</sup> FL.Dr.D.N.Road Fort, Mumbai-400001.	Vs.	I.T.O(Exem)-2(3) Room no. 617.MTCL.Bldg. Pedder Road, Mumbai-400001.
<b>PAN: AAFTS 3012 B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri D.C. Jain, CA
Revenue by	Shri. Vijay Kr. G. Subramanyam, Sr. DR
Date of Hearing	21/04/2025
Date of Pronouncement	23/04/2025

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal has been preferred against the impugned order dated 20.01.2025 passed in Appeal no. ADDL/JCIT (A)-3 Bangalore /10030/2021-22 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] under section 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2022-23. The assessee has raised following grounds of appeal:

*" 1 Under the facts circumstances and in law the learned assessing officer erred in Denying the exemption under sub-section 2 of section 11 of 1.T.Act and assessed Income at Rs.23, 00, 842/- and confirmed the same by learned ADDL JCIT (A)-3 Bengaluru.*

*2. The learned assessing officer as well as learned ADDL JCIT (A) failed to Appreciate That:-*

*(i) The assessee filed form no.10 i.e. statement to be furnished to the assessing officer Under section 11 (2) of 1.T.Act on 24-09-2022 i.e. before the due date of furnished Return of income under section 139 (1) of L.T.Act.*

*(ii) Return of income for A.Y.2022-23 filed on 31-10-2023 though the return was Uploaded in computer for necessary submission on 24-09-2022 but due to website Problem the same remain unfiled when the return for A.Y.2023-24 was under Process of submission, it was observed that return form A.Y.2022-23 remain Unfiled, immediately return was filed.*

*(iii) Form 10-B i.e. Audit Report filed on 24-09-2022 which contain all the details /information which contain in return of income.*

*(iv) Sub-section 9 of section 13 of 1. T.Act states that the exemption u/s 11(2) shall Not apply if.*

*(a) Form No.10 is not furnished on or before the due date specified under section 139 (1) for furnished the return for the previous year.*

*(b) The Return of income for the previous year is not furnished by such person on or Before the due date.*

*The appellants submitted form no. 10 on 24-09-2022 i.e. within the due dates under Section 139(1) of T Act therefore the exemption u/s 11 (2) should be allowed.*

*3. The Appellants crave, leave to add, amend, alter and delete the grounds of appeal at Or before the hearing of appeal.”*

2. Rival submissions of both the parties have been heard and record perused. The learned authorized representative (Ld. AR) of the assessee submit that assessee is a public charitable trust, having registration under section 12A/AB of income tax Act and is also registered under Maharashtra Public Trust Act. Due to accidental omission, return of income for A.Y. 2022-23 was not filed within due date and was filed only on 31.10.2023. The assessee realized non-filing of return of income for A.Y. 2022-23 only when return of income for A.Y. 2023-24 was being filed. The assessee filed return of income for AY 2022-23 on 31.10.2023, but it was beyond due date. Though, the assessee furnished Form-10B well within time. The Central Processing Centre (CPC) while processing return of income not allowed the exemption under section 11(2) in the intimation issued vide order dated 09.12.2024 under section 143(1). The assessee filed application under section 119(2) of Income tax Act for condonation of delay in filing return of income, which is still pending before Ld. CIT(Exemption). The Ld. AR for the assessee submits that the omission of non-filing return was not intentional rather due to bonafide mistake. The Ld. CIT(A) confirmed the action of CPC and not

condoned the delay in filing return of income belatedly. The Ld. AR of the assessee prayed that delay in filing the return of income may be condoned and matter may be restored back to the file of AO to treat the belated return as return file in time and to consider application of income under section 11 of Income Tax Act. He undertake on behalf of assessee to furnish necessary details. The assessee is a charitable trust and actively involved in charitable activities for last 25 years and substantially satisfied all the conditions for availing benefit of exemption under section 11 of Income Tax Act.

3. On the other hand the Ld. DR for the revenue submits that assessee has not filed return of income within due date, which is preconditioned for availing benefit under section 11 of the Act. Admittedly, the delay in filing the income has still not be condoned by Ld. CIT(Exemption). Thus, the assessee failed to satisfy the condition for availing benefit under section 11 Income Tax Act.
4. I have considered the rival submission of both the parties and I have gone through the orders of lower authorities carefully. It is not in dispute that assessee is a charitable trust. The assessee is having registration under section 12A/12AB, which is the precondition for claiming application of income of the trust. Further, object and activity of the assessee is not disputed by Id CIT(A). Only reason for not allowing application under section 11 is that assessee has not filed return of income within due date. It is also matter of fact that application for condonation of delay in filing return of income is still pending before Ld. CIT(Exemption). Considering the fact that assessee all the condition except filing return of income within due date. Therefore, matter is restored to the file of Jurisdictional AO to treat the belated return a return filed in time and

to verify the fact and allow benefit of section 11(2), if the assessee fulfilled all other requisite conditions. The assessee is also directed to provide necessary detail to the Jurisdictional AO. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 23.04.2025.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 23/04/2025  
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**