

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, COCHIN**

Before Shri Inturi Rama Rao, Accountant Member

ITA No.186/Coch/2025 : Asst.Year 2017-2018

ITA No.187/Coch/2025 : Asst.Year 2018-2019

Sri Gandhari Ammancoil Trust TC 25/111, Gandhari Ammancoil Junction, Trivandrum – 695 001. PAN : AADTS8310E.	v.	The Income Tax Officer Exemption Ward Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.Krishnamoorthy Hariharan, CA

Respondent by : Smt.Leena Lal, Senior AR

Date of Hearing : 13.03.2025	Date of Pronouncement : 29.04.2025
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ORDER

These appeals filed by the assessee-trust is directed against different orders of the Addl./Joint Commissioner of Income-tax (Appeals)-6, both dated 30.12.2024 passed u/s.143(1) of the Income-tax Act, 1961 (“the Act”) for the assessment years 2017-2018 and 2018-2019.

2. Since common issues are involved in these appeals, they were heard together and are being disposed of by this consolidated order, for the sake of convenience. We take ITA No.186/Coch/2025 for assessment year 2017-2018 as the lead appeal for adjudication, and to state that the decision that would arrive at therein would be applicable to the other appeal as well.

3. Briefly the facts of the case are that the appellant is a charitable trust, duly registered under the Trust Act. It is formed with the object of running and maintaining of a temple and also for doing charitable activities. The appellant trust also duly registered u/s.12AA of the Income-tax Act, 1961 (“the Act”) on 30.10. 2001. The return of income for the assessment year 2017-2018 was filed on 26.10.2017 disclosing Nil income, after claiming exemption u/s.11 of the Act. The said return of income was processed by the CPC u/s.143(1) of the Act vide intimation dated 25.03.2019 after making adjustment by disallowing income applied for charitable purposes of Rs.22,50,000, by denying exemption u/s.11 of the Act, since the Auditor’s report in Form10 was filed beyond the prescribed time.

4. Being aggrieved by the said intimation, an appeal was filed before the CIT(A), who vide the impugned order held that since audit report was filed after processing of the return of income u/s.143(1) of the Act and the audit report in Form 10B was filed only in the year 2023, the CPC was justified in making the adjustment to the income claimed exemption u/s.11 of the Act.

5. Being aggrieved, the appellant is in appeal before me in the present appeal. It is submitted that the audit report in Form 10B could not be submitted within the prescribed due date for filing the return of income u/s.139(1) of the Act, as the concerned Chartered Accountant was passed away and its audit report was furnished during the course of proceedings before the CIT(A). It is further submitted that making an adjustment u/s.143(1) of the Act for non-furnishing of audit report in

Form 10B is beyond the scope of the power u/s.143(1) as filing of the audit report is only procedural in nature and mere failure to file the audit report does not constitute incorrect claim. In support of this, the learned Counsel placed reliance on the decision of the Co-ordinate Bench of the ITAT in the case of *M/s.Ammuni Foundation v. DCIT* in ITA No.695/Coch/2022 (order dated 28.10.2022) and the judgment of the Hon'ble Gujarat High Court in the case of *Association of Indian Panel Board Manufacturer v. DCIT* in Tax Appeal No.655 of 2022 (dated 21.03.2023), etc.

6. On the other hand, the learned Senior DR submits that filing of audit report in Form 10B is mandatory as per Rule 12(2) of the Income-tax Rules, 1962 from assessment year 2016-2017.

7. I heard rival submissions and perused the material available on record. The only issue that arises for my consideration is whether the CPC was justified in making adjustment of income claimed to be exempt u/s.11 of the Act for the reason that the appellant-trust had not filed audit report in Form 10B within the due date prescribed u/s.139(1) of the Act nor filed before the processing of the return by the CPC. The scope of adjustment u/s.143(1) of the Act was defined there under. On a mere reading of the provisions of sec.143(1) of the Act, an adjustment can be made where incorrect claim is made in the return of income based on the information contained in the return of income. The said provision nowhere stipulates that the mere non-filing of audit report would amount to "incorrect claim". Therefore, respectfully following the decision of the Co-ordinate Bench of the ITAT in the case of *M/s.Ammuni Foundation v. DCIT* in ITA No.695/Coch/2022 (order

dated 28.10.2022), I am of the considered view that the adjustment made by the CPC is not valid in law and accordingly I direct the CPC to amend the intimation.

8. In the result, the appeals filed by the assessee stand allowed.

Order pronounced on this 29th day of April, 2025.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Cochin; Dated : 29th April, 2025.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT, Cochin.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin