

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH "SMC", RAJKOT**

**BEFORE DR. ARJUN LAL SAINI,
ACCOUNTANT MEMBER**

**ITA No.140/RJT/2025
Assessment Year: (2021-2022)**

Kakadiya Parivarna Kuldevi Sghree Brahmani Khodiyar Trust Jaysukhbhai Laljibhai Kakadiya Jarkhida, Ta. Lathi, Amreli PAN : AADTK 1328 E (Assessee)	Vs.	The ITO Exemption Ward-2, Rajkot. (Respondent)
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निर्धारिती की ओर से/Assessee by : Shri D.M. Rindani, Id.AR

राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Id.Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/03/2025

घोषणा की तारीख/Date of Pronouncement : 28/04/2025

आदेश / ORDER

Per, Dr. ARJUNLAL SAINI AM;

Captioned appeal filed by the assessee, pertaining to Assessment Year 2021-22, is directed against the order passed by the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre (NFAC), Pune, vide order dated 17.01.2025, which in turn arises out of an order passed by the Assessing Officer, dated 24.01.2023, u/s154 of the Income Tax Act, 1961.

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

1. The learned ADDL/JCIT (A)-1, Pune, erred in confirming the action of the CPC, Bangalore in rejecting application u/s 154 of the Act by failing to appreciate that the action of CPC, Bangalore in making adjustments to



the returned income of the appellant by way of intimation u/s 143(1) of the Act and in denying the benefit of Sec. 11 to the appellant was not a case of permissible prima facie adjustment.

2. The learned ADDL/JCIT (A)-I, Pune, erred in confirming the action of the CPC, Bangalore in not giving deduction of Rs. 20,51,250/- claimed by the assessee u/s 11(I)(d) of the Act, being voluntary contribution received as corpus.

3. The learned ADDL/JCIT (A)-I, Pune, erred in confirming the action of the CPC, Bangalore in not giving deduction of Rs.16,373/-, claimed by the assessee u/s 11(1)(a) of the Act.

4. The learned ADDL/JCIT (A)-I, Pune, erred in confirming the action of the CPC, Bangalore in not giving deduction of Rs.36,397/-, claimed by the assessee, by way of amount applied during the previous year on revenue account.

5. The learned ADDL/JCIT (A)-I, Pune, erred in confirming the action of the CPC, Bangalore by failing to appreciate that only net income is taxable under the Act and not the entire gross income of the assessee.

6. The assessee craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal.”

3. Shri D.M. Rindani, Learned Counsel for the assessee, at the outset, argued that the assessee could not file audit-report in Form No.10B, on or before the due date of filing of return of income, u/s 139(1) of the Act, therefore, exemption claimed by the assessee, was denied by the Assessing Officer (CPC-AO). However, the assessee has filed the Form No.10B, during the appellate proceedings, which is sufficient compliance. Therefore, a suitable direction may be given to the Assessing Officer to examine the Form No.10B and adjudicate the issue in accordance with law.



4. On the other hand, the Learned Senior DR for the Revenue submitted that since the assessee did not file the audit report in Form No.10B, on or before the due date of filing of return of income, under section 139 (1) of the Act, therefore, exemption claimed by the assessee, was rightly denied by the assessing officer (CPC-AO). Apart from this, Id.Sr-DR for the revenue, has primarily reiterated the stand taken by the Assessing Officer, which I have already noted in our earlier para and is not being repeated for the sake of brevity.

5. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. I note that assessee has submitted the chart of events, before the Bench, which is reproduced below:

<i>Event</i>	<i>Date</i>
<i>Audit report under the Bombay Public Trusts Act, 1950 obtained by the Assessee</i>	<i>07-02-2022</i>
<i>Return of income filed by the Assessee for the year within 139(1)</i>	<i>10-02-2022</i>
<i>Due date of filing return of income u/s 139(1) (extended)</i>	<i>15-03-2022</i>
<i>Intimation u/s 143(1) of the Act issued on</i>	<i>14-09-2022</i>
<i>1st Rectification application filed by assessee u/s 154 online against intimation u/s 143(1)</i>	<i>24-11-2022</i>
<i>1st Order u/s 154 upholding adjustments made u/s 143(1)</i>	<i>24-01-2023</i>
<i>Audit report in Form 10B filed online by its Chartered Accountant</i>	<i>23-02-2023</i>
<i>1st Appeal filed by Assessee before CIT(A) against order u/s 154 dated 24-01-2023</i>	<i>27-02-2023</i>
<i>2nd Rectification application filed by assessee u/s 154 online</i>	<i>24-02-2023</i>



<i>2nd Order u/s 154 upholding adjustments made u/s 143(1)</i>	<i>24-02-2023</i>
<i>CIT(A) order dismissing the appeal of the Assessee</i>	<i>17-01-2025</i>
<i>2nd Appeal filed by the Assessee before the Hon'ble Tribunal, Rajkot (present appeal)</i>	<i>26-02-2025</i>

The Ld. Counsel for the assessee explained me that assessee is duly registered u/s 12A of the Act and hence it had claimed deduction u/s 11 in respect of corpus donation, amount applied on objects of the trust in the return of income filed for the year. However, the same is denied by CPC-AO, by way of an intimation u/s 143(1) of the Act, because the assessee had not filed audit report in Form 10B within due date, as per Section 139(1) of the Act. The assessee's first appeal before the CIT(A) against the intimation u/s 143(1) of the Act has been dismissed by the CIT(A) on 13-11-2023. The Audit report in Form 10B is filed before first appeal proceedings, which may be accepted as a compliance, when statutory audit was carried out earlier. Hence, Ld. Counsel prays the Bench that the matter may be set aside to the file of the Assessing Officer to consider Form 10B, filed before first appellate proceedings, and adjudicate the issue as per the provisions of the Act.

6. I find merit in the submissions of the ld Counsel for the assessee, that if the audit report is filed in Form No. 10B, during the appellate proceedings, it would be sufficient compliance and for that I rely on the following judgements:

i. Recent decision of Rajkot Tribunal in the case of Suryoday Kelavani Mandal in ITA No. 334/Rjt/2023 dated 29-11-2024 wherein it was held that where assessee-trust filed audit report in Form 10B belatedly during the pendency of second appeal proceedings, the A.O. was directed to verify Form 10B and allow exemption u/s 11 in accordance with law.



ii. **Xavier Kelavani Mandal (P.) Ltd. (2014) 41 taxmann.com 184 (Gujarat HC)** wherein it was held that in order to claim exemption u/s 11, assessee can file audit report in Form no. 10B, even at a later stage either before the Assessing Officer or before appellate authority.

iii. **Shree Charitable Trust (2024) 158 taxmann.com 159 (Ahd Trib.)** wherein it was held that where assessee-trust filed Audit Report in Form 10B belatedly and AO denied exemption under section 11 on ground that Form 10B was not filed along with return of income, since Audit report was not considered and verified by AO, impugned order was to be set aside and AO was to be directed to verify Form 10B and then allow claim of exemption under section 11 in accordance with law.

iv. **Social Security Scheme of GICEA (2023) 147 taxmann.com 283 (Gujarat HC)** wherein it was held that where assessee was a public charitable trust for past 30 years and substantially satisfied conditions for availing exemption u/s 11, it should not be denied exemption merely on bar of limitation especially when legislature had conferred wide discretionary powers to condone such delay.

v. **Sarvoday Charitable Trust (2021) 125 taxmann.com 75 (Gujarat HC)** wherein it was held that where assessee trust registered u/s 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. Considering the above facts and circumstances and position in law, I find that assessee- trust has not filed the Audit Report in Form No. 10B, on or before the due date of filing of return of income, u/s 139(1) of the Act, however, filed belatedly during the appellate proceedings, the same was not considered and



verified by the Assessing Officer u/s 143(1) of the Act. I also find that there is no regular assessment order framed, u/s 143(3) of the Act, in the assessee`s case under consideration, therefore, I direct the jurisdictional Assessing Officer to verify the Form No. 10B and then allow the claim of exemption in accordance with law.

8. In the result, the appeal of the assessee is allowed for statistical purposes in above terms.

Order pronounced in the open court on 28/04/2025.

Sd/-

(Dr. A.L. SAINI)

लेखा सदस्य/ACCOUNTANT MEMBER

राजकोट /Rajkot

दिनांक/ Date: 28/04/2025

DKP Outsourcing Sr.P.S

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

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By order/आदेशसे,

सहायक पंजीकार

आयकर अपीलीय आधिकरण ,राजकोट