

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
(HYBRID HEARING)**

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

I.T.A. No. 1238/SRT/2024
(Assessment Year: 2022-23)

Jayshri Gopallal Maharajshrini Surat Srusti Trust, Makanjipark Society, Nr. Balashram, Katargam, Surat-395004	Vs.	Assistant Director of Income Tax, CPC, Bengaluru Income Tax Officer, (JAO), Exemption Ward, Surat
[PAN No.AAATJ1753H]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Chitrang Vaiwala, C.A. from the office of Shri Sapnesh Sheth, C.A.
Respondent by:	Shri Mukesh Jain, CIT DR

Date of Hearing	23.04.2025
Date of Pronouncement	06.05.2025

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)-8, Mumbai vide order dated 25.11.2024 passed for A.Y. 2022-23.

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) has erred in not appreciating the fact that assessee trust has already filed Form 10B on 25.09.2022 and also filed the screen shot of the UDIN generated at that time.

2. On the facts and circumstances of the case as well as law on the subject, the Ld. ADDL/JCIT Commissioner of Income Tax (A) has erred in confirming the action

of Asst. Director of Income Tax, CPC in making huge addition of Rs. 44,68,753/- to the income of assessee by not allowing the amount claimed as application of income & accumulation of income.

3. 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 experience and that gross amount cannot be charged to tax.

4. 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.

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

3. The brief facts of the case are that the assessee filed return of income for the impugned assessment year on 30-09-2022 declaring total income at ₹1,09, 651/-. The assessee is a charitable trust registered under section 12A of the Act. An intimation was issued by the CPC under section 143(1) of the Act, in which the amount claimed by the assessee as application of income and accumulation of income was disallowed and gross receipts of the assessee trust were taxed in the hands of the assessee. The reason for such disallowance in the 143(1) intimation issued by CPC was that the assessee had filed the audit report in Form 10B belatedly and accordingly, the claim of the assessee for deduction under section 12A of the Act was disallowed.

4. In appeal before Ld. CIT(Appeals), the assessee submitted that the assessee had initially filed the audit report in Form 10B for the impugned assessment year on 25-09-2022 for claiming exemption under section 12A of the Act, however, on 23-02-2023, on account of mistake by one of the employees of the chartered accountant of the assessee, he revoked the request for filing of Form 10B for assessment year 2022-23, which resulted technically into non-filing of audit report in Form number 10B for assessment

year 2022-23. Accordingly, the assessee again uploaded audit report in Form 10B on the Government Portal on 25-11-2023. As a result of the said mistake and resultant delay in filing of audit report in Form number 10B, the assessee filed an application to the CIT (Exemptions), Ahmedabad on 25-04-2023 seeking condonation of delay in filing of Form 10B for assessment year 2022-23. However, vide order dated 29-02-2024, the request for condonation was rejected by the concerned CIT (Exemptions). Thereafter, the assessee filed appeal before Ld. CIT(Appeals), who rejected the appeal of the assessee with the following observations:

“5.1 During the course of appellate proceeding, the appellant vide written submission dated 19.10.2024 has stated that the F. No. 10B was filed on 25.09.2022. But on 23.02.2023, by mistake one of the employees of the CA revoked the request for filing of form No. 10B which resulted technically into non filing of audit report in F.No. 10B and hence appellant again uploaded audit report in F.NO. 10B on 25.11.2023.

*5.2 On verification of CPC Portal 2.0, it is found that the **appellant has filed form no. 10B on 25.11.2023 only** though the date of audit is mentioned as 25.09.2022. No other information is available on the portal. Further, the appellant has also failed to adduce any documentary evidence in support of its claim. Moreover, as submitted by the appellant itself, the claim in question has already been rejected by the CIT (Exemption).*

*5.3 It is pertinent to note that the CPC has passed intimation under section **143(1) on 31.03.2023** rejecting the claim of exemption and the appellant **has filed form No.10B on 25.11.2023 i.e. after passing the intimation under section 143(1)**.*

*5.4 In view of the above findings, it is clear that in the instant case the Form 10B was not filed before the specified date, therefore appellant was not eligible for such deduction in view of provisions of Section 12A(1)(b). In view of the above, the grounds of appeal are **DISMISSED**.*

*6. In the result, the **appeal is dismissed**. Order passed u/s 250 r.w.s. 251 of the Act.”*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) disallowing the claim of exemption under section 12A

of the Act on account of delay in filing of Form 10B, along with return of income.

6. We observe that 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.

7. 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.

8. 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.

9. In the case of **Associated Chambers of Commerce and Industry of India vs. Deputy Commissioner of Income-tax [2024]** 165 taxmann.com 510 (Delhi)/[2024] 300 Taxman 410 (Delhi)/[2025] 473 ITR 696 (Delhi)[05-08-2024], High Court held that electronic submission of Form 10B is essentially a matter of procedure as opposed to being a mandatory condition which may be recognized to Form part of substantive law; reassessment not valid on mere allegation of a delayed digital filing of Form 10. While passing the order, Delhi High Court made the following observations:

32. We further note that a Division Bench of the Gujarat High Court has in its decision rendered after the insertion of the 2015 Act and the 2016 Amendment Rules in Association of Indian Panelboard Manufacturer v. Deputy Commissioner of Income-tax 2023 : GUJHC : 27028-DB/[2023] 157 taxmann.com 550 clearly held that the electronic submission of Form 10B is essentially a matter of procedure as opposed to being a mandatory condition which may be recognized to Form part of substantive law. We deem it apposite to extract the following passages from that decision:-

"5.4 Recollecting the relevant dates, the income was filed on 31.8.2018. On 15.3.2019 Form 10B was filed electronically. On 7.12.2019 intimation under Section 143(1) of the Act was given to the appellant that the exemptions were denied, while processing the return of income on the ground that alongwith the return of income Form 10B was not filed.

5.5 It is to be observed in the present case that the Form D- the audit report, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under Section 143(1) of the Act. The conditions for claiming exemption under Section 11 was satisfied. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under Sections 11(1) and 11(2) on the ground that the audit report was not filed.

5.6 The tribunal further committed an error in appreciating the import of Section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No.7/18 dated 20.12.2018 issued under Section 119 of the Act could not be, therefore said to have taken away the appellate remedy.

5.7 *The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1.4.2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically Form which is made mandatory under Rule 12 (2) of the Income Tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.*

6. *The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed along with the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.*

6.1 *The appellant assessee has to be held to be eligible and entitled to exemptions under Section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report alongwith return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.*

6.2 *Accordingly the substantial questions of law have to be decided in favor of the appellant.*

7. *They are accordingly decided. The appeal is allowed."*

33. *Though rendered in the context of Form 10B, in our considered opinion, the legal position as enunciated in the aforesaid judgment would equally apply to the submission of Form 10.*

10. 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.

11. 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.

12. 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.”

13. Now coming to assessee's particular set of facts, we observe that it is an undeniable fact that at the time of filing of original return of income, the assessee had submitted Form 10B and in support of which, the transaction ID of Form 10B as well as UDIN number were also placed on record to show that the Form 10B was ready and uploaded on 25-09-2022 i.e. before the date of filing of return of income itself. It was on account of an inadvertent error committed on part of the employee of the chartered accountant of the assessee, that the request for filing of Form No. 10B was revoked, resulting into technical non-filing of Form 10B, as a result of which the assessee again uploaded Form No. 10B on the Government Portal on 25-11-2023. Accordingly, in the instant facts it is evident that there was only a procedural lapse/ delay on part of the assessee in submitting Form Number 10B, for which the assessee cannot be penalised. In the preceding part of our judgement, we have cited various judicial precedents which have held that mere delay in filing of Form number 10B is a procedural defect and not a violation in following a mandatory requirement, so as to disentitle the assessee the benefit of exemption under section 12A of the Act, itself. In the

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instant case, when the assessee came to know about the mistake committed by the employee of the chartered accountant, the assessee again filed Form 10B and the above facts are not in dispute. Further, while processing the return of income by the CPC under section 143(1) of the Act, not only the claim of exemption under section 12A of the Act was denied to the assessee, but the entire/gross receipts of the assessee were subject to tax in its hands, without allowing deduction of corresponding expenditure as well. In view of the above position and the facts of the assessee's case and the judicial precedents on the subject, we are of the considered view that mere delay in filing of Form 10B, being a procedural lapse should not disentitle the assessee the benefit of exemption under section 12A of the Act.

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

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 06/05/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 06/05/2025

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