

**आयकर अपीलीय अधिकरण, कोलकाता पीठ "ए", कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA**  
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री राकेश मिश्र, लेखा सदस्य के समक्ष  
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Rakesh Mishra, Accountant Member]

**I.T.A. No. 2584/Kol/2024**  
**Assessment Year: 2022-23**

The Goodhope Foundation  (PAN: AABTT 4054 E)	Vs.	ITO, Ward-1(3), (Exemption), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	23.04.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	06.05.2025
For the assessee / निर्धारिती की ओर से	Shri Manoj Kataruka, Advocate
For the revenue / राजस्व की ओर से	Shri S Datta, CIT DR

**ORDER / आदेश**

**Per Pradip Kumar Choubey, JM:**

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeal)-Addl./JCIT(A)-4, Chennai (hereinafter referred to as the Ld. CIT(A)] dated 09.05.2024 for AY 2022-23.

2. It appears from the report of the registry that the appeal has been filed after a delay of 140 days for this the assessee has filed condonation petition., which are as follows-

“1. That in the case of the assessee order u/s 250 for AY 2022-23 was passed by NFAC on 9.5.2024 and it was served upon the assessee on 9.5.2024.

2. That against the order passed by NFAC u/s 250 dated 9.5.2024, the time limit for filing of the appeal before the Hon'ble Tribunal as per provisions of Section 253 of the IT Act shall be within sixty days of the date of the service of the appellate order and in the case of the assessee the date of service being the 9th May, 2024, the time limit for filing of appeal has expired on 8th of July, 2024.

3. That the issue of the assessee was exemption u/s 11 due to delay in filing of Form 10B which was dismissed by the NFAC on the ground that it did not have any powers to condone the delay. The assessee was advised to file writ before the Calcutta High Court against the order of the CIT(Exemption) instead of availing the appellate route.

4. That the documents were handed over to the Advocate for filing of the writ before the Calcutta High Court whereas the writ could not be filed and still under preparation. In the meantime, the Delhi Tribunal in the case of B.R. Hospital Research Institute vs. ITO vide order dated 31.7.2024 which came to the notice from AIFTP Journal of December 2024 has decided a similar issue in favour of the assessee after which the lawyer advised to file the appeal.

5. That the delay caused in the filing of the appeal was due to the reason that the assessee was in the process of availing the alternative remedy having been advised by the lawyer after the order was passed u/s 250. The assessee could not avail the alternative remedy and also was suffering because exemption was denied and tax demand was hovering.

6. The delay in filing of the appeal is due to bona fide reasons without any mala-fide intention and due to reasonable causes beyond the control of the assessee and it is prayed that the delay be condoned and the appeal be heard on merits.”

On perusal of the condonation petition, the reason for delay in filing the appeal seems to be genuine and bonafide. The Ld. D.R did not raise any objection in condoning the delay. Keeping in view, the condonation petition as well as judicial pronouncement that the case should be decided on merit not on technical issue, the delay is hereby condoned.

3. Brief facts of the case of the assessee are that the assessee is a trust, filed its return of income for AY 2022-23 declaring total income of Rs. Nil. The return was processed u/s 143(1) of the Act assessed total income of Rs. 80,41,408/- denying the exemption claimed by the assessee u/s 11 of the Act.

4. The said order of the AO has been challenged by the assessee before the Ld. CIT(A) wherein the appeal of the assessee has also been dismissed on the ground that there was a delay in filing of Form no. 10B.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

5. The Ld. A.R challenges the very impugned order thereby submitting that the action of the AO confirmed by the Ld. CIT(A) is not allowing the exemption of income available u/s 11 of the Act to the member only on the technical ground i.e. delayed filing of audit report in Form 10B is arbitrary, illegal and bad in law. The Ld. Counsel submits that the assessee has filed Form 10B and there was a delay in filing of form 10B to the extent of 27 days. The Ld. Counsel cited several decisions of ITAT passed in this context and also placed reliance on the Hon'ble Calcutta High Court judgment by submitting that filing of Form 10B is a procedural nature and that can be condone.

6. The Ld. D.R supports the impugned order.

7. Upon hearing the submission of the counsel of the respective parties, we have perused the order passed by the lower authorities and find that the sole issue in denying the exemption u/s 11 of the Act is the delay in filing of Form 10B. It is apparent from the order passed by the Ld. CIT(A) that there is a delay in filing form 10B and the appellate authority is not empowered to condone the delay in filing form 10B. In this context, we have gone through the order passed by the ITAT, Kolkata in the case of Kaydee Foundation vs ITO (Exemption), Kolkata in ITA NO. 1774/Kol/2024 for AY 2022-23 dated 31.12.2024 and the issue has been discussed at length which is as follows:

*“6. We have gone through the record and find that the assessee is a trust and he filed return of income along with auditor's report in Form no. 10B. The claim has been rejected on the ground of delayed filing of Form no. 10B which as per the annual mandate provision was required to be filed one month before the due date by filing the return of income though it was filed on 1.11.2022. The extended issue date of filing of return of income for the AY 2022-23 on 07.11.2022, hence there was delay of 24 days in furnishing the report in Form no. 10B. The Ld. A.R has submitted that he was unaware of the new provisions requiring of filing report in form no. 10B one month before the due date of filing the same. In this connection, we have gone through the judgment of Hon'ble Calcutta High Court and find that Hon,ble High Court has held that filing of form No. 10B is a procedural provision and not directory in nature. On perusal of the order of Ld. CIT(A) it appears to us that there was a delay in filing from no. 10B*

and due to this claim of exemption has been denied. The assessee has submitted that due to the mistake on the end of income tax department initially the assessee was confused and delayed in getting up accounts audited for filing 10B. According to the assessee, the delay in filing 10B was mainly in the technical mistake in certificate itself which has been rectified later. We have gone through the order passed by the Co-ordinate Bench of Kolkata and find that the Co-ordinate Bench, Kolkata in *Manav Seva Trust Vs. AO, Ward-1(4), Kolkata* in ITA No. 940/Kol/2024 dated 9.8.2024 has discussed this issue and held thus:

“3. We have considered the submissions by both the ld. A/R and ld. D/R and also perused the orders of ld. AO and the ld. CIT(A). Ld. A/R has relied on the case of *Hari Gyan Pracharak Trust vs. DCIT* in ITA No. 245/AHD/2021, order dated 16.06.2023. In this case, the Coordinate Bench has held that since filing of Form-10B is merely a procedural requirement, any defect in that is curable. It is seen that the Hon'ble Orissa High Court in the case of *Oneness Educational and Charitable Trust vs. Commissioner of Income-tax (Exemption)* reported in [2024] 161 taxmann.com 544 (Orissa) has held that the oversight in not filing Form-10B within the due date was to be condoned and the exemption was to be allowed and granted. Also, the Hon'ble Telangana High Court in the case of *Global Organization for Development vs. Commissioner of Income-tax (Exemption)* reported in [2024] 162 taxmann.com 633 (Telangana) has held that the delay on the part of the assessee in submitting Form-10B was to be condoned and the matter remanded back to the file of the AO for passing appropriate order on merits. Similarly, the Hon'ble Bombay High Court in the case of *Al Jamia Mohammediyah Education Society vs. Commissioner of Income-tax (Exemptions)* reported in [2024] 162 taxmann.com 114 (Bombay) has held that where the assessee Trust belatedly submitted Form-10B, along with return, on account of oversight by the Chartered Accountant, the delay in filing of Form-10B deserves to be condoned. In fact, some relevant portions from the said order deserves to be extracted as under:

“■ Admittedly, Petitioner is a charitable trust and had been filing its returns and Form 10B for AY 2015-16, for AY 2017-18 to AY 2021-22 within the due dates. On this ground alone, delay condonation application should have been allowed because the failure to file returns for AY 2016-17 could be only due to human error. Even in the impugned order, there is no allegation of mala fide. As held by the Gujarat High Court in *Sarvodaya Charitable Trust v. ITO (Exemption)* [2021] 125 taxmann.com 75/278 Taxman 148, the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, Respondent No.1 might be justified in denying the exemption by rejecting such condonation application, but an assessee, a public charitable trust with almost over thirty years, which otherwise satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. [Para 6]

■ Moreover, the Petitioner does not appear to have been lethargic or lacking in bona fides in making the claim beyond the period of limitation which should have a relevance to the desirability and expedience for exercising such power. Such routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, Page 3 of 5 I.T.A. No.: 940/KOL/2024 Assessment Year: 2018-19 *Manav Seva Trust*. if such powers are routinely exercised without considering its desirability and expedience to do so to avoid genuine hardship. [Para 7]

■ In a similar matter in *Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (Exemptions)* [2024] 161 taxmann.com114 (Bombay) was also a case where auditor had due to oversight not filed Form 10B. The Court held that the error on the part of auditor cannot be rejected but should be accepted as a reasonable cause shown by the trust management. In that case also, Petitioner did not suo moto realize its mistake and

*filed a condonation request only after Centralised Processing Centre (“CPC”) sent an intimation about non-filing of Form 10B. [Para 8]*

■ *Having considered the matter in its entirety, one is satisfied that the delay was not intentional or deliberate. Petitioner cannot be prejudiced on account of an ignorance or error committed by professional engaged by Petitioner. Respondent No.1 ought to have exercised the powers conferred. [Para 9]*

■ *In the circumstances, this Writ Petition has to be allowed and is hereby allowed in terms of prayer clause.*

■ *Since the delay has been condoned, Respondent shall process Petitioner’s returns in accordance with law by giving effect to this order on the basis that Form No.10B has been filed within time. [Para 11]”*

*4. Considering the discussions made above, the delay in filing of Form 10B is hereby condoned and it is directed that the appellant be allowed exemption as would be due to him as per law. The ld. AO is directed accordingly.*

*5. In the result, the appeal filed by the assessee is allowed for statistical purposes.”*

*7. Keeping in view the above decision and considering the facts of the present case delay in filing form 10B is here by condoned. A.O is directed that the appellant be allowed exemption as would be due to him as per law.”*

8. Keeping in view the facts of the case as well as the order passed in this context, we find substance in the argument of the Counsel of the assessee. Accordingly, the appeal of the assessee by condoning the delay in filing Form 10B is remitted back to the file of Ld. CIT(A) / Jr. CIT(A) for fresh adjudication.

In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order is pronounced in the open court on 6<sup>th</sup> May, 2025

Sd/-

Sd/-

(Rakesh Mishra /राकेश मिश्र)  
 Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)  
 Judicial Member/न्यायिक सदस्य

Dated: 6<sup>th</sup> May, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- The Goodhope Foundation, 8/1A/1, Keyatalla Road, Kolkata-700029
2. Respondent – ITO, Ward-1(3),(Exemption), Kolkata
3. Ld. CIT(A)-Addl/JCIT(A)-4, Chennai
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata