

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC': NEW DELHI**

BEFORE SHRIS.RIFAUR RAHMAN, ACCOUNTANT MEMBER

**ITA No.3210/DEL/2024
(Assessment Year: 2017-18)**

**ITA No.3211/DEL/2024
(Assessment Year: 2019-20)**

M/s. Trilok Singh Bhandari Charitable Trust,
BH – 22, East Shalimar Bagh,
New Delhi – 110 088.

**(PAN : AAATT2913R)
(APPELLANT)**

vs. ITO,
Ward Exemption 2(3),

(RESPONDENT)

ASSESSEE BY : Shri Lalit Mohan, CA
REVENUE BY : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 13.03.2025
Date of Order : 14 .05.2025

ORDER

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The assessee has filed appeals against the orders of the Learned Addl/JCIT (Appeals)-1, Chandigarh ["Ld. JCIT(A)", for short] dated 10.05.2024 for the Assessment Years 2017-18 and 2019-20.
2. Brief facts of the case are, the assessee filed appeals before the ld. JCIT (A) on 06.03.2023 & 14.03.2023 for AYs 2017-18 & 2019-20 respectively against the order under section 143 (1) of the Income-tax Act, 1961 (for short 'the Act') dated 09.03.2018 & 12.05.2020 for the AYs 2017-18 & 2019-20 respectively. Subsequently, the appeals were

migrated to the National Faceless Appeal Centre (NFAC) and thereafter, the appeal was transferred to Id. JCIT (A)-1, Chandigarh on 13.08.2023.

Ld. JCIT (A) observed that the assessee has filed the appeals on 06.03.2023 & 14.03.2023 for the AYs 2017-18 & 2019-20 i.e. delayed by 1425 & 1036 days respectively and the assessee has made submissions for the delay which was reproduced at page 2 & 3 of the appellate order.

Ld. JCIT (A) observed that the main contention of the assessee was that the assessee was under a bonafide belief that no appeal arises from an intimation dated 13.05.2020 u/s 143(1) of the Act and affidavits of the Trustee of the assessee and Chartered Accountant of the assessee were filed and thus pleaded that instant delay was not caused on account of malafide intention and gross negligence on the part of the assessee. However, Id. JCIT (A), after considering the submissions of the assessee and relying on various judgments, held that the delay of 1425 & 1036 days for AYs 2017-18 & 2019-20 respectively in filing of appeals is not condoned as no "sufficient cause" has been shown for the assessee's failure to file the appeals within the prescribed period of limitation and hence the appeals sought to be instituted belatedly are hereby not admitted and accordingly dismissed in limine.

3. At the time of hearing, Id. AR for the assessee reiterated the submissions made before the Id. CIT (A). He submitted that the delay in filing the appeal before the Id. CIT (A) may be condoned and the matter may be remitted back to the Id.

CIT(A) to decide afresh on merits with the prayer to give an opportunity of being heard to the assessee.

4. On the other hand, Id. DR for the Revenue objected to the submissions of the Id. counsel for the assessee and relied on the findings of the Id. CIT (A).
5. Considered the rival submissions and material placed on record. After going through the submissions made by the assessee before the Id. CIT (A) and reiterated before me, I am of the considered view that in the interest of justice, the delay in filing the appeals before the Id. CIT (A) is to be condoned. Accordingly, I condone the delay in both the appeals and decide the appeals hereunder.
6. Since the issues are common and the appeals are connected, hence the same are heard together and are being disposed off by this common order.

I take ITA No.3210/Del/2024 for AY 2017-18 as lead case. The assessee has taken the following grounds of appeal :-

“1. That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NF AC), Delhi has erred both in law and on facts in upholding the determination of the income of the appellant trust at Rs.14,31,437/- as against declared Nil income In an intimation dated 9.3.2019 U/S 143(1) of the Act

2. That the order made by the learned Commissioner of Income Tax (Appeals) by dismissing the appeal on the ground that the delay of 1425 days in filing of appeal in this case is not condoned as no "sufficient cause" has been shown U/S 249(3) of the Income Tax Act, 1961 for the appellant's failure to file the appeal within the prescribed period of limitation u/s 249(2) of the Income Tax Act, 1961 r.w.s. 5 of Limitation Act" and thus holding "the appeal sought to be instituted belatedly is hereby not admitted and accordingly dismissed in limine".

2.1 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the appellant was under a bonafide belief that no appeal arises from an intimation dated 9.3.2019 u/s 143(1) of the Act and therefore the

sufficient cause for delay in filing of instant appeal which ought to have been condoned u/s 249(3) of the Act

2.2 That the finding of the learned Commissioner of Income Tax (Appeals) that "the appellant has no furnished any plausible explanation for such delay. The appellant's submission that it was under bonafide belief that no appeal lies against intimation under section 143(1) is not having any substance. Firstly, ignorance of law is no excuse. Secondly, when the appellant has now filed the appeal after consulting the counsel this exercise could have been carried out at the time of receipt of intimation"" is not based on correct appreciation of facts on record and therefore unsustainable.

3 That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the denial of claim of exemption of Rs.14,31,437 u/s 11 and 12 of the Act.

3.1 That furthermore the learned Commissioner of Income Tax (Appeals) has failed to appreciate that return of income was filed beyond the due date u/s 139(1) of the Act but prior to due date u/s 13 9(4) of the Act could not ipso-facto be made a basis to upheld the denial of claim of exemption u/s 11 and 12 of the Act

4 That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the income computed of the appellant trust at Rs.14,31,437/- without allowing application of income on revenue account of Rs.12,55,690/- towards the objects of the trust and also not in allowing application of income on capital account of Rs.42,769/-

5. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the denial of claim of exemption of Rs.1,32,978/- on account of amount accumulated or set apart for application to charitable or religious purposes or for the stated objects of the trust/institution to the extent it does not exceed 15 per cent of income derived from property held in trust/institution u/s 11 (1)(a)/11 (1)(b) of the Act.

6. That in any case and without prejudice the learned Commissioner of Income Tax (Appeals) has failed to appreciate that had the expenditure incurred alongwith depreciation been allowed as such, income computed is excessive; and thus not in accordance with law.

7. That the learned Commissioner of Income Tax (Appeals) has also erred both in law and on facts in upholding the demand aggregating income tax liability at Rs.2,67,523/-, interest at Rs. 15,6161- u/s 234A of the Act, Rs.46,848/- u/s 234B of the Act and Rs.9,857/- u/s 234C of the Act as against declared income tax liability of Rs.2,62,065/- is contrary to facts on record.

8. That even otherwise the adjustments so made in the intimation u/s 143(1) of the Act or debatable and contentious issues and thus untenable.

9. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that intimation dated 9.3.2019 was made without granting opportunity much less fair meaningful and effective opportunity and therefore such an intimation is otherwise vitiated.

10. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that intimation dated 9.3.2019 was made without jurisdiction; and therefore deserves to be quashed as such.

11. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that intimation dated 9.3.2019 is without reasons and therefore unreasonable is otherwise a nullity.

It is therefore, prayed that, it be held that adjustment made is without jurisdiction. It be further held that claim of exemption u/s 11 and 12 of the Act may kindly be allowed and disallowance made and sustained by the learned Commissioner of Income Tax (Appeals) may kindly be deleted and demand raised alongwith interest may kindly be held to be not tenable and not in accordance with law and appeal of the appeal of the appellant trust be allowed. In any case and without prejudice had the expenditure incurred alongwith depreciation been allowed as such, Income computed was excessive; and thus not in accordance with law. It be further held that the learned Commissioner of Income Tax (Appeals) unjustifiable not condoning the delay in filing the appeal and therefore the delay in filing of the appeal may kindly be condoned u/s 249(3) of the Act and appeal of the appellant be allowed.”

7. At the outset of the hearing, ld. AR of the assessee that the basis adopted to deny the claim of exemption of Rs.14,31,437/- u/s 11 & 12 of the Act in intimation u/s 143(1) of the Act is as under :-

"As per Section - 12A(1)(b) of Income tax Act read with 151 Proviso to Rule 12(2) of the Income Tax Rules, where the total income of the trust or institution without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income tax, the audit report in Form - 10B has to be E-filed along with the return of income. Since assessee has not E-filed the Audit Report in Form 10B along with or before filing of the Return of Income, the exemption u/s 11 i.e. sr. no. 1 & SI. No. 4i to 4viii in Schedule Part B- TI is not allowed."

8. Ld. AR submitted that it is evident from aforesaid extract that only basis for denial of legitimate claim of the assessee is that the audit report in Form 10B has not been filed electronically along with the return of income. He further submitted that a copy of Form 10B dated 26.03.2018 is placed at pages 11-13 of Paper Book and audited financial statement is placed at pages 7-10 of Paper Book. He submitted that non filing of Audit Report along with the return of income is a procedural omission and cannot be an impediment in law in claiming the exemption. In this regard, ld. AR relied upon plethora of decisions wherein identical issue has been decided in favour of assessee and specially relied upon the decision of Hon'ble Madras High Court in the case of Shri Chandraprabhuji Maharaj Jain Juna Mandir Trust Vs. DCIT, Tax case Appeal No.517 of 2019 and Hon'ble Gujarat High Court in CIT vs. Xavier Kelavani Mandal (P) Ltd. 221 taxman 43 (Guj-HC) and accordingly submitted that denial of exemption is not in accordance with law.
9. Further ld. AR of the assessee prayed that the adjustment made may kindly be held to be not in accordance with law and beyond the scope of powers contained in section 143(1) of the Act and therefore, may kindly be deleted. Furthermore, he submitted that intimation so made be also held to be without jurisdiction and be quashed as such and appeal of the

assessee may be allowed. He prayed that claim of exemption u/s 11 and 12 of the Act may be allowed and demand raised alongwith interest levied may be held to be not tenable and not in accordance with law and appeal of the assessee be allowed.

10. On the other hand, ld. DR of the Revenue did not produce any contrary view to the judgments relied upon by the ld. AR of the assessee.
11. Considered the rival submissions and material placed on record. I observed that the assessee was claiming the benefit u/s 10B(8) of the Act as per the provisions of section 10B and the assessee has to comply certain conditions failing which the assessee will loose the benefit. In the present case, the assessee has to file the audit report in Form 10B before the due date as per Rule 12A(1)(b) of the Rules. I observed that the above conditions of filing the Form 10B was relaxed by the CBDT in the earlier assessment years, therefore, it clearly shows that it is only directory in nature and not mandatory, since, it is in compliance with Rules framed for availing the benefit under the provisions of Section 11 and it is held that to be directory in nature. I noticed that assessee relied on the decision of Hon'ble Madras High Court in the case of Shri Chandraprabhuji Maharaj Jain Juna Mandir Trust (supra), wherein it is held as under:

“8. As noted by us earlier, the assessee filed the return of income for the assessment year under consideration on 02.04.2009, which was processed and intimation under Section 143(1) of the Act was issued on 21.01.2011. Thus,

there was no assessment under Section 143(3) of the Act. The assessee, while filing the petition under Section 154 of the Act, on 22.03.2011, pointed out that the assessee filed the Form No.10 along with the Board Resolution along with the covering letter dated 01.04.2019. However, the mistake done by the assessee was to file hard copies before the Assessing Officer, and not filing the same along with the return of income, which they filed on 02.04.2019. Thus, on the date when the return was taken up for assessment, there was record to show that the assessee had intimated the department about the resolution passed by the Board of the assessee Trust and the statutory Form No. 10. Admittedly, the assessment was not completed under Section 143(3) of the Act and therefore, there would have been no error had the assessing officer taken up the copy of the Board Resolution and Form No.10. Thus, on the date when the return was filed, the assessee had separately filed Form No. 10 along with the Board Resolution along with a covering letter dated 01.04.2009. Thus, in our considered opinion, when the assessee was entitled to a statutory benefit, it would be incumbent upon the concerned authority to examine the admissibility of the benefit than to foreclose the assessee on technicalities.”

12. Further Id. AR relied on the decision of the Hon’ble Gujrat High Court in the case of CIT-IV vs. Xavier Kelavani Mandal (P.) Ltd. (supra), wherein it is held as under:

“4. The question whether it is permissible to the assessee to produce the audit report at the appellate stage, has already been answered by this court in CIT v. Gujarat Oil & Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report along with the return has to be treated as a procedural provision, It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income, but produced before completion of the assessment. The Punjab and Haryana High Court in CIT v. Shahzadanand Charity Trust [1997] 228 ITR 292 has reiterated the same principle holding that the benefit of exemption should not be denied merely on account of delay in furnishing the same, and it is permissible for the assessee to produce the audit report at a later stage either before the Income Tax Officer or before the appellate authority by showing a sufficient cause. This decision of Punjab & Haryana High Court has been relied on by the Tribunal.

5. In the above view, the Tribunal is eminently justified both in law and on facts in observing and holding as under.-

"In this case, it is not in dispute that the audit report in prescribed form was obtained prior to filling of the return on 20/12/2006; therefore, there was no reason for the assessee to keep the audit report with it in order to loose the exemption. The assessee in the earlier as well as in the subsequent assessment years filed the audit report and got the exemption. The conduct of the assessee in

earlier year and subsequent years would prove that due to the facts stated above there was delay in filing the audit report and the contention of the assessee was supported by the affidavit of Mohmad Iqbal Vohra (PB-4). The learned CIT(A) on proper appreciation of the facts and material on record in the light of the decisions of the Hon'ble Punjab & Haryana High Court and the Hon'ble Calcutta High Court rightly directed the AO to accept the audit report of the assessee and grant exemption u/s. 11 of the IT Act."

13. Respectfully following the aforesaid decisions, I am inclined to allow the claim made by the assessee and, accordingly, I direct the Assessing Officer to allow the claim of the assessee u/s 11 and 12 of the Act.
14. In the result, the appeal filed by the assessee being ITA No.3210/Del/2024 for AY 2017-18 is allowed.
15. With regard to appeal for AY 2017-18 is concerned, since the facts are exactly similar to AY 2019-20 my above findings in AY 2017-18 are applicable *mutatis mutandis* in AY 2016-17. Accordingly, the appeal being ITA No.3211/Del/2024 for AY 2019-20 filed by the assessee is also allowed.
16. To sum up : both the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 14th day of May, 2025.

Sd/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 14.05.2025
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI