

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA**

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. Nos.: 245/GTY/2024
Assessment Year: 2022-23**

S.B. Bhattacharjee Memorial Trust for Children Education <i>(Appellant)</i>	Vs.	ACIT, Circle-1, Dibrugarh <i>(Respondent)</i>
PAN: AAATS6734R		

Appearances:

Assessee represented by : Sanjay Modi, FCA.

Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : May 06th, 2025

Date of pronouncing the order : May 9th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order dated 23.09.2024 of the Ld. Addl./JCIT, Jodhpur, District Dibrugarh [hereinafter referred to as the 'Ld. Addl./JCIT (A)'] passed in respect of the intimation under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2022-23 dated 31.03.2023.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. For that the impugned appellate order dated 23.09.2024 passed by the learned Addl./JCIT(Appeals), Jodhpur [ld. Addl.CIT(A)] is bad in law, facts and procedure.

2. For that the ld. Addl. CIT(A) ought to have hold that the ld. DDIT, CPC, Bengaluru [AO] after determining total amount to be allowed as application in Annexure - Schedule ER (Revenue Expenditure) at Rs. 73,35, 625/- in page no. 22 of the intimation order dated 31.03.2023 passed u/s 143(1), was not justified in arbitrarily taking the same figure at Rs. NIL in page no. 16 of the said intimation order while computing total income of the appellant, which is self-contradictory and bad in law.

3. For that the ld. Addl. CIT(A) ought to have hold that the ld. AO after determining total amount to be allowed as application in Annexure - Schedule EC (Capital Expenditure) at Rs. 1,51,0017/- in page no. 23 of the said intimation order, was not justified in arbitrarily taking the same figure at Rs. NIL in page no. 16 of the said intimation order while computing total income of the appellant, which is self-contradictory and bad in law.

4. For that the ld. Addl. CIT(A) ought to have hold that the ld. AO was not justified in arbitrarily assessing total income of the appellant at Rs. 87,13,857/- in place of returned income of Rs. NIL by making adjustment in a proceeding under section 143(1) of the Act.

5. For that the return of income having been filed on 07.11.2022, i.e., within extended due date and audit report in Form 10B having been uploaded on 30.09.2022, the ld. CIT(A) ought to have hold that the ld. AO was not justified in not allowing statutorily allowable exemption under section 11 and 12 of the Act.

6. For that the ld. Addl. CIT(A) was not justified in arbitrarily not allowing benefits of sections 11/12 of the Act to the assessee.

7. For that without prejudice to the above, on the facts and circumstances of the case, the net income of the appellant from running a school being loss of Rs. 1,07,491/- during the year under consideration, the ld. Addl. CIT(A) ought to have hold that in any view of the matter, the ld. AO was not justified in arbitrarily and whimsically assessing the total income of the appellant at Rs. 87,13,857/- and determining the total tax liability of the appellant at Rs. 27,76,097/-, divorced of the real life facts.

8. For that the ld. Addl. CIT(A) Ought to have hold that the ld. AO was not justified in arbitrarily determining total income of the appellant at Rs.



87,13,857/- in place of returned income of Rs. NIL without assigning any reason, whatsoever, in impugned intimation order and such non-speaking and unreasoned order is liable to be quashed on this ground alone.

9. For that after accepting the fact that the return of income was filed within the extended due date of 07.11.2022, the Addl. CIT(A) was not justified in not deleting the arbitrarily charged interest u/s 234A of the Act at Rs. 27,760/-.

10. For that after accepting the fact that the returned income was NIL, the ld. Addl. CIT(A) was not justified in not deleting the arbitrarily charged interest u/s 234C of the Act at Rs. 1,40,188/-, which is not in accordance with the law.

11. For that the impugned order having been passed in gross violation of principles of natural justice and without allowing reasonable opportunity of being heard, the same is bad in law and untenable.

12. For that the appellant craves leave of your honour to take additional ground or grounds of appeal and/or to modify or resign any ground(s) of appeal before or at the time of hearing.”

3. Brief facts of the case are that are that the assessee trust had filed its return of income for the Assessment Year 2022-23 on 07/11/2022, declaring therein total income of Rs. Nil which was processed u/s 143(1) of the Act by the CPC at the total income of Rs. 87,13,857/- after disallowing the exemption claimed u/s 11 of the Act on account of non-filing of Form 10B. The appellant's income was accordingly computed at Rs. 87,13,857/- after the disallowance and a demand of Rs. 32,77,170/- was raised. The CPC, Bangaluru while processing the appellant's return of income for the AY 2022-23 filed on 07/11/2022, denied grant of exemption claimed u/s 11 of the Income-tax Act, 1961 in the return of income filed u/s 139(1) of the Act due to the fact that that the appellant failed to furnish the requisite Form No. 10B for the relevant AY 2022-23 within the due date prescribed as per the provisions of Section 139(1) of the Income-tax Act, 1961 as required under the provisions of Section 12A(1)(b) of the Income-tax Act, 1961.



Aggrieved with the intimation issued, the assessee filed an appeal before the Id. Addl/JCIT(A), who, vide the impugned order, dismissed the appeal. The appellant failed to file any details, proof or evidence of filing Form 10B within the prescribed due date i.e. on 30/09/2022, as claimed in the Grounds of Appeal nor any written reply/submissions had been filed in this matter by the appellant in spite of repeated opportunities granted to it, therefore, the appeal before Ld. Addl/JCIT (A) was dismissed. The Ld. Addl/JCIT(A) has held as under while dismissing the appeal:

“(iii). In this context it is relevant to mention here that the CBDT Circular No. 2 of 2020 permits the assessee to file application for condonation of delay in filing Form 10B. However, from the facts it is clear that the appellant has failed to file any application before the Competent Authority i.e. Ld. CIT(Exemption) with its request for condonation of delay in filing Form 10B, if any. The appellant was required to file the same before the said authority but without filing of any such application, the said authority cannot consider its case on merit. This office is not competent to condone any delay in filing of Form 10B as per the aforesaid Circular No. 2 of 2020 dated 03/01/2020.

Considering the facts of the case, I am not inclined to agree with the appellant's submissions. Further, keeping in view the above mentioned legal provisions as per Section 12A(1)(b) of the Income-tax Act, 1961, it is clear that the appellant has not submitted the requisite Form 10B within due date as prescribed and thus, has not fulfilled the necessary conditions for consideration of its claim of exemption u/s 11/12 of the Act. As regards the appellant's plea regarding filing of Form 10B on 30/09/2022 it is stated that no proof/evidence of filing of any such Form 10B has been furnished during the entire appellate proceedings, and hence its claim cannot be acceptable without any documentary proof. Therefore, it is treated that no Form 10B has been filed in this case. Accordingly, any delay even of a single day is a delay/violation as per law so the same cannot be treated as a valid Form 10B in the eyes of law. Thus, it is clear that the Form 10B was not filed before the expiry of the time allowed for furnishing the return of income u/s 139(1) of the Act. As per the provisions of Section 12A(1)(b) of the Income-tax Act, 1961, any valid claim of exemption u/s 11/12 requires to be made by furnishing the Form 10B before the expiry of the time allowed under sub-section (1) of Section 139 of the Act. Thus, the appellant's claim cannot be accepted in absence of any proof. Further, as regards the validity of the adjustment/disallowance made by the CPC it is stated that the CPC has made

above adjustment/disallowance as per the provisions of Section 143(1)(a) of the Act and well within the powers given to it as per law, so the same is valid and as per law.

In view of the above, there is no merit in the appellant's plea that its claim u/s 11/12 of the Act may be allowed. But the fact remains crystal clear that the Form 10B was not filed within the prescribed due date u/s 139(1) of the Act. Further, filing of the said Form 10B within prescribed due date u/s 139(1) is statutory requirement for grant of exemption, as per the provisions of Section 12A(1)(b) of the Income-tax Act, 1961, which has not been fulfilled in the appellant's case.

*The failure to furnish such Form 10B in the prescribed manner before filing of the return of income u/s 139(1) of the Act within prescribed due date, results in disentitlement of the appellant from claiming exemption under section 11/12 of the Income-tax Act, 1961. Therefore, the CPC was justified in denying the exemption claimed u/s. 11/12 of the Act while processing the return of income in the appellant's case vide intimation passed u/s 143(1). Therefore, the action of the CPC in the intimation u/s 143(1) of the I.T. Act is **upheld**. Thus, the Ground Numbers 1 to 7 raised by the appellant in the present appeal are **dismissed**."*

Aggrieved with the order of the Ld. Addl/JCIT (A), the assessee is in appeal before the Tribunal.

4. Rival contentions were heard and the submissions made have been examined. During the course of the appeal before us, the Ld. AR submitted that Form No. 10B was filed on 01/10/2022 and the return of income was also filed on 07/11/2022. The audit report was uploaded on 01/10/2022, but the same could be e-verified only on 05/11/2022 and the assessee was required to file the same by 07/10/2022. It was submitted that the gross receipts of the assessee have been taken as the income and no deduction for the expenses claimed has been allowed. Apparently no show cause notice was served before denying the claim of exemption under section 11. The assessee relied upon the decision of **Kaydee Foundation v ITO ward-1(2), Exemption, Kolkata** in ITA No.1774/Kol/2024, order dated 31/12/2024 of "A" Bench,

Kolkata, wherein relying upon the decision of Manav Seva Trust v the AO, Ward-1(4), Kolkata in ITA No.940/Kol/2024, order dated 09/08/2024, the delay of 24 days in filing the audit report was condoned. It was submitted that the filing of the audit report was directory and not mandatory in nature and the delay occurred due to a technical default. The Ld. DR relied upon the order of the appellate authority and requested that the same may be confirmed.

5. We have heard the rival contentions and perused the material available on record. It is submitted that if the exemption were not allowed, the income should have been computed after allowing the expenses claimed, which has not been done and the gross receipts have been added. The assessee has also filed written submission in respect of the claim that filing of Form No. 10B is directory and not mandatory and the relevant extract of the case laws relied upon in the written submission filed is as under:

"1. ITO v. The Little Stars Trust [ITA No. 64/GTY/2024 dated 20.01.2025 for AY 2022-23:

The Hon'ble Co-ordinate Bench of the ITAT has held, to quote:-

"7. From perusal of the above finding, it remains uncontroverted that the assessee has filed the Audit Report in Form 10B8 within the extended due date of section 139(1) of the Act. We therefore find no infirmity in the said order allowing exemption u/s.11 of the Act to the assessee. Thus, we countenance the view point of the Id. Addl/JCIT(A)."

2. Bangarh Educational Welfare Trust v. ITO (Exmp) [ITA No. 496/KOL/2021 dt. 02.01.2022]

The Hon'ble Co-ordinate Bench of the ITAT has held, to quote:-

12. Now, the second reason for which lower authorities have denied the deduction u/s 11 of the Act is of filing the belated audit report on form 10B of the Act. Now, clause (b) of section 12A(1) of the Act provides for a condition that if the income of a trust exceeds a maximum amount which is not chargeable to tax in the previous year the account have to be

audited and the person in receipt of such income furnishes the audit report before the specified date. In the case of the assessee, Form No. 10B was to be filed and the relevant rule is rule 17B of the Income Tax Rules which provides that the report of audit of the accounts of a trust or institution which is required to be furnished under Clause (b) of section 12A, shall be in Form No. 10B.

13. Now, on perusal of the Form 10B, we notice that the same is required to be submitted electronically, one month prior to the due date of the filing of return of income. Admittedly, in the case in hand, the audit report on form 10B has been uploaded on 30.03.2019 which is even after the date of filing the return of income on 15.11.2018. Now, before us, it has been contended by the ld. counsel for the assessee that filing of audit report is directory in nature and even if report is submitted in time before the conclusion of the assessment proceedings, the same needs to be considered. Though the assessee referred to the various decisions, we find it pertinent to refer to the judgment of the Hon'ble Gujarat High Court in the case of **Sarvodaya Charitable Trust vs, ITO(Exemption) (2021) 125 taxmann.com 75 (Gul.)** wherein Para 32 of the said judgment reads as follows:

"32. We may also refer to the decision of this Court in *CIT v. Gujarat Oil and Allied Industries Ltd. (1993) 201 ITR 325 (Guj)*, wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. 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 the same before the completion of the assessment. This Court took the view 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 assigning sufficient cause."

14. In the above judgment, Hon'ble Court has held that filing of audit report is directory in nature and its substantial compliance would suffice. The Id. Departmental Representative failed to place before us any other binding precedents of Hon'ble Jurisdictional High Court or the Hon'ble Apex Court. Therefore, considering the ratio laid down in (by) the Hon'ble Gujarat High Court in the case of *Sarvodaya Charitable Trust vs. ITO(Exemption) (supra)*, we find that though the audit report has been uploaded after the filing of return of income but the said report has been signed by the auditor on 28.10.2018 and the copy of this report is placed

at 40-41 of paper book and the date of audit report is prior to the filing of the return of income, therefore, it is presumed that conducting of audit for preparation of audit report is before e-filing of the return of income but as claimed by the assessee due to technical glitches, the report was uploaded after filing the return of income.

15. Though the Hon'ble Court holds that the report should be considered even filed in the course of assessment proceedings, or before in appellate authority, however, we notice that in the instant case, the case of the assessee was not selected for scrutiny assessment and it was mere processing of return by the computer with the set program. Had it been the case of scrutiny proceeding u/s 143(3) of the Act, the case could have been different. The Id. A.O. may had an opportunity to go through the audit report. But still when the issue come before Id. CIT(A) who also possesses co-terminus power with that of A.O. and as per section 251(1)(a) of the Act, the Id. CIT(A) in disposing the appeal against order of assessment has the power to confirm, reduce, enhance or annul the assessment, therefore, though, it was not possible to entertain the audit report while processing the return u/s 143(1)(a) of the Act, but the Id. CIT(A) was well within its power to have entertained the said report and examined the same as could have been done by the A.O.

16. We, therefore, in the given facts and circumstances and respectfully following the judgment of Hon'ble Gujarat High Court in the case (of) Sarvodaya Charitable Trust vs. ITO(Exemption) (supra), we are of the considered view that since the case of assessee is for A.Y 2018-19 and CBDT came up with a circular dated 23.04.2019 specially for A.Y 2018-19 providing that return of income to be filed within the time allowed u/s 139 of the Act, the assessee has complied with the conditions provided in sub-clause (b) and (ba) to section 12 and there is no dispute at the end of the revenue authorities that the assessee is carrying on charitable activities, for which it has been granted registration u/s 12A of the Act, the benefit of section 11 and 12 should be given to the assessee and deductions claimed by the assessee are, therefore, allowed. Thus, Ground Nos.1 to 4 of the assessee are allowed.

17. So far as alternate plea praying that only the net income should have been subjected to tax rather than gross receipts, since we have already allowed the deduction u/s 11 and 12 of the Act to the assessee, this alternate plea becomes academic in nature. Other grounds are general in nature which needs no adjudication.

18. In the result, the appeal of the assessee is allowed.”



6. Before us, the assessee has also filed acknowledgement of filing audit report on Form No. 10B on the portal on 5th November, 2022 and has also provided screenshot of the portal of the revenue in support of the evidence that the same was uploaded on 01/10/2022. The audited income and expenditure account for the year ended 31.03.2022 showing net excess expenditure over income by Rs. 1,07,491/- has also been filed, which should have been considered even if the claim under section 11 was not allowed, as the expenditure claimed cannot be disallowed while processing the return under section 143(1) of the Act. Hence, respectfully following the decision of the coordinate Bench in the case of **Kaydee Foundation** (supra), and others relied upon by the assessee, the order of Ld. Addl/JCIT (A) is hereby set-aside and the Ld. AO is directed to allow the exemption claimed under section 11 of the Act by the assessee as per law as the requisite audit report is available on the portal and the delay, if any, in filing the same is condoned in view of the finding that filing of the same within the due date is directory and not mandatory in nature.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 9th May, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[**Manomohan Das**]
Judicial Member

Sd/-

[**Rakesh Mishra**]
Accountant Member

Dated: 09.05.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **S.B. Bhattacharjee Memorial Trust for Children, Bogapani Colony, Digboi, Assam - 786171.**
2. **ACIT, Circle-1, Aayakar Bhawan, Milan Nagar, Dibrugarh.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata