

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE DR. BRR KUMAR, VICE PRESIDENT &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.444/Ahd/2025  
(Assessment Year: 2018-19)

Koshambh Charitable Trust, 301, 3 <sup>rd</sup> Floor, Gamthi Complex, Opp. B.P.C. House, Productivity Road, Vadodara-390007	Vs.	Centralized Processing Centre, (CPC), Bangalore <b><u>Jurisdictional AO</u></b> Income Tax Officer, Exemption Ward, Aaykar Bhavan, Vadodara
<b>[PAN No.AABTK8442P]</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Sanjay R. Shah, A.R.
<b>Respondent by:</b>	Shri Veerbadram Vislavath, Sr. DR

<b>Date of Hearing</b>	15.05.2025
<b>Date of Pronouncement</b>	26.05.2025

O R D E R

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), ADDL/JCIT(A)-1, Hyderabad vide order dated 30.12.2024 passed for A.Y. 2018-19.

2. The Assessee has taken the following grounds of appeal:-

“1. The Ld. ADDL/JCIT(A)-1, Hyderabad has erred in law and on facts of the case by partly allowing the appeal for statistical purpose only and thereby not deleting unsustainable and invalid additions by way of adjustments u/s.143(1)(a) of the I.T. Act. 1961, made by the Ld. ADIT CPC, Bengaluru, though such disallowances are beyond the scope of provisions of section 143(l)(a) of the I.T, Act, 1961.

2. The Ld. ADDL/JCIT(A)-1, Hyderabad has also erred in law and on facts and circumstances of the case, by not appreciating that denial of exemption u/s. 11 of the

*I.T. Act, 1961, rightly and validly claimed u/s. 11 of the I.T. Act, 1961 by the Appellant, is beyond the scope of provisions of section 143(l)(a) of the I.T. Act, 1961.*

3. *The Ld. ADDL/JCIT(A)-1, Hyderabad has erred in law and on facts of the case by substantially confirming the order by Intimation u/s.143(1) of the I.T. Act, 1961 passed by the Ld. ADIT, CPC, Bengaluru, merely on the technical ground that the Appellant has not filed Audit Report in Form-10B in time, even though, at the time of passing intimation on 12.03.2020, Audit Report in Form 10B electronically filed on 19.11.2019, was already available on records.*

4. *The Ld. ADDL/JCIT(A)-1, Hyderabad has also erred in law and on facts of the case by partly allowing the appeal or statistical purpose only and not deciding the appeal on merits even though the Appellant has duly e-filed Audit Report in Form 10B on 19.11.2019.*

5. *The Ld. ADDL/JCIT(A)-1, Hyderabad has also erred in law and on facts of the case by confirming the disallowance made by the Ld. ADIT, CPC, Bengaluru and by not granting deduction of expenditure of Rs.43,92,319/- as application of income, merely on the ground that the Appellant has not E-filed audit report in Form No. 10B along with return of income or before filing return of income without properly appreciating that the provisions of filing Form No. 10B are governed by the provisions of section 12A(1)(b) and (ba), wherein there is no such direction to file the form electronically as mentioned in Rule 12(2) r.w.r. 17B and further, since the section does not contain the direction to file such report electronically, the same cannot be considered to be mandatory requirement as the rules cannot go beyond the scope of the section,*

6. *The Ld. ADDL/JCIT(A)-1, Hyderabad has also erred in law and on facts of the case by not appreciating that requirements of filing return as well as Form No. 10B are governed by the provisions of section 139(4A), which lays down that the return or revised return and Audit Report in Form No.10B, can be filed till the end of the assessment year and as such the same are filed within the time permissible under the Act.*

7. *The Appellant therefore prays that disallowance made by the Ld. Assessing Officer by not granting deduction of expenditure of Rs.43,92,319/- as application of income may kindly be deleted.*

8. *The Appellant reserves the right to add, alter, amend or withdraw any of the above grounds of appeal.”*

3. The brief facts of the case are that the appellant is a charitable trust registered under Section 12AA of the Income Tax Act, 1961, and availing exemption under Sections 11 and 12 since its inception. The assessee filed its return of income for the Assessment Year 2018-19 on 05.12.2018 and

disclosed receipts of ₹42,82,000/- and claimed expenses of ₹43,92,319/- as application of income for charitable purposes, resulting in a nil taxable income. Although the assessee / applicant trust had duly obtained the audit report in Form No.10B from its Chartered Accountant on 03.12.2018, it inadvertently failed to file the form electronically along with or before the return of income. The error came to the appellant's notice in November 2019, following which it electronically filed Form No.10B on 19.11.2019. However, the Assistant Director of Income Tax, CPC, Bangalore, processed the return under Section 143(1) on 12.03.2020 and disallowed the exemption under Section 11 on the ground that Form 10B was not filed within the required timeframe, thereby raising a tax demand of ₹32,44,371/-. The assessee's case is that such disallowance was made without issuing any notice to the assessee / appellant.

4. Aggrieved by the said order of the Assessing Officer, the assessee preferred appeal before Ld. CIT(Appeals).

5. In appeal before CIT(Appeals), the assessee submitted that the Assessing Officer, CPC based this adjustment on the proviso to Rule 12(2) of the Income Tax Rules, which mandates e-filing of Form 10B along with the return. The appellant argued that this action ignored CBDT Circular No. 2 of 2020 dated 03.01.2020, which provides for condonation of delay in filing Form 10B for up to 365 days. Since the form was filed within that permissible window, the appellant contended that the exemption under Section 11 should not have been denied.

6. During the course of appellate proceedings, the assessee submitted that assessee trust is eligible to claim deduction u/s 11 of the Act. Further copy of audit report in form 10B which could not be submitted electronically due to inadvertence was also enclosed before Ld. CIT(Appeals). The assessee submitted that assessee should not suffer for procedural mistakes which are beyond assessee's control. The assessee submitted that if a public charitable trust registered u/s 12A of the Act had substantially satisfied conditions for availing benefit of exemption as a trust, it could not be denied exemption merely on account of bar of limitation in furnishing audit report in Form no. 10B. The assessee submitted here that donation received by assessee is eligible for exemption u/s 80G(5) of Act granted by CIT-III, Baroda vide certificate dated 12.03.2013. The assessee further submitted that the accounts of the trust are also audited, not only under the IT Act but also under Bombay Public Trust Act. Copy of the Audit report dated 03.12.2018 for above year was also submitted before Ld. CIT(Appeals). Further, the assessee submitted that copy of Audit Report in Form 10B which could not be submitted electronically within stipulated time due to inadvertence and the same was again filed before Ld. CIT(Appeals), for his records.

7. However, Ld. CIT(Appeals) dismissed the appeal of the assessee, with the following observations:

*“7.3.3 I have perused the arguments of the appellant on the issue. It is the default of the appellant that it has not filed audit report as mandated under the provisions of Income Tax Act. Once, appellant has failed to comply with the directions of Act, it is natural consequences of CPC denying the exemption.*

*7.3.4 Further, the appellant fails to explain how this is not a prima facie adjustment u/s 143(1). It is not the case of the appellant that it has complied with the provisions of Act and CPC has denied exemption without any basis. The appellant has failed to upload the audit report one month before the due date of filing return u/s 139(1) of the Act. If we accept the contention of the appellant for academic purpose also, then it would vitiate the distinction made by those which are filing audit report in form 10B in time and those like an appellant who have not filed the audit report within the time allowed under the act. In view of the above facts, the AO, CPC is competent to make denial of exemption u/s 11 of the Act. Accordingly, the appellant's claims on the issue are also rejected.”*

8. The assessee is in appeal against the order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee. On going through the rival contentions, we observe that both for the earlier as well as subsequent years, the assessee has e-filed Form 10B within the stipulated time frame. Further, for this year as well, we observe that the Form 10B contained a specific UDIN mentioning the date on which the Audit Report was prepared as 03.12.2018 (enclosed at pages 21-23 of Paper-Book submitted before us). Therefore, it is not the case that Auditor's Report in Form 10B had not been prepared by the Auditors but there was a procedural delay in e-filing of the same.

9. In the case of **JCIT(OSD) vs. Gujarat Energy Development Agency 154 taxmann.com 348 (Ahmedabad – Tribunal)**, the Ahmedabad Tribunal held that where assessee is a charitable trust, filed audit report in Form No. 10B during the assessment proceedings, the Assessing Officer could not have denied exemption under Section 11 of the Act on the ground that audit report was not e-filed along with return.

10. Further, in the case of **ITO(E) vs. Takshshila Foundation (NGO) 165 taxmann.com 735 (Ahmedabad – Tribunal)**, the Ahmedabad

Tribunal held that requirement of filing Form 10/10B is merely directory in nature and failure to furnish Form 10/10B before due date prescribed under Section 139(1) of the Act cannot be so fatal so as to deny very claim of exemption under Section 11(2) of the Act.

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. In the case of **CIT(E) vs. Anjana Foundation 168 taxmann.com 462 (Gujarat)**, the Hon'ble High Court held that charitable trust cannot be denied benefit of Section 11 solely for not filing audit report in Form No. 10B, as it is only a procedural requirement.

13. Respectfully following the aforesaid decisions, we are of the considered view that the claim of application of income cannot be denied

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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 and the same being a procedural defect.

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

<b>This Order pronounced in Open Court on</b>	<b>26/05/2025</b>
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Sd/-  
**(DR. BRR KUMAR)**  
**VICE PRESIDENT**

Ahmedabad; Dated 26/05/2025

TANMAY, Sr. PS

*TRUE COPY*

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

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, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad