

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

[वर्चुअल कोर्ट]
[Virtual Court]

श्री दुव्वुरु आरएल रेड्डी, उपाध्यक्ष (कोलकाता क्षेत्र)
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI DUVVURU RL REDDY, VICE PRESIDENT (KZ)
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 195/CTK/2025
Assessment Year: 2023-24**

Jeevan Kalyana Sadhana Kendra <i>(Appellant)</i>	Vs.	Income Tax Officer, Exemption, Sambalpur <i>(Respondent)</i>
PAN: AAAAJ9932H		

Appearances:

Assessee represented by : Subash Agarwal, AR.

Department represented by : S.C. Mohanty, Sr. DR.

Date of concluding the hearing : 20-May-2025

Date of pronouncing the order : 29-May-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Ld. Addl/JCIT(A)-1, Jaipur [hereinafter referred to as Ld. 'Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2023-24 dated 30.01.2025, which has been passed against the intimation order u/s 143(1) of the Act, dated 13.12.2024.



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

“1. For that, on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the action of the A.O (CPC) in denying the exemption claimed by the assessee u/s 11 of the Act on the alleged ground that the Audit Report in Form 10BB was not filed within due date.

2. The applicant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.”

3. Brief facts of the case are that the assessee is an AOP, a public charitable Trust registered u/s 12A of the Act and engaged in the public charitable activities. The assessee filed the audit report u/s 12A(1)(b) of the Act in Form No. 10B in the old format on 30/10/2023. Later on the assessee filed its return of income dated 30.10.2023 claiming exemption under section 11 of the Act and the Auditor filed the audit report in the new format in Form No. 10BB on 04/04/2024. The Assessing Officer (hereinafter referred to as Ld. 'AO') while completing the assessment, disallowed the claim of exemption u/s 11 of the Act on the ground that the audit report u/s 12A of the Act was not filed within the due date and added the gross receipt of Rs. 41,90,580/- as taxable income. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 30.01.2025, noted that in order to get entitlement for claiming exemption of its income u/s 11 of the Act, it is mandatory on the part of the assessee to file the Form No. 10B/10BB in due time or get a condonation of delay in filing the Form No. 10B/10BB from the CIT (Exemptions). Therefore, the Ld. CIT(A) upheld the order of the Ld. AO and dismissed the appeal of the assessee.

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.



5. Rival submissions were heard and the record and the submissions made have been examined.

6. It was submitted before us by the Ld. AR that on the date of preparation of intimation under section 143(1) on 13/12/2024, the audit report filed on Form No. 10BB on 04/04/2024 was available and therefore, the required claim ought to have been allowed. It was submitted that the delay was only a procedural lapse and ought to have been condoned. The Ld. CIT(A) denied the exemption as according to him either the Form No. 10B/10BB should have been filed within the due date or an order for condonation of delay in filing the form from the CIT(Exemptions) should have been obtained and the AO cannot allow the exemption under section 11 on facts and in the circumstances of the case unless the court directs under alternative remedy or the CIT(Exemptions) condones the delay under section 119(2)(b) of the Act. The assessee had submitted before the Ld. CIT(A) by citing several judicial pronouncements that the delay in filing Form No. 10B/10BB could not result in denial of claim of exemption under section 11 of the Act. Before us, the assessee relied upon the decision of Commissioner of Income Tax Exemptions Kolkata vs M/s Indian Sugar Mills Association in ITAT/270/2023 IA No: GS/1/2023, GA/2/2023 order dated 10/01/2024 of the Hon'ble High Court of Calcutta wherein it has been held that the filing of the auditor's report along with the return of income has to be treated as a procedural provision and therefore, directory in nature. The relevant extract from the order is as under:

“The short question falls for consideration in the instant case is whether the Principal Commissioner of Income Tax (Appeals), NFAC was justified in allowing the appeal filed by the assessee thereby condoning the delay in filing the Form 10B of the Act. The learned Tribunal after going through the facts of the case took note of the latter circular issued by the Board in Circular No. 16 of 2022



dated 19-07-2022 issued under Section 119(2)(b) by which the powers delegated to the Principal Chief Commissioner of Income Tax/Commissioner of Income Tax to condone the delay in filing Form 10B beyond 365 days up to 3 years from the assessment year 2018-19 or for subsequent year. Applying the said circular the learned Tribunal affirmed the order passed by the CIT (Appeals) in grounds before us in this appeal.

The revenue has not dealt with the said circular nor anything has been brought on record to show that Circular No. 16 of 2022 dated 19-07-2022 cannot be applied to the case on hand. The Commissioner of Income Tax (Exemptions) while rejecting the application for condonation of delay by order dated 17-08-2020 has referred to the Circular No. 2 of 2020 dated 3.1.2020 which admittedly gives power to condone the delay in filing Form 10B up to a period of 365 days. The CIT (Appeals), NFAC also took note of a decision of the High Court of Gujarat in Commissioner of Income Tax Vs Gujarat Oil And Allied Industries reported in 1993 ITR (201) 325 wherein it was held that the filing of the auditor's report along with return of income has to be treated as procedural provision and therefore, directory in nature. Thus we find that there is no error committed by the learned Tribunal in dismissing the appeal filed by the revenue.

Accordingly, the appeal is dismissed. Substantial questions of law are answered against the revenue.”

7. Reliance has also been placed on the order dated 30/09/2024 of the coordinate Bench of the Tribunal in the case of Salt Movement Area Revival Trust Vs. Dy. Director, CPC, Bengaluru, I.T.A. No.317/KOL/2024 Assessment Year: 2022-23. It was also submitted before us by the Ld. AR that the due date for filing the return of income had been extended to 30/11/2023 and the audit report was required to be filed a month earlier. The same was filed belatedly but was available at the time of processing of the return of income and therefore, the claim of exemption should not have been denied. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. CIT(A) as well as the intimation of the Ld. AO and and remit the matter back to the Ld. AO for considering the claim of the assessee afresh as the audit report on the new format was available at the time of processing of the return of income and therefore, the claim of exemption



under section 11 of the Act has to be allowed. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, all the grounds taken by the assessee in his appeal are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 29th May, 2025.

Sd/-

[Duvvuru RL Reddy]
Vice President (KZ)

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 29.05.2025

Bidhan (P.S.)



Copy of the order forwarded to:

- 1. Jeevan Kalyana Sadhana Kendra, C/o. Subash Agarwal & Associates, Advocate, Siddha Gibson, 1, Gibson Lane, Suite 213, 02nd Floor, Kolkata, West Bengal, 700069.**
- 2. Income Tax Officer, Exemption, Sambalpur.**
3. Addl/JCIT(A)-1, Jaipur.
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata