

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

सुश्री सुचित्रा काम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 483/Ahd/2025
निर्धारण वर्ष /Assessment Year : 2017-18

Health Foundation & Research Centre GF Post Box No. 156, Sheth Shri Girdharlal Marg, Raliyati Road, Dahod, Gujarat - 389151	बनाम/ v/s.	The Assistant Commissioner of Income-tax Circle-2, Exemption, Ahmedabad
स्थायी लेखा सं./PAN: AATH0867J		

अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Sakar Sharma, AR
Revenue by :	Shri Hargovind Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/06/2025
घोषणा की तारीख /Date of Pronouncement: 10/06/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal is filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"], dated 03.01.2025, arising out of the assessment order dated 24.12.2019 passed by the Office of Assistant Commissioner of Income Tax - Circle 2 (Exemptions), Ward-1, Ahmedabad [hereinafter referred to as "Assessing Officer / AO"] under section 143(3) of

the Income Tax Act, 1961 [hereinafter referred to as 'the Act'], for the Assessment Year 2017-18.

Brief Facts of the Case

2. The assessee is a charitable trust duly registered under section 12A of the Act since 16.04.1984 and is also enjoying approval under section 80G(5) of the Act. The trust is engaged in the field of medical relief and education and is running a hospital and nursing college. For the year under consideration, the assessee filed its return of income under section 139(1) on 02.11.2017, declaring total income at NIL. The return was selected for scrutiny assessment, and notices under section 143(2) and 142(1) were issued. During the course of the assessment proceedings, the Assessing Officer noted that the assessee had not furnished the audit report in Form No. 10B electronically along with the return or subsequently up to the time of assessment. The AO further recorded that no accumulation under section 11(2) had been claimed, nor any application made under section 119(2)(b) for condonation of delay. The Assessing Officer, therefore, held that the assessee had failed to comply with the condition laid down in section 12A(1)(b) and accordingly, denied exemption under sections 11 and 12. The AO treated the entire income of the assessee as taxable, including corpus donations aggregating to Rs. 71,38,000/- and completed the assessment under section 143(3) of the Act, determining the total income at Rs. 1,25,10,028/- as against NIL income declared.

3. Aggrieved by the above assessment order, the assessee filed an appeal before the CIT(A). There was, however, a delay of 63 days in filing the appeal. The assessee filed an application for condonation of delay supported by an affidavit explaining that the delay was due to inadvertent mistake on the part of the consultant's assistant. The CIT(A), however, refused to condone the delay, holding that no sufficient cause was shown, and dismissed the appeal

in *limine* without adjudicating the matter on merits. The CIT(A), in the impugned order, held that the explanation for the delay was vague and unsupported by proper evidence. Since the appeal was not admitted, no findings were recorded on the merits of the additions made by the AO. The grounds relating to the exemption under section 11, the treatment of corpus donations, and claim of deduction under section 11(1)(a) were not adjudicated.

4. Aggrieved by the order of the CIT(A),NFAC, the assessee is in appeal before us and has raised the following grounds:

1. *The Ld. CIT(A)_NFAC erred on facts and in law in not condoning the delay of 63 days in filing of appeal.*
2. *The Ld. CIT(A)-NFAC erred on facts and in law in not adjudicating the appeal on merits.*
3. *The Ld. CIT(A)-NFAC erred on facts and in law in not condoning the delay in filing of Form No. 10B.*
4. *The Ld. CIT(A)-NFAC erred on facts and in law in not directing the Assessing Officer to compute the income of the appellant at Rs. NIL against Rs. 1,25,10,028/- computed. in the assessment order.*
5. *The Ld. CIT(A)-NFAC erred on facts and in law in treating corpus donations of Rs., 71,38,000/- as income of the appellant.*
6. *The Ld. CIT(A)-NFAC erred on facts and in law in not granting deduction @ 15% of the income of the Trust u/s 11(1)*

5. During the course of hearing before us, the learned Authorised Representative (AR) reiterated that the assessee is a long-standing charitable trust registered under section 12A since 1984 and enjoying approval under section 80G(5). The AR submitted that for the year under consideration, the assessee had filed its return of income on 02.11.2017 declaring NIL income and had claimed exemption under section 11. The audit of financial statements was completed on 29.07.2019, and the audit report in Form No. 10B was signed by the auditor on 27.07.2019. However, due to oversight and inadvertent error, the said audit report was not uploaded electronically

within the prescribed time and was eventually filed online on 07.12.2019. It was emphasised that the delay was procedural in nature, and there was no intention to evade tax or suppress facts. The AR further submitted that the Assessing Officer has not disputed the fact that the audit was completed in time, nor has he pointed out any defect in the application of income or the nature of activities of the trust. The only ground for denial of exemption under sections 11 and 12 was the belated filing of Form No. 10B. It was submitted that the AO has not recorded any other adverse finding in the assessment order and has proceeded to treat even corpus donations aggregating to Rs. 71,38,000/- as income.

6. On the issue of condonation, the AR submitted that the delay in filing Form No. 10B ought to have been condoned in the light of various judicial precedents including the decision of the Hon'ble Gujarat High Court in *Association of Indian Panelboard Manufacturers v. DCIT* [(2023) 157 taxmann.com 550 (Guj)] and *Anjana Foundation v. CIT (Exemptions)* [(2024) 168 taxmann.com 462 (Guj)]. He also placed reliance on CBDT Circular No. 2/2020 dated 03.01.2020, which permits condonation of delay in filing Form 10B where the audit is completed in time but the uploading is belated. It was submitted that such delay being technical in nature should not defeat a substantive claim for exemption. The learned AR also placed reliance on various decisions of co-ordinate benches where delay in filing Form No. 10B was held to be procedural and condonable, and exemption under section 11 was allowed despite such belated filing, provided the audit had been completed in time. Specific reference was made to the decisions of the Co-ordinate Bench in the case of *Bhavnagar Dashrimali Meshree Vanik Gnati* (ITA No. 602/Ahd/2024), wherein the Bench, after considering the factual matrix and applying the principles laid down by the Hon'ble Gujarat High Court, held that exemption under section 11 could not be denied merely on

account of procedural delay in e-filing Form No. 10B, when the audit was admittedly completed before finalisation of assessment. The AR submitted that the ratio of these co-ordinate bench decisions, being based on identical facts and binding judicial principles, fully supports the case of the assessee.

7. In response, the learned Departmental Representative (DR) supported the orders of the lower authorities. He submitted that the audit report in Form No. 10B was not filed within the due date prescribed under section 139(1) of the Act, and no application for condonation of delay had been filed before the jurisdictional Commissioner as contemplated under section 119(2)(b). It was further submitted that the return of the assessee was not processed under section 143(1), and the assessment was completed under section 143(3), thereby requiring a stricter standard of compliance. The DR distinguished the judgment in *Anjana Foundation* on the ground that in that case, the return had been processed under section 143(1), whereas in the present case, the audit report was made available at the time of scrutiny assessment.

8. In rebuttal, the AR clarified that the audit had been completed in time, and the only lapse was in uploading the report electronically. He submitted that this was a technical default which should not result in denial of exemption when there was no adverse finding by the AO on the charitable nature of activities. He further stated that the delay in filing the appeal before the CIT(A) was also supported by reasonable cause, and the CIT(A) erred in not condoning the delay and not deciding the case on merits.

9. We have carefully considered the rival submissions of both parties, perused the orders of the lower authorities, and examined the material placed on record including judicial precedents and circulars relied upon. The issue for adjudication in the present appeal lies in a narrow compass: whether the

delay in e-filing of Form No. 10B by the assessee trust, despite timely completion of audit, can be condoned and whether the denial of exemption under section 11 of the Act merely on that ground is legally sustainable.

10. At the outset, it is not in dispute that the assessee is a trust duly registered under section 12A of the Act since 1984 and is also enjoying approval under section 80G(5). The assessee is engaged in bona fide charitable activities in the field of health and education. For the assessment year under consideration, it filed its return of income on 02.11.2017 declaring income at Nil. It is also undisputed that the audit of the financial statements was completed on 29.07.2019, and the audit report in Form No. 10B was signed by the auditor on 27.07.2019. However, the said audit report was e-filed belatedly on 07.12.2019.

11. The Assessing Officer completed the scrutiny assessment under section 143(3) and denied exemption under section 11 on the sole ground that the audit report in Form No. 10B was not available on record at the time of assessment. Notably, the AO has not disputed the genuineness of the activities of the trust, nor has he recorded any finding suggesting misapplication of income or violation of conditions of section 11 or 12. Even corpus donations aggregating to Rs. 71,38,000/- were brought to tax without examining whether they were received with specific direction. The CIT(A), in turn, declined to condone the delay of 63 days in filing the appeal before him and dismissed the appeal in *limine* without adjudicating the grounds on merits. The explanation furnished by the assessee supported by affidavit—stating that the delay occurred due to oversight and inadvertent error by the consultant—was summarily rejected as vague and unsubstantiated, despite no finding of *malafide* or deliberate inaction.

12. In our considered view, the CIT(A) erred in dismissing the appeal without appreciating the fact that the explanation tendered by the assessee, which is not found to be false or lacking in bonafides, deserves liberal interpretation in light of various judicial precedents where it is held that justice-oriented approach should be adopted while considering condonation of delay. The assessee being a charitable trust, the explanation deserves to be evaluated in the backdrop of its functioning and reliance on professional assistance for procedural compliance.

13. On the substantive issue of belated filing of Form No. 10B, we note that the Hon'ble Gujarat High Court in *Association of Indian Panelboard Manufacturers v. DCIT* [(2023) 157 taxmann.com 550 (Guj.)] has categorically held that where Form 10B was belatedly filed but audit was completed in time, the denial of exemption solely on that ground is not justified. The Hon'ble Court emphasized that the requirement of filing the audit report along with return is directory and not mandatory, and that the claim of exemption under section 11 should not be denied when there is substantial compliance with the law. Similarly, in *Anjana Foundation v. CIT (Exemptions)* [(2024) 168 taxmann.com 462 (Guj.)], the Hon'ble Court reiterated that the purpose of requiring Form 10B is to ensure that the conditions of sections 11 and 12 are fulfilled, and if the audit is completed in time, mere technical delay in uploading the form should not defeat the substantive right of the assessee to exemption. The CBDT Circular No. 2/2020 dated 03.01.2020 also supports this view. It clarifies that the Commissioners of Income-tax are authorised to condone delay in filing Form No. 10B under section 119(2)(b), subject to satisfaction of reasonable cause. While the assessee may not have approached the CIT for condonation under that route, the principle underlying the circular is equally relevant that the delay in uploading the form, if not attributable to *malafide* intent and the audit is completed in time, ought not to

disentitle a trust from exemption. The co-ordinate benches have consistently followed this legal position that exemption under section 11 cannot be denied merely due to delay in filing Form 10B when the audit was admittedly completed prior to the finalisation of assessment.

14. In the present case, the audit was completed on 29.07.2019 and the audit report was signed on 27.07.2019 – well before the conclusion of the assessment proceedings. The explanation for delay in e-filing the report is procedural and technical. In absence of any adverse finding by the AO on the merits of the exemption, and in light of the legal and factual matrix, we find no justification in denying exemption under section 11 solely on account of such delay.

15. We are, therefore, of the considered view that both the delay in filing Form 10B and the delay of 63 days in filing appeal before the CIT(A) deserve to be condoned in the interest of substantial justice. The CIT(A) ought to have admitted the appeal and adjudicated the grounds on merits.

16. In view of the foregoing discussion, we set aside the impugned order of the CIT(A) dated 28.09.2023 and condone the delay of 63 days in filing the appeal before the CIT(A). Further, applying the ratio laid down by the Hon'ble Gujarat High Court and co-ordinate benches of the Tribunal, and keeping in view CBDT Circular No. 2/2020, we also condone the delay in filing Form No. 10B and direct the Assessing Officer to grant the benefit of exemption under sections 11 and 12 in accordance with law.

17. Accordingly, the matter is restored to the file of the Assessing Officer with a direction to recompute the income of the assessee after granting exemption under section 11 and treating the corpus donations as capital

receipts, and allowing the 15% statutory deduction under section 11(1)(a) as claimed in accordance with the law.

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

Order pronounced in the Open Court on 10th June, 2025 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 10/06/2025

S. K. Sinha, Sr. PS

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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)/Pr.CIT-1, Vadodara
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad