

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 राकेश मिश्रा, लेखा सदस्य
के समक्ष

Before

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

I.T.A. Nos.: 436 & 437/CTK/2024
Assessment Years: 2014-15 & 2015-16

Gram Vikas Trust (Appellant)	Vs.	ITO (Exemption), Berhampur (Respondent)
PAN: AAATG4507C		

Appearances:

Assessee represented by : Nank Fogla, AR.

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

Date of concluding the hearing : 06-May-2025

Date of pronouncing the order : 12-June-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

Both these appeals filed by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AYs 2014-15 & 2015-16 dated 24.08.2024, which have been passed against the rectification orders u/s 154 of the Act, dated 19.12.2016. Since the issues are common, both the appeals were heard together and are being decided vide this common order for the sake of convenience and brevity.



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

I. ITA No. 436/CTK/2024; AY 2014-15:

“Ground No. 1: The learned CIT(A) and the Assessing Officer have erred in rejecting the petition filed under section 154 on 19/12/2016 for rectifying the intimation under section 143(1)(a) for disallowing deduction claimed under section 11(2), in the light of the fact that a disallowance pertaining to delay in filing of Form 10 cannot be treated as a prima facie adjustment for the purposes of intimation under section 143(1)(a).

Ground No. 2: When Rs. 10,45,000/- has been actually set apart under section 11(2) and reported in Form 10B, delay in uploading Form 10 cannot lead to disallowances.

Ground No. 3: Rejection of the claim under section 11(2), without notice to appellant, is incorrect and the same is against judicial decisions. Nagpur Hotel Owners’ Association 247 ITR 201 (SC).

Ground No. 4: The AO erred in levying interest under section 234B and C of the Act.

Ground No. 5: Even otherwise since the delay in filing Form 10 is condonable one, (vide Board’s Circular No. 273 dt. 3/6/1980) Assessing Officer ought not to have rejected the claim for deduction under section 11(2) without educating the assessee about the remedial measures available with him.

Ground No. 6: That the assessee has been taxed for a procedural delay and has been deprived of substantive justice therefore the Hon’ble Tribunal may direct the Jurisdictional PCIT/CIT to condone the delay in filing of Form 10 under section 119(2)(b) of the Act.”

II. ITA No.437/CTK/2024; AY 2015-16:

“Ground No. 1: The learned CIT(A) and the Assessing Officer have erred in rejecting the petition filed under section 154 on 10/12/2016 for rectifying the intimation under section 143(1)(a) for disallowing deduction claimed under section 11(2), in the light of the fact that a disallowance pertaining to delay in filing of Form 10 cannot be treated as a prima facie adjustment for the purposes of intimation under section 143(1)(a).

Ground No. 2: When Rs. 19,00,000/- has been actually set apart under section 11(2) and reported in Form 10B, delay in uploading Form 10 cannot lead to disallowances.

Ground No. 3: Rejection of the claim under section 11(2), without notice to appellant, is incorrect and the same is against judicial decisions. Nagpur Hotel Owners’ Association 247 ITR 201 (SC).



Ground No. 4: The AO erred in levying interest under section 234B and C of the Act.

Ground No. 5: Even otherwise since the delay in filing Form 10 is condonable one, (vide Board's Circular No. 273 dt. 3/6/1980) Assessing Officer ought not to have rejected the claim for deduction under section 11(2) without educating the assessee about the remedial measures available with him.

Ground No. 6: That the assessee has been taxed for a procedural delay and has been deprived of substantive justice therefore the Hon'ble Tribunal may direct the Jurisdictional PCIT/CIT to condone the delay in filing of Form 10 under section 119(2)(b) of the Act.”

3. We will first take up the appeal in ITA No. 436/CTK/2024. Brief facts of the case are that the assessee filed the return of income which was processed u/s 143(1)(a) of the Act by the CPC in which the claim of exemption was denied. Aggrieved with the intimation, the assessee moved an application u/s 154 of the Act which was rejected vide order dated 19.12.2016. Aggrieved with the order of rejection, the assessee filed the appeal before the Ld. CIT(A). It was stated that the assessee Society is registered under the Income Tax Act vide No.55/98-99 dated 11.12.2002 with the Commissioner of Income Tax, Orissa and for AY 2014-15, it derived an income of ₹ 49,30,281/- out of which the amount utilized in this year was ₹ 31,50,550/- and the amount accumulated u/s 11(1)(a) of the Act was ₹ 7,34,731/- while the amount set apart u/s 11(2) of the Act was ₹ 10,45,000/-. The return of income was filed on 26.09.2014 along with Form No. 10B, but Form No. 10 was not uploaded on the same day. This omission was noticed later but, in the meantime the CPC sent the intimation u/s 143(1) of the Act dated 14.01.2016 disallowing the claim u/s 11(2) of the Act and raising a demand of ₹ 1,70,630/-. The assessee thereafter, uploaded Form No. 10 and filed a petition u/s 154 of the Act for rectification of the intimation u/s 143(1)(a) of the Act to allow the claim u/s 11(2) of the Act but the same was rejected by the CPC on 19.12.2016 for the reason that there was no prima facie error which the assessee had sought to get rectified.

It was submitted in respect of not being able to upload Form No. 10 that the assessee was using the computer with Windows XP and could upload the return of income and Form No. 10B with Windows XP but Form No. 10 could not be seen on the Windows XP system. Later on the assessee came to know that Windows 7 was required to file Form No. 10 and subsequently upgraded the Computer to Windows 7 and uploaded Form No. 10 on 30.09.2016. The CPC, vide intimation u/s 143(1) of the Act disallowed the exemption claimed u/s 11(2) of the Act by making an addition of ₹ 10,45,000/- and raising tax liability of ₹ 1,82,680/- and tax demand of ₹ 1,70,633/- after adjustment of TDS refund claim for that year of ₹ 12,047/- due to failure to file Form No. 10 within the due date of filing the return of income as required u/s 139(1) of the Act. It was submitted that the delay in uploading Form No. 10 cannot lead to disallowance of the amount actually set apart u/s 11(2) of the Act and reported in Form No. 10B. Reliance was placed on the decision of Hon'ble Bombay High Court in the case of **Commissioner of Income-tax-III, Pune v. Sakal Relief Fund [2017] 81 taxmann.com 396 (Bombay)** wherein it has been held as under:

“An order was passed to enable the revenue to respond to the same. In that order it was stated that the respondent is a charitable trust. The issue arising in these two appeals, prima facie, appears to be covered in favour of the respondent assessee and against the revenue by the decision of the High Court and Supreme Court. The Apex Court's decision is to the effect that Form 10 required to be filed under 17 of the Rule, could be filed at any time till the completion of assessment and not after the completion of assessment. The Delhi High Court's decision on the issue that assessment proceedings would include re-assessment proceedings for the purpose of filing Form 10 in terms of rule 17 of the Rules.

The decision of this Court on the issue that a return filed under sub-section (4) of section 139 will be dealt with as a return filed under section 139(1) which extends the time as permitted under section 139(1). In the present case, a return of income filed consequent to a re-opening notice under section 148 is to be treated as a return required to be filed under section 139. [Para11]

The revenue accepts that even if the Form 10 is filed during the reassessment proceedings, the benefit of accumulation under section 11(2) is available. So

also, the time allowed in rule 17 of the rules for furnishing the form before the expiry of time to file the return of income under section 139(1) get extended to include the time within which a return of income could be filed under section 139(4) of the Act. Therefore, filing of Form 10 during reassessment proceeding is filing of the same within the time allowed for furnishing the return of income under section 139(4). Therefore, the revenue has not been able to point out any reasons why the aforesaid two decisions should not be applied in the facts of the present case to reject the appeal. [Para 12]"

3.1. Further, reliance was placed on the decisions of ITAT, Pune Bench in the case of **The Sonhira Foundation for Rural Development vs. DCIT, Central Circle-2(2), Pune in 2016 (1) TMI 600 – ITAT-Pune** and of ITAT, Jodhpur Bench in the case of **Jodhpur Income Tax Officer vs. M/s. Rajasthan Medical Relief Society 2015 (3) TMI 227 – ITAT-Jodhpur** in support of the relief claimed.

3.2. The Ld. CIT(A) went through the submission and has dismissed the appeal by holding as under:

"i) I have carefully considered the provisions of the Act, submissions of the appellant and the facts of the case. In the instant case there was delay in filing of Form 10 by the appellant resultantly the CPC, Bangalore processed the return of income u/s 143(1) dt.14-1-2016 of the Income-tax Act and disallowed the claim of the appellant u/s 11(2), raising a demand of Rs.1,70,630. Thereafter, realizing its mistake the appellant filed the Form - 10 and filed an application u/s 154 requesting the rectification of intimation u/s 143(1) of the Income-tax Act by allowing the claim u/s 11(2) of the Income-tax Act.

ii) The CPC, Bangalore vide its order dated 14.01.2016 rejected the rectification application of the appellant stating that, "On Verification, it is seen that there is no prima facie error in the order which you have sought to be rectified. Therefore, your application for Rectification under Sec.154 is rejected, for the following reasons (if any).

As seen from the e-filed return of income filed by the Assessee, the Assessee has claimed exemption under section 11 but has not furnished details of audit in the SCH. Audit information and Audit report in form 10B is not E-filed along with the return or before filing the return.

--In view of the above, this rectification Request is rejected."

iii) The CPC, Bangalore has rightly rejected the claim of the appellant to rectify the intimation passed u/s 143(1) of the Income-tax Act. As the delay



in filing of Form No. 10 after the due date of filing of return of income can be condoned not rectified.

6. Accordingly, the appeal of the appellant is dismissed.”

4. Rival submissions were heard and the record and the submissions made have been examined. It was submitted before us that there was delayed filing of Form No.10 but section 13(9) of the Act was brought into the statute with effect from 01.04.2016 and the assessee relied upon the judicial pronouncements in support of fact that Form No.10 can be filed in the course of the assessment proceedings as well which mentions the details of accumulation. For AY 2014-15, which is the impugned assessment year, the same was filed after 30th September, 2016 while the date of intimation was 14.01.2016. It was submitted that there was no provision for disallowance of the exemption for non-filing of Form No. 10 and non-compliance of section 13(9) of the Act which is with effect from 01.04.2016 and is only a procedural lapse. Our attention was drawn to page 7 of the paper book and the decision of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Nagpur Hotel Owners' Association [2001] 114 Taxman 255 (SC)/[2001] 247 ITR 201 (SC)/[2001] 165 CTR 1 (SC)[13-12-2000]** in support of claim that Form No. 10 could be filed before the assessment proceedings. It was also submitted that in **CIT v Mayur Foundation [2005] 194 CTR (Guj.) 194/274 ITR 562 (Guj.)**, it has been held that Form No. 10 can be filed at any time during the assessment proceeding. It was also submitted that this is not covered under the prima facie adjustment. The Ld. CIT(A) dismissed the appeal by holding that the delay in filing of Form No. 10 after the due date of filing of return of income can be condoned but not rectified.

5. The Ld. DR relied upon the recent amendment and stated that the decision of Hon'ble Gujarat High Court is no longer a good law and the

assessee had made a wrong claim. The Ld. AR submitted that the disallowance u/s 143(1) of the Act for AY 2015-16 for the exemption claimed also was on account of a procedural lapse and the amended law is with effect from AY 2015-16. The assessee's submission can be summarised as under:

- a. Making disallowances under section 11(1) and (2) is not allowed in the Intimation stage of proceedings.*
- b. It is undisputed that the claim of the assessee was legally correct and there was no arithmetical mistake.*
- c. Any expenses which are subject to procedural compliance or which require application of mind cannot be disallowed at the Intimation Stage of Proceedings under section 143(1)(a).*
- d. Prior to AY 2016-17 delay in filing of Form 10 could not lead to disallowance under section 11(2) and it was permissible to file Form 10 any time before the completion of assessment and the assessee was entitled to show cause an opportunity before any such disallowance.*
- e. The Supreme Court and various other High Courts and ITAT benches have held that mere delay in filing of Form 10 could not lead to disallowances under section 11(2).*
- f. The CBDT has also in its circular held delay in filling of Form 10 is a procedural lapse and it can be condoned by the Commissioner."*

6. We have considered the submissions made. The assessee's contention is correct that no prima facie adjustment could have been made u/s 143(1) of the Act in support of an issue which is not included in the *prima facie* adjustment to be made and further as section 13(9) of the Act has been inserted with effect from 01/04/2016 and is relevant for A.Y. 2016-17 onwards. The filing of Form No. 10 being a procedural requirement, the delay in filing the same cannot lead to the denial of exemption. Hence, in view of the decision of the Hon'ble Bombay High Court in the case of **Sakal Relief Fund** (supra), we are of the view that the delay in filing Form No. 10 cannot lead to the disallowance of the claim of exemption u/s 11(2) of the Act in the intimation issued under section 143(1) of the Act if the assessee is otherwise eligible as section 13(9) of the Act has been inserted with effect from 01/04/2016 and is relevant for A.Y. 2016-17 onwards. It was also submitted that in **CIT v**



Mayur Foundation [2005] 194 CTR (Guj.) 194/274 ITR 562 (Guj.), it has been held that Form No. 10 can be filed at any time during the assessment proceeding. Therefore, the Ld. AO is directed to consider the claim of the assessee and allow the exemption u/s 11(2) of the Act as the delay in filing Form No.10/10B is only a procedural lapse which does not disentitle the assessee for claiming exemption u/s 11(2) of the Act as Form No. 10 could have been filed till the completion of assessment and the intimation u/s 143(1) of the Act is not an assessment order.

7. In the result, both the appeals filed by the assessee for AYs 2014-15 & 2015-16 are allowed.

Order pronounced in the open Court on 12th June, 2025.

Sd/-

[Duvvuru RL Reddy]

Vice President (KZ)

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 12.06.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Gram Vikas Trust, 1, Mohuda, Berhampur, Odisha, 760002.**
2. **ITO (Exemption), Berhampur.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Cuttack Bench, Cuttack.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata