

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 365/KOL/2025
(ASSESSMENT YEAR : 2022-23)**

AMPI Foundation, Unimark Asian, 16 th Floor, 52/1, Shakespeare Sarani, Kolkata - 700017 (PAN: AADTA8073A)	Vs	Deputy Director of Income Tax, CPC, Bengaluru, (Jurisdictional Assessing Officer, Ward 1(4), Exempt, Kolkata, 10, Middleton Row, Kolkata - 700071
(Appellant)		(Respondent)

Present for:

Appellant by : Siddarth Agarwal, Advocate
Respondent by : Kallol Mistry, JCIT, Sr. DR

Date of Hearing : 15.05.2025
Date of Pronouncement : 16.06.2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

1. This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), Addl/JCIT(A)-Indore (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 2022-23 dated 04.12.2024, which has been passed against the intimation u/s 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 03.03.2023.

2. The grounds of appeal raised by the assessee are reproduced as under:

“1. That under the facts and circumstances of the case and in law the order passed by the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Indore on 04/12/2024 vide DIN & Order No: ITBA/APL/S/250/2024-25/1070870271(1)

for the assessment year 2022-23 is bad-in-law, arbitrary, perverse, unsustainable and against the principles of natural justice.

2. That under the facts and circumstances of the case the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Indore has grievously erred in sustaining the assessed total income at Rs. 9,42,771 as against the returned income of Rs. NIL

3. That under the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Indore has erred in not considering the amount applied during the previous year Revenue Account as 0 as against the amount applied during the previous year - Revenue Account Rs. 42,771 as returned by the assessee and certified by the Auditor.

4. That under the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Indore has grievously erred in sustaining the view of the Deputy Director of Income Tax, CPC, Bengaluru in denying the assessee exemption of 9,00,000 being corpus donation received during the year to which the assessee is entitled in terms of Section 12A(1)(b) read with Section 11(1)(d) of the Income Tax Act, 1961.

5. That under the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Indore has grievously erred in sustaining the view of the Deputy Director of Income Tax, CPC, Bengaluru that the trust has not e-filed the Audit Report in Form 10B atleast one month prior to the due date for furnishing return u/s 139(1) whereas the assessee's Tax Auditor has duly e-filed the relevant Form 10B only the assessee missed to accept the same within time. Assessee accepted Form 10B on 14.02.23 vide Acknowledgement No. 955227960140223.

6. That under the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals), ADDL/JCIT(A), Indore and the Deputy Director of Income Tax, CPC, Bengaluru has grievously erred in either not perusing the response filed by the assessee in response to notice u/s 143(1)(a) or not properly considering the response filed by the assessee.

7. The appellant craves leave to make any addition, alteration or modification etc., of the grounds either before the appellate proceedings, or during the course of appellate proceedings.”

3. Brief facts of the case are that the assessee-trust is engaged in providing financial and other assistance to the lower strata of the society and needy as well as to individuals on receiving specific application from them as also to various organisations after due evaluation of their needs. The trust had been granted approval under Section 12A(1)(ac)(i) of the Income Tax Act, 1961 ('the Act') vide order dated 28.05.2021 bearing Provisional Registration No. AADTA8073AE20131. The return of income for the assessment year under consideration was filed on 13.10.2022 vide acknowledgement No. 717686701131022, i.e., within the extended due

date of 07/11/2022. The requisite Form No. 10B was duly filed on 28/09/2022 within 1 month prior to due date for furnishing ROI under Sec. 139(1) by the CA in practice (duly e-signed) vide acknowledgement No. 955227960140223 but inadvertently, the assessee missed to accept it. The absence of proper verification was a curable defect as is submitted by the assessee. The return was processed u/s 143(1) of the Act on 03/03/2023, wherein adjustment of Rs.9,42,771/- was made and the exemption claimed under section 11 of the Act was denied. Aggrieved with the intimation, the assessee filed an appeal before the Ld. CIT(A), who considered the submissions of the assessee, examined the provisions of section 12A of the Act and noted that since the appellant had filed its e-return on 31/10/2022 within the extended due date of 07/11/2022 and the audit report in Form No. 10B had been submitted on 28/09/2022 but was accepted by the assessee on 14/02/2023, which was beyond the specified date i.e. 07/10/2022 and as the audit report in Form No. 10B had not been filed by the appellant within the due date, therefore, the action of the CPC was found to be correct and the appeal was dismissed. It was further noted that the delay in filing of Form No. 10B had not been condoned by the appropriate authority in accordance with the CBDT Circular No.16/2022 dated 19.7.2022. The Ld. CIT (A) also relied upon the decision in the case of Pr. CIT v Wipro Ltd. [2022] 140 taxmann.com 223 (SC) which was in the context of deduction u/s 10B and according to him which is equally applicable to the present case. Since in the instant case, the assessee had filed the return of income on 31.10.2022 i.e. within the extended period up to 7.11.2022 for the filing of return of income u/s 139(1) and had filed the audit report in Form No.10B on 28.9.2022, but which was accepted by the assessee on 14.02.2023, and which was beyond the specified date i.e. 7.10.2022, therefore, it was clear that the audit report in Form No. 10B had not been filed within the specified date and therefore, the action of the Ld. AO was found to be correct and

accordingly the appeal was dismissed. Aggrieved with the order of the Id CIT(A), the assessee has filed the appeal before the Tribunal.

4. Rival submissions were considered and details furnished by the assessee have been examined.

5. It is submitted in the statement of facts filed along with Form No. 36 that only on receipt of the show cause notice issued by the Ld. AO proposing to disallow the alleged incorrect claim of Rs. 42,771/- (actually Rs. 9,42,771/-) u/s 143(1)(a)(ii) of the Act, the assessee came to know that the assessee had missed to accept Form No. 10B within time. It is stated that the assessee responded that Form No. 10B was submitted on 28.9.2022 i.e. within one month prior to the due date of filing of return of income u/s 139(1) of the Act by the C.A. which was however accepted on 14.02.2023 and the mistake was unintentional and requested the Ld. AO to condone the delay. However, the CPC in the intimation u/s 143(1) of the Act disallowed the total donation receipts including corpus fund amounting to Rs.9,42,771/- and raised a demand of Rs.4,44,720/-. It is stated that the CPC did not consider the details filed by the assessee and has not properly considered the reply furnished by the assessee. The assessee has relied upon the decision of the Hon'ble Calcutta High Court in the case of **Commissioner of Income-Tax vs Rai Bahadur Bissesswarlal Motilal Malwasie Trust (1992) 195 ITR 825 (Cal)**, in which it is stated that the requirement of filing the audit report with the return is merely a procedural requirement and that the exemption cannot be denied so long as the report is available with the Assessing Officer before the completion of assessment. Further, reliance has been made on the decision of Hon'ble Jammu and Kashmir High Court in the case of **Smt. Sneh Lata Jain vs CIT [2001] 140 Taxman 156 (J & K)** in which it is held that when the substantive law confers a benefit on the assessee under the statute, it cannot be taken away by the adjudicating authority on mere technicalities. In the course of hearing, the assessee also relied upon the decision

of the Hon'ble jurisdictional High Court in the case of CIT(E) vs Indian Sugar Mills Association in ITAT/270/2023, IA No.GA.1/2023, GA No.2/2023 order dated 10.1.2024. It was requested that the relief claimed may be allowed. The Ld. DR relied upon the order of the appellate authority and requested that the same may be confirmed.

6. We have considered the rival submissions. It is noted that Form No.10B had not been uploaded within the due date, which is claimed to be unintentional on the part of the assessee. However, it is noted that the same was available before the Ld. Assessing Officer at the time of processing of the return of income and was uploaded by the Chartered Accountant in time. The filing of Form No.10B has been held to be a procedural requirement and directive in nature and not mandatory. 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. It was also submitted before us by the Ld. AR that the due date for filing the return of income had been extended 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 remit the matter back to the Ld. AO for considering the claim of the assessee afresh as the audit report was available at the time of processing the return of income and therefore, the claim of exemption under section 11 of the Act had 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 filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 16th June, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 16.06.2025

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata