

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.88/Ahd/2025
(Assessment Year: 2022-23)

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| Shri Barwala Panjrapole, C/o. Divyang Shah & Co., Chartered Accountants, 201, Devashish Complex, Nr. Regenta Central Antarim Hotel, Off. C.G. Road, Ahmedabad-380009 | Vs. | Income Tax Officer, Ward-2 (Exemption), Ahmedabad |
| [PAN No.AABTS1491A] | | |
| (Appellant) | .. | (Respondent) |

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| Appellant by : | Shri Divyang Shah, A.R. |
| Respondent by: | Shri Hargovind Singh, Sr. DR |

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| Date of Hearing | 10.06.2025 |
| Date of Pronouncement | 19.06.2025 |

ORDER

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), Aurangabad vide order dated 18.11.2024 passed for A.Y. 2022-23.

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

“1. Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) erred in not allowing exemption of Rs. 2,34,78,541/- u/s. 11 of the act?

2. Whether, on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in confirming adjustment of Rs. 2,34,78,541/- u/s. 143(1) of the act?

Further, appellant craves leave to add, amend, alter or withdraw all or any ground of appeal.”

3. The brief facts of the case are that the assessee/applicant trust filed return of income on 14.10.2022. Thereafter, notice under Section 143(1)(a) dated 14.02.2023 was issued by CPC, wherein certain adjustments were proposed. The assessee/applicant trust could not file response to the said

notice and on 04.04.2023 an intimation order under Section 143(1) of the Act was passed, wherein exemption under Section 11 of the Act, claimed by the assessee was withdrawn and income amounting to Rs. 2,34,78,541/- was treated as income in the hands of the appellant trust.

4. Aggrieved with this intimation order, the assessee/applicant trust filed an appeal before Ld. CIT(A). However, the assessee could not cause appearance before Ld. CIT(A) and accordingly, Ld. CIT(A) passed an order, upholding the additions made by the Assessing Officer, amounting to Rs. 2,34,78,541/-.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A).

6. Before us, the Counsel for the assessee submitted that the reason for denial of grant of exemption under Section 11 of the Act was that there was a delay in e-filing of Audit Report in Form 10B, which was required to be filed at least one month prior to the due date for furnishing return of income. In this case the due date of filing the Audit Report was 30.09.2022, whereas the Audit Report in Form 10B was filed by the assessee/applicant trust on 14.10.2022 i.e. there was a delay of 14 days, alongwith the return of income which was also filed by the assessee/applicant trust on 14.10.2022. Thereafter, an intimation order under Section 143(1) of the Act was issued, denying the claim of exemption under Section 11 of the Act. Before us, the Counsel for the assessee submitted that the assessee had duly e-filed Audit Report in Form 10B much prior to intimation order passed under Section 143(1) of the Act. The Counsel for the assessee relied on various judicial precedents which have held that delay in filing of Form 10B is only a procedural error and such delay cannot be the basis of denial of grant of exemption under Section 11 of the Act.

7. In response, Ld. D.R. placed reliance on the observations made by Ld. CIT(A), in his order.

8. Ld. D.R. submitted that the assessee had got multiple opportunities to present it's case on merits. But despite this the assessee failed to avail these opportunities and he neither filed any response to notice issued under Section 143(1) of the Act and even did not file any response/submissions before Ld. CIT(A) for his consideration.

9. We have heard the rival contentions and perused the material on record.

10. In the case of **Social Security Scheme of GICEA vs. CIT 147 taxmann.com 283 (Gujarat)**, 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 the assessee 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 the 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 the same was rejected. The High Court held that since assessee was a public charitable trust for the 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.

11. In the case of **JCIT vs. Gujarat Energy Development Agency** **154 taxmann.com 348 (Ahmedabad-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.

12. In the case of **Sarvodaya Charitable Trust vs. ITO** **125 taxmann.com 75 (Gujarat)**, 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.

13. In the case of **CIT vs. Gujarat Oil & Allied Industries** **201 ITR 325 (Gujarat)**, 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.

14. In the case of **Shiksha Founation vs. ITO in ITA No. 441/Ahd/2024** vide order dated 14.06.2024 the ITAT Ahmedabad Bench held 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.

15. Accordingly, in view of the judicial precedents referred to above, we are of the considered view that grant of exemption under Section 11 of the

Act cannot be denied to the assessee only on account of a minor delay in filing of Form 10B, especially keeping into light the fact that the said form was available with the Income Tax Department prior to issue of notice under Section 143(1) of the Act. However, we also observe that none of the facts which have been stated before us by the Counsel for the assessee have been verified by the Income Tax Department at any stage of proceedings regarding the precise date of filing of Audit Report etc. owing to non-compliance by the assessee before the Tax Authorities. Accordingly, in the interest of justice, the matter is hereby set-aside to the file of Ld. CIT(A), for necessary verification and if it is found that the assessee had filed Form 10B before issuance of notice under Section 143(1) of the Act, then appropriate relief may be granted to the assessee.

16. In the result, Ground No. 1 of the assessee's appeal is allowed for statistical purposes.

17. The second ground/issue which was raised by the assessee was that on verifying the Income Tax Return, the assessee came to know that while filing return of income there was an inadvertent error on part of the tax consultant who had mistakenly entered the details in Form 10AC issued for registration under Section 80G of the Act, instead of filing details in form pertaining to registration under Section 12A of the Act. It is as a result of this inadvertent error on part of the tax consultant of the assessee/applicant trust that an intimation under Section 143(1) of the Act was issued stating that the details of registration under Section 12A of the Act provided in the return of income "were not matching" with the information as per Form 10AC. Hence, the exemption claimed under Section 11 of the Act was withdrawn by the Ld. AO, CPC.

18. Before us, the Counsel for the assessee submitted that admittedly there was an error in part of the tax consultant of the assessee/applicant trust, but it was submitted before us that mere mismatch in the details as per ITR and Form 10AC should not lead to withdrawal of grant of exemption under Section 11 of the Act, especially when Form 10AC is accessible to the Assessing Officer and he can verify that the trust is registered under Section 12A of the Act and hence eligible for claiming exemption under Section 11 of the Act.

19. On going through the instant facts, in the interest of justice, the matter is set-aside to the file of Ld. CIT(A), for carrying out necessary verification and thereafter, pass appropriate orders in accordance with law.

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

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| This Order pronounced in Open Court on | 19/06/2025 |
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 19/06/2025

TANMAY, 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)-
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