

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य एवं श्री संजय अवस्थी, लेखा सदस्य के समक्ष
[Before Shri Pradip Kumar Choubey, Judicial Member & Shri Sanjay Awasthi, Accountant Member]

I.T.A. No. 669/Kol/2025
Assessment Year: 2023-24

Dr. Graham's House, Kalimpong (PAN: AAATG 4532 B)	Vs.	ACIT(Exempt), Circle-31, Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	07.07.2025
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	17.07.2025
For the assessee / निर्धारिता की ओर से	Shri A. N. Chatterjee, FCA Shri G. Banerjee, FCA
For the revenue / राजस्व की ओर से	Shri Raja Sengupta, CITDR

ORDER / आदेश

Per Pradip Kumar Choubey, JM:

This is the appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals), -Addl/JCIT(A)-1, Gurugram (hereinafter referred to as the Ld. CIT(A)] dated 03.02.2025 for AY 2023-24.

2. Brief facts of the case of the assessee is that the assessee is a charitable educational institution, registered u/s 12AA, 12AB for a long time and eligible for exemption u/s 11 for the Ay 2023-24 to the total income from main activities of the charitable institution stood at Rs. 15,95,16,560/-. While processing the return of income CPC raised an issued that as the application of income is reported in return of income in a wrong row, so the assessee would not be eligible for exemption u/s 11 of the Act. The AO has assessed the taxable income of the assessee at Rs. 15,95,16,560/- levying tax and interest of Rs. 6,79,16,608/- and Rs. 1,62,69,874/- respectively aggregating to Rs. 8,41,86,482/-.

3. Aggrieved by the said order the assessee preferred an appeal before the Ld. CIT(A) wherein the appeal of the assessee has been dismissed by upholding that the valid audit report in form no. 10B must be filed one month prior to the due date, failure to furnish such report in prescribed form result in disentitlement of the trust from claiming exemption u/s 11 and 12 of the Act.

Being aggrieved and dissatisfied the assessee preferred an appeal before us.

4. The Ld. A.R challenges the very impugned order thereby submitting that the Ld. CIT(A) has erred in dismissing the appeal of the assessee ignoring the settled law that delay in filing form 10B is procedural in nature and not mandatory and that can be cured. The Ld. A.R submits that the assessee is a charitable institution and for AY 2023-24 the total income from main activities of the charitable institution stood at Rs. 15,95,16,560/- and the application of such income was to the tune of Rs. 14,37,17,629/- and this income of application is exempted in from 10B filed on 30.11.2023, however, due to inadvertency the application of income of Rs. 14,37,17,629/- was wrongly reported in the return of income in row vi(i) and this mistake has been rectified by filing revised return of income by the assessee on 26.12.2024. The Ld. A.R further submits that there are several citations in which it has been held that technical irregularities or mistakes in return of income cannot take way substantial benefit available to the assessee.

5. Contrary to that the Ld. D.R supports the impugned order.

6. Upon hearing the submission of the counsel of respective parties, we have perused the order of lower authorities and facts of the case and find that the assessee has filed return of income on 12.11.2023 declaring Nil income. The AO/ CPC has processed the return of income and assessed the income of Rs. 15,95,16,560/- by declining the exemption u/s 11 of the Act. It has been held by the CPC that the assessee has not filed audit report in filing form no. 10B within specified due date. It is pertinent to mention herein that the assessee had filed its return, audit report on 27.03.2023 subsequently the assessee filed revised audit report and made substantial changes in the revised audit report filed on 13.11.2023. The Ld. CIT(A) has held that audit report filed on 27.03.2023 is incorrect. Therefore, it will not be incorrect to say that valid audit report was filed on 13.11.2023 which is after the due date of filing of audit report. The Ld. CIT(A) in its operative portion has held thus:

4.1.5. A valid audit report in Form 10B have to be filed by the specified date in terms of Section 12Ab(ii) r.w.s 44AB i.e. at least one month prior to the due date for furnishing return u/s 139(1) of the Act. As stated above a valid audit report in Form 10B of the Appellant for the impugned assessment year was uploaded on 23.11.2023 i.e. after the specified date for filing of such audit report. As per Rule 17B and Rule 12(2) of the Income Tax Rules, 1962, such audit report is to be furnished electronically. The failure to furnish such report in prescribed form result in disentitlement of the trust from claiming exemption u/s 11 and 12 of the Act.

7. In this context, we have gone through the order passed by ITAT, Kolkata in the case of Manav Seva Trust vs. CIT(E) in ITA No. 909/Kol/2024 wherein it was held thus:

“The following written submissions have made by the appellant-trust for non-compliance of the notice/directions issued by the ld. CIT(E):

“1. That the application for registration u/s 12A(1)(ac)(ii) of the Income Tax Act was filed on 31.03.2023 and the same was rejected by the Hon'ble Commissioner of Income Tax (Exemption), Kolkata vide an order dated on 25.08.2023.

2. That the time for filing of the appeal before the Tribunal expired on 23.10.2023.

3. That the Trust engaged the services of Mr Arindam Pal, an accountant, for the purpose of handling accounts and income tax matters of the trust.

4. That Mr Arindam Pal was entrusted with the responsibility of ensuring the accurate preparation and timely submission of income tax returns and other income tax returns and other income tax compliances.

5. That the trust relied on Mr Arindam Pal to comply all requirements and obligations related to application of trust and assessment

6. That as we trusted Mr Arindam Pal, he was in full control of income tax login id and password and all compliance related matters.

7. That it came to our knowledge that there was negligence on the part of Mr Arindam Pal, which led to non-compliance during proceedings u/s 12A(1)ac of the Income Tax Act, 1961 and that even the rejection of application of trust was not even communicated to us.

8. Only recently, when the said accountant left the Job and new accountant was appointed, we came to know that any compliance was not made by him at the time of assessment for application of registration and not filed the appeal before the Hon'ble ITAT.

9. Considering above circumstances, the delay in the present case as the circumstances were beyond the control of the assessee trust."

5. Considering the above submissions, in our view, interests of justice will be well served if the appellant-trust is given an opportunity to present its case before the CIT(E). Therefore, the impugned order of the ld. CIT(E) is set aside and the matter is restored to the file of the CIT(E) decision afresh. Needless to say that the ld. CIT(E) will give proper opportunity to the appellant-trust to present its case."

8. Keeping in view, the facts of the case as well as considering the order passed by the tribunal as discussed above the appeal of the assessee is remitted back to the file of Ld. CIT(A) for fresh adjudication with a direction to consider form no. 10B and pass an afresh order as it deem fit and proper.

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

Order is pronounced in the open court on 17th July, 2025

Sd/-

Sd/-

(Sanjay Awasthi/संजय अवस्थी)
 Accountant Member/लेखा सदस्य

(Pradip Kumar Choubey /प्रदीप कुमार चौबे)
 Judicial Member/न्यायिक सदस्य

Dated: 17th July, 2025

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Dr. Graham's Homes, Homes St and Grahams, Topkhana, Kalimpong, S.O. Darjeeling-734316.
2. Respondent – ACIT(Exempt), Circle-31, Kolkata
3. Ld. CIT(A)-Addl/JCIT(A)-1, Gurugram
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata