

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.947/Bang/2025
Assessment year : 2016-17

Suvarna Arogya Suraksha Trust, TTMC A Block, 4 th Floor, Shantinagar, K H Road, Bengaluru – 560 027. PAN: AAJTS 2992N	Vs.	The Assistant Commissioner of Income Tax, Exemptions Circle, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Deepak, CA
Respondent by	:	Shri Subramanian, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	03.07.2025
Date of Pronouncement	:	09.07.2025

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by Suvarna Arogya Suraksha Trust (the assessee/appellant) for the assessment year 2016-17 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [Id. CIT(A) dated 26.9.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) of the Act

dated 20.12.210.8 by the ACIT, Exemptions Circle 1, Bangalore was dismissed.

2. Therefore assessee is aggrieved and in appeal before us.
3. It was found that assessee has filed appeal before the Tribunal which is late by 145 days. The assessee has filed an application for condonation of delay. According to the application, it is stated that assessee is a charitable trust registered u/s. 12A of the Act which was set up and run by Govt. of Karnataka for the welfare of the poor by providing free medical facilities. The appellate order was passed on 26.9.2024 which was received by the assessee on the same date, the appeal was filed on 24.4.2025 which has caused delay by 145 days.
4. It was submitted that assessee's management is controlled by Govt. of Karnataka by putting Officers on deputation and therefore assessee had to go through various levels of bureaucratic procedures about appointment of the Officer and major decisions. It was stated that the assessee trust did not have any Executive Director as well as Finance Director earlier for some time and only in February 2025 both these Officers were appointed. Immediately on their appointment, when the matters were reviewed, it was found that the appeal against the appellate order dated 26.9.2024 is not filed. Based on this, an appeal was immediately filed. This procedure has caused delay of 145 days in filing the appeal. In the condonation petition, the assessee has also referred to several judicial precedents and requested that the delay in filing the appeal is for sufficient cause, bonafide and does not cause

prejudice to the Revenue. Accordingly, a delay of 145 days may be condoned.

5. The Id. DR vehemently stated that there is no sufficient cause shown by the assessee and accordingly the delay cannot be condoned.
6. We have carefully considered the rival contentions and found that originally Parvathi H B was the signatory to Form 35. Now it is Dr. Jayalakshmi H V, who is the signatory in Form 36. It is not disputed that due to appointment of Executive Director as well as Finance Director, who was transferred and new Officers could be appointed only in February, 2025, who on due diligence of pending legal matters, found the appeal is required to be filed against the appellate order passed by the Id. CIT(A), immediately on 22.4.2025 filing fees was paid and appeal was filed on the same date. The above transfer of Officers and delay in the appointment of the Executive Director & Director (Finance) has caused a delay of 145 days in filing the appeal. On perusal of the status of assessee, it is a charitable trust run by Govt. of Karnataka and funded also by Govt. of Karnataka. It cannot be said that delay in filing of the appeal is not for bonafide reasons. The fact of not having appointed officers at relevant time was not disputed. Accordingly, we find that delay caused in filing of appeal for 145 days is for sufficient cause and the same is condoned, admitting the appeal of the assessee.

7. The assessee has raised grounds of appeal wherein the only grievance is denial of claim of accumulation of income u/s. 11(2) of the Act of Rs.70,80,45,385 and disallowance of depreciation of Rs.104,88,910.
8. The brief facts of the case show that the assessee is a charitable trust, which filed its return of income on 13.10.2016 declaring total income at Rs. Nil, after claiming exemption u/s. 11. Notice u/s. 143(2) of the Act was issued on 1.8.2017. During the course of assessment proceedings, it was found that assessee is registered u/s. 12A of the Act as per Certificate dated 18.7.2014, which has filed return of income along with audit report in Form 10AB on 13.10.2016 claiming accumulation u/s. 11(2) of Rs.70,80,45,385. But it was found that the assessee has not filed a statement of accumulation of income in Form 10. Therefore, the assessee issued a show cause notice that why accumulation was claimed by the assessee. 11(2) should not be disallowed. There was no response received from the assessee. Accordingly, the ld. AO held that assessee is not entitled to claim accumulation of income u/s. 11(2) of the Act because of failure in filing Form 10 within the due date prescribed. Thus, accumulation of income of Rs.70,80,45,385 was denied.
9. Further the AO found that the assessee has shown a sum of Rs.104,88,910 as depreciation in the Income & Expenditure Account. Considering the provisions of section 11(6) of the Act, the AO was of the view that assessee cannot be allowed claim of depreciation and therefore the same was disallowed.

10. Accordingly, the total income of the assessee was assessed at Rs.21,03,91,082 by assessment order passed u/s. 143(3) of the Act dated 20.12.2018.
11. The assessee was aggrieved with the assessment order and preferred appeal before the CIT(A).
12. The Id. CIT(A) was informed that assessee has made a representation u/s 119 of the Act to CIT(Exemptions) on 30.1.2023 for condonation of delay in filing Form 10, it is yet to receive any communication condoning the delay. It was further stated that assessee is receiving grants, there is no accumulation required as the grant is shown as Income to the extent of its utilization. Thus, it was claimed that the assessee is not required to file Form 10 at all. Even otherwise, the filing of Form no 10 is mandatory which is filed but timeline is directory. The Id. CIT(A) held that the trust if fails to file Form 10, cannot be allowed the benefit of accumulation in view of the decision of Hon'ble Supreme Court in the case of PCIT v. Wipro Ltd. [2022] 140 taxmann.com 223 (SC). He further held that the relief in such cases is available to the assessee u/s. 119(2) of the Act to request them to condone the delay. Accordingly, he held that he does not have any power to condone the delay and therefore denial of accumulation of income so far is proper. The assessee did not dispute the addition on account of depreciation before him. Accordingly, the appeal of the assessee was dismissed.

13. The assessee is in appeal before us. It was submitted that the condonation of delay petition in filing Form 10 before the Id. CIT(Exemptions) is rejected because CIT(A) has dismissed the appeal of the assessee. The Id. AR produced the order passed by the CIT(Exemptions) dated 6.5.2025. Therefore it was submitted that neither the CIT(A) granted relief to the assessee but directed the assessee to file application u/s. 119(2) nor the Id. CIT(Exemptions) granted relief to assessee by condoning the delay in filing Form 10 holding that appeal of assessee is dismissed by the Id. CIT(A). It was further submitted that as per computation of total income, the assessee is not at all required to file Form 10. He submitted that because Income Computation & Disclosure Stand is applied, then the grant cannot be considered as income of the trust to the extent not utilized. Even otherwise, the filing of form no 10 is mandatory but the timeline is directory. On the issue of depreciation, it was stated that the assessee has not claimed depreciation as deduction at all. Depreciation is provided and debited to Income & Expenditure account and credit was made to Income & Expenditure account of identical amount by reducing the provision. Therefore, the net effect of depreciation is Nil on Income & Expenditure account.
14. The Id. DR vehemently submitted that there is no infirmity in the order of the Id. lower authorities. The Id. CIT(A) is correct in holding that he does not have the power to condone the delay in filing Form 10 and the only option left is that the assessee was to file application for condonation of delay u/s. 119 of the Act. It was submitted that for

whatever reason the CIT(Exemptions) has not condoned the delay and therefore the assessee is not entitled to claim accumulation of income. He submitted further regarding claim of depreciation that it is a new argument of the assessee which was not raised before the Id. lower authorities. He submitted that the assessee did not represent before the Id. AO on this issue and further it was not a ground before the Id. CIT(A). Therefore, it needs to be examined whether the assessee has claimed depreciation or not.

15. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities. We find that due to non-filing of Form 10 within the due date specified, assessee was denied benefit of accumulation of income of Rs.70.80 crores. The Id. CIT(A) confirmed the action of the AO relying upon the decision of Hon'ble Supreme Court. Further the Id. CIT(A) was also shown an application u/s. 119 of the Act has been preferred before the CIT(Exemptions), Bangalore. In view of this, the appeal of the assessee was dismissed.
16. Now before us, assessee has produced order u/s. 119(2)(b) of the Act dated 6.5.2025 passed by the CIT(Exemptions), Bangalore rejecting the request of assessee for condonation of delay in filing Form 10. While reading para 3.6 of the above order, there is no reason given by the Id. CIT(Exemptions), but merely because the Id. CIT(A) has dismissed the appeal of the assessee, the delay was not condoned. We found that before the Id. CIT(A) assessee was hopeful that its request for condonation of delay u/s. 119(2)(b) would be met with a reasonable

and reasoned order, but unfortunately the order of the Id. CIT(Exemptions) did not give any reason for rejecting the condonation of delay. According to the petition filed by the assessee, the assessee filed its return of income in ITR-7 on 13.10.2016 where the due date was 17.10.2016. Form 10B was also filed on the same date. However, Form 10 was filed on 16.2.2019 which was required to be filed on or before 17.10.2016. This caused a delay of 852 days in filing Form 10. The Id. CIT (exemption) rejected the condonation request by stating that as appeal has been dismissed by the Id. CIT (A), the requesting for condonation of delay is also rejected. We are of the view that Id. CIT (E) should have considered the application of condonation delay on its own merit, irrespective of decision of Id. CIT (A). Thus the claim of the assessee was thrown out by both the authorities without discussing on the merits. The Id. CIT (A) did not consider the arguments of the assessee that the time line for filing form no 10 is merely directory and not mandatory, as well as that even otherwise form no 10 is not required to be filed. As the appeal of the assessee involves the action of Id. CIT (E) as well as the order of the Id. CIT (A), also assessee did not file any submission before the Id. AO, in the interest of justice, we direct the Id. CIT (E) to decide the application of assessee of condonation of delay on its own merit and thereafter the Id. AO should decide the issue of accumulation and depreciation claim on its merit after granting an opportunity of hearing to the assessee. Accordingly appeal of the assessee is restored back to the file of the Id. AO as directed above.

17. Appeal of assessee is allowed for statistical purposes.

Pronounced in the open court on this 9th day of July, 2025.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 9th July 2025.

/Desai S Murthy /

Copy to:

1. Appellant 2. Respondent 3. Pr. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

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By order

Assistant Registrar
ITAT, Bangalore.