

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: "SMC" NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER**

ITA No.3354 & 3373/Del/2025  
Assessment Year: 2017-18

The Happy School, 11 Silver Oak Avenue, DLF Phase I, DLF City, Gurugram	<b>Vs.</b>	Income Tax Officer, Exemption Ward, Faridabad
<b>PAN: AABTT0606J</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Ms. Tanya Gupta, CA Sh. Ram Avtar Sharma, CA Sh. Bhupesh Aggarwal, CA
Department by	Sh. Manoj Kumar, Sr. DR

Date of hearing	24.07.2025
Date of pronouncement	24.07.2025

**ORDER**

These assessee's twin appeals ITA Nos. 3354/Del/2025 & 3373/Del/2025 for assessment year 2017-18 arise against the Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre [in short, the "CIT(A)/NFAC"], Delhi's DIN and order no. ITBA/APL/S/250/2024-25/1075196674(1), dated 28.03.2025, involving proceedings under section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

Heard both the parties. Case file perused.

2. At the very outset, it has been brought to our notice that against the very same order of learned CIT(A), the assessee has wrongly filed another appeal before the ITAT, registered as ITA No. 3373/Del/2025, which is dismissed having become infructuous.

3. This assessee's first appeal ITA Nos. 3354/Del/2025 raises the following substantive grounds:

1. *On the facts and circumstances of the case the Ld. CIT(A) has erred in upholding the disallowance of deduction Rs 12,15,020/- being accumulation in excess of 15 percent claimed by the appellant u/s Section 11 of the Income Tax Act, 1961 merely on the basis that Form 10 was not filed before due date of filing of return of Income.*
2. *That the order of the CT(A) is not sustainable in law in as-much-as the order has been passed without affording opportunity of being heard through virtual hearing despite repetitive requests by the appellant, which is against the principal of natural justice.*
3. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.*

4. A perusal of the assessee's above extracted pleadings indicates that both the learned lower authorities have refused to its section 11 exemption claim for the sole reason of belated filing of tax audit report Form 10, on or before the due date of filing of section 139(1) return. The Revenue's case accordingly is that the

above compliance of timely filing of Form 10 tax audit report is mandatory. Case law CIT vs. Xavier Kelavani Mandal (P.) Ltd., [2014] 41 taxmann.com 184 (Guj.) has already settled the issue in assessee's favour that the foregoing compliance of filing/upholding form 10 tax audit report is directory than a mandatory provision. That being the case, I find merit in the assessee's instant sole substantive grievance and direct the learned Assessing Officer to frame its consequential computation as per law after verifying all the relevant facts.

5. These assessee's first appeal ITA No.3354/Del/2025 is allowed and the second appeal ITA No.3373/Del/2025 is dismissed as a duplicate file.

***Order pronounced in the open court on 24<sup>th</sup> July, 2025***

***Sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 24<sup>th</sup> July, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi