

**IN THE INCOME TAX APPELLATE TRIBUNAL  
GUWAHATI BENCH, GUWAHATI  
(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 81/GTY/2025  
Assessment Year: 2020-21**

**ITO(Exemption), Ward-2(4), Shillong,**  
Aayakar Bhawan, MG Road, Shillong,  
Shillong (Meghalaya) - 793001 ..... **Appellant**

**vs.**

**North East Society of Sisters of the Holy Cross,**  
Meiaida Holy Cross Convent,  
Nongrim Road, Laitumkhrah,  
Shillong (Meghalaya) – 793003 ..... **Respondent**  
[PAN: AABTN8138P]

**CO No. 03/GTY/2025  
(Arising out of ITA No. 81/GTY/2025)  
Assessment Year: 2020-21**

**North East Society of Sisters of the Holy Cross,**  
Meiaida Holy Cross Convent,  
Nongrim Road, Laitumkhrah,  
Shillong (Meghalaya) – 793003  
[PAN: AABTN8138P] ..... **Respondent**

**vs.**

**ITO(Exemption), Shillong,**  
Aayakar Bhawan, MG Road,  
Shillong,(Meghalaya) - 793001 ..... **Respondent**

**Appearances by:**

Assessee represented by : S.P. Bhati, FCA  
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 06.08.2025  
Date of pronouncing the order : 11.08.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. This is a batch of two cases belonging to the same assessee for the same assessment year. While ITA No. 81/GTY/2025 has been filed by the Revenue, CO No. 03/GTY/2025 has been filed by the assessee. It is seen that the CO is time barred and there is an application for condoning of the said delay as under:

“Sir,

*We received Form No. 36 and same was kept by Treasurer at his end as he has not understood the same what to do. Later on when the appeal was fixed for hearing the contacted his consultant who enquired about Form No. 36. Thereafter immediately Form No. 36A was filed.*

*Sir, there was no intention to delay the process but it happened due to ignorance for which we may kindly be condoned and Form No. 36A may kindly be condoned and Form No. 36A may kindly be admitted.”*

1.1 Considering the reasons given in the said application for condoning of the delay, the delay is hereby condoned and the CO is admitted for adjudication, along with the main appeal filed by the Revenue.

2. Both these appeals arise from orders u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), dated 18.02.2025, passed by the Additional/Joint Commissioner of Income Tax (Appeals)-7, Mumbai (hereafter “the Ld. Addl./JCIT(A).”

2.1 The facts in brief are that the assessee is a charitable trust, who had filed a return of income declaring income of Rs. 8,66,800/-, after claiming exemption u/s 11 of the Act amounting to Rs. 16,56,00,042/-. Admittedly, the assessee had filed Form 10B on 10.02.2021, whereas the due date for filing of the said Form was 15.01.2021. Thereafter, the Ld. AO-CPC denied the exemption u/s 11 of the Act as the assessee had not filed Form 10B within the stipulated date.

2.2 Aggrieved with this action, the assessee approached the Addl./JCIT(A) where he could succeed partially as revenue expenses were directed to be allowed for consideration, following certain case laws including the case of Petroleum Stocks Promotion Board reported in 44 taxmann.com 322 (Delhi).

2.1 Both the Revenue and the assessee are aggrieved with the impugned order and have filed the appeal and CO respectively with the following grounds:

ITA No. 81/GTY/2025

*“1. Whether on the facts and circumstances of the case the Ld. JCIT(A) has erred in law by directing the AO to allow the expenses of revenue nature incurred by the appellant for the objects of the Trust.*

*2. Whether on the facts and circumstances of the case, the Ld. JCIT(A) has erred in relying on the decision of the Hon’ble Delhi High Court in the case of DDIT(E), Cir-II, Vs. Petroleum Sports Promotion Board (44 taxmann.com 322) without considering that the facts of the case are distinguishable from the facts of the present case, viz, in that, scrutiny assessment had taken place wherein the expenses were dully verified whereas in the present case, no scrutiny assessment has taken place.”*

CO No. 03/GTY/2025

*“1. For that the learned A.O., CPC was not justified in making adjustment u/s 143(1) without giving intimation as per 1st Proviso of said section.*

*2. For that the learned A.O., CPC was not justified in making adjustment u/s 143(1) when CBDT vide Circular No. 2/2020 has issued beneficial circular for condonation of delay prior to processing of return.*

*3. For that the learned CIT(A) was not justified in holding that the exemption claimed falls under sec. 143(1)(a)(ii)-Incorrect claim.*

*4. For that the learned CIT(A) was not justified in not allowing Capital Expenditure incurred for the objects of society.*

*5. The Appellant craves leave not take Additional Grounds and/or amend the above grounds of appeal at the time of hearing of Appeal.”*

3. Since the grounds of appeal by the Revenue and the CO by the assessee are comprehensively inter-linked with each other hence the main

issues will be decided before any technical issue is taken up for consideration. Before us, the Ld. DR argued that once the Form 10B was belatedly filed then there was no reason for any exemption to be allowed as per the provisions of Section 12A of the Act. It was argued by the Ld. DR that the case laws relied upon by the Ld. Addl./JCIT(A) were clearly distinguishable and had no application on the facts of the present case. It was pointed out by the Ld. DR that while there is no specific ground of appeal pertaining to the delay in filing of Form 10B but Ground No. 1 was general and should be taken to cover this issue as well.

3.1 The Ld. AR was also critical of the first appellate order and stated that the filing of Form 10B in time was a directory condition and not mandatory. He pointed out that u/s 143(1) of the Act order was passed without giving any opportunity as envisaged under the first proviso to section 143(1)(a) of the Act. The Ld. AR pointed out that the first appellate order was erroneous in so far as only the revenue expenses had been allowed whereas the assessee was entitled for full exemption, as had been claimed in the original return of income.

4. We have carefully considered the rival submissions, we have gone through the grounds of appeal in both of the cases and we have also perused the orders of authorities below. For the sake of convenience, we need to deal with the primary issue, which goes to the root of the matter, being the delay in filing of Form 10B. It is clear that an extensive review of judicial literature on the subject reveals that the Courts have invariably taken a view that delay in filing Form 10B is condonable and not fatal to any claim u/s 11 or 12 of the Act. To illustrate this position a few of the cases need to be mentioned as under:

(a) FIIT Jee Foundation for Education Research and Training reported in 175 taxmann.com 260 (Delhi), order dated 29.04.2025.

(b) Laxmannarayan Dev Shrishan Seva Khendra reported in 167 taxmann.com 548 (Gujarat), dated 10.09.2024

(c) Sau Dwarkabai Tai Karwa Charitable Public Trust reported in 174 taxmann.com 245 (Bombay), order dated 25.03.2025.

4.1. An examination of the facts reveals that in the present case 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. AO at the time of processing of the return of income. The filing of Form No.10B has been held to be a procedural requirement and directive in nature and not mandatory. We are also aware of the decision of CIT 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."*

4.2 It is seen that the Hon'ble Orissa High Court in the case of Oneness Educational and Charitable Trust vs. Commissioner of Income-tax (Exemption) reported in [2024] 161 taxmann.com 544 (Orissa) has held that the oversight in not filing Form-10B within the due date was to be condoned and the exemption was to be allowed and granted. Also, the Hon'ble Telangana High Court in the case of Global Organisation for Development vs. Commissioner of Income-tax (Exemption) reported in (2024) 162 taxmann.com 633 (Telangana), has held that the delay on the part of the assessee in submitting Form-10B was to be condoned and the matter remanded back to the file of the AO for passing appropriate order on merits. Similarly, the Hon'ble Bombay High Court in the case of Al Jamia Mohammediyah Education Society vs. CIT (Exemptions) reported in [2024] 162 taxmann.com 114 (Bombay) has held that where the assessee Trust belatedly submitted Form-10B, along with return, on account of oversight by the Chartered Accountant, the delay in filing of Form-10B deserves to be condoned. In fact, some relevant portions from the said order deserves to be extracted as under:

*"Admittedly, Petitioner is a charitable trust and had been filing its returns and Form 10B for AY 2015-16, for AY 2017-18 to AY 2021-22 within the due dates. On this ground alone, delay condonation application should have been allowed because the failure to file returns for AY 2016-17 could be only due to human error. Even in the impugned order, there is no allegation of mala fide. As held by the Gujarat High Court in Sarvodaya Charitable Trust 1. ITO (Exemption) (2021) 125 taxmann.com 75/278 Taxman 148, the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, Respondent No. 1 might be justified in denying the exemption by rejecting such condonation application, but an assessee, a public charitable trust with almost over thirty years, which otherwise satisfies the condition for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned. [Para 6]*

*Moreover, the Petitioner does not appear to have been lethargic or lacking in bona fides in making the claim beyond the period of limitation which should have a relevance to the desirability and expedience for exercising such power. Such*

*routine exercise of powers would neither be expedient nor desirable, since the entire machinery of tax calculation, processing of assessment and further recoveries or refunds, would get thrown out of gear, if such powers are routinely exercised without considering its desirability and expedience to do so to avoid genuine hardship. (Para 7)*

*In a similar matter in Shree Jain Swetamber Murtipujak Tapagachha Sangh v. CIT (Exemptions) [2024] 161 taxmann.com114 (Bombay) was also a case where auditor had due to oversight not filed Form 10B. The Court held that the error on the part of auditor cannot be rejected but should be accepted as a reasonable cause shown by the trust management. In that case also, Petitioner did not suo moto realize its mistake and filed a condonation request only after Centralised Processing Centre ("CPC") sent an intimation about non-filing of Form 10B. (Para 8)*

*Having considered the matter in its entirety, one is satisfied that the delay was not intentional or deliberate. Petitioner cannot be prejudiced on account of an ignorance or error committed by professional engaged by Petitioner. Respondent No. 1 ought to have exercised the powers conferred. [Para 9]."*

Considering the discussion regarding the issue of delayed filing of Form 10B and following the many judicial pronouncements referred to above, there is no hesitation in holding that the delay in filing of Form 10B deserves to be condoned and the assessee is directed to be allowed the benefit of exemption as claimed for by it in the return of income.

5. Since, the assessee has succeeded on the primary issue hence, we do not deem it necessary to adjudicate on other issues raised by either of the parties.

6. In result, the appeal of the revenue is dismissed and the CO filed by the assessee is not specifically adjudicated since the assessee has succeeded in becoming eligible for exemption. However, for statistical purposes, the CO is treated as partly allowed.

Order pronounced on 11.08.2025

Sd/-  
**[Manomohan Das]**  
**Judicial Member**  
Dated: 11.08.2025

Sd/-  
**[Sanjay Awasthi]**  
**Accountant Member**

AK, Sr. PS

*Copy of the order forwarded to:*

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

//True copy//

By order

Assistant Registrar, Kolkata Benches