

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER
ITA NO. 4999/MUM/2025 (AY: 2023-24)
ITA NO. 4998/MUM/2025 (AY: 2024-25)
(Physical hearing)**

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| Church of Our Lady of Immaculate Conception, Mount Poincur, Borivali (West), Mumbai – 400103. [PAN: AAATC2637D] | Vs | ITO (Exemption) Ward-1(2), Mumbai, 6 th Floor, MTNL, TE Building, Pedder Road, Mumbai-400026. |
| Appellant / Assessee | | Respondent / Revenue |

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| Assessee by | S/Shri M.A. Gohel & Ketan Patel, CAs |
| Revenue by | Shri Virabhadra Mahajan, Sr. DR |
| Date of Institution | 11.08.2025 |
| Date of hearing | 18.09.2025 |
| Date of pronouncement | 18.09.2025 |

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeals by assessee are directed against the separate orders of Id. CIT(A) both dated 13.06.2025 for A.Y. 2023-24 and 2024-25. In both the appeals, the assessee has raised certain common grounds of appeal, facts in both the years are similar except variation of figure of application of income under section 11 of Income Tax Act. Therefore, with the consent of both the parties both the appeals were clubbed, heard together and are decided by common order to avoid the conflicting decision. For appreciation of fact, the appeal for A.Y. 2023-24 in ITA No. 4999/M/2025 is treated as lead case. The assessee has raised following grounds of appeal:

"1. VAILIDTY OF THE EX-PARTE APPELLATE ORDER:

On the facts and in the circumstances of the case and in law,

The learned Commissioner of Income-tax (Appeals) [CIT(A)] erred in disposing of the Appeal without issuing any notice for hearing and thereby affording any opportunity of being heard to the Appellant.

It is submitted that the learned CIT(A) has passed the ex-parte Appellate Order in gross violation of principles of natural justice.

The learned CIT(A) has passed a very cryptic and non-speaking Order which fails to deal with and address the grounds of appeal raised by the Appellant in the appeal before him.

The Appellant prays that the Appellate Order may kindly be quashed and/or set aside as bad in law and invalid.

II. DENIAL OF EXEMPTION UNDER THE INTIMATION UNDER SECTION 143(1) OF THE ACT IS INVALID:

Without prejudice to the above, on the facts and in the circumstances of the case and in law,

2.1. The learned CIT(Appeals) failed to appreciate that the denial of benefits of Section 11 of the Act to the Appellant by the Central Processing Centre, Bengaluru (CPC/learned Assessing Officer) while processing the Return of Income under Section 143(1) of the Act is bad in law and illegal.

2.2. It is submitted that the basic issue leading to denial of exemption under Section 11 of the Act viz. delay in filing the Audit Report in Form 10B, itself is a highly debatable question of law and the same cannot be the ground for adjustment/additions/disallowances under Section 143(1)(a)/143(1) of the Act.

2.3. The Learned CIT(Appeals) failed to appreciate that it is now a well settled legal position that delay in filing audit report in Form No. 10B under Section 12A(1)(b) is merely declaratory and not mandatory. The alleged delay in filing of such audit report leads to only a procedural lapse and it cannot be a ground to deny benefits of Section 11 of the Act while processing the Return of Income under Section 143(1) of the Act

2.4. It is submitted that the learned Assessing Officer has resorted to the denial of benefits of Section 11 of the Act without complying with the provisions of Section 143(1) of the Act

The Appellant prays that the denial of benefits of Section 11 of the Act as above, is illegal, unwarranted and contrary to the law and may therefore be kindly struck down/deleted.

III. DENIAL OF DEDUCTION/EXEMPTION UNDER SECTION 11 OF THE ACT:

3.1. On the facts and in the circumstances of the case and in law the learned CIT(A) failed to appreciate that the denial of exemption/deductions under Section 11 of the Act resorted to by the learned Assessing Officer while processing the Return of Income under Section 143(1) of the Act on the grounds that the Audit Report in Form 10B was filed belatedly, though with the Return of Income which was filed in prescribed time is illegal and bad in law.

3.2. The learned CIT(Appeals) failed to appreciate that the time limit prescribed for filing the Audit Report is only declaratory and not mandatory. The lower authorities failed to appreciate that delay in filing the Audit Report is only a procedural lapse and the same cannot be fatal leading to denial of exemption/benefits under Section 11 of the Act particularly when the said Audit Report was available on record when the Return of Income was processed under Section 143(1) of the Act.

3.3. The learned CIT (Appeals) failed to deal with the Grounds of Appeal taken up by the Appellant. The learned CIT(Appeals) failed to appreciate and consider/deal with the legal position emerging from the decisions of various High Courts/Income-tax Appellate Tribunals dealing with the subject.

In view of the above, the Appellant prays that the learned Assessing Officer may kindly be directed to grant the exemption under Section 11 of the Act to the Appellant and reduce the Total Income to Rs.1,65,199/- as declared in the Return of Income filed.

IV. CONSEQUENTIAL DISALLOWANCES:

Without prejudice to the above, it is submitted that the denial of exemption under Section 11 of the Act, as discussed above, has led to denial of deductions of the following amounts resulting into determination of Total Income at Rs.4,25,24,000/- and huge demand of Rs.2,00,09,600/- after adjusting the tax refund against the Appellant:

4.1.1. A sum of Rs.97,58,801/under section 11(1)(a) of the Act being amount accumulated or set apart for application to charitable or religious purposes or for the stated objects of the trust to the extent it does not exceed 15 per cent of income derived from property held in trust.

4.1.2. A sum of Rs.3,26,00,000/- being amount accumulated or set apart for specified purposes under section 11(2) read with section 11(5) of the Act.

It is submitted that the disallowances referred to above are unjustified and bad in law as the denial of exemption under Section 11 of the Act itself is ill-founded and unwarranted."

2. Rival submissions of both the parties have been heard and record perused.

The learned Authorised Representative (Id. AR) of the assessee submits that assessee is a trust registered under Maharashtra Public Trust Act on 20.11.1969. The object of the assessee is religious and charitable in nature. In furtherance of its object, the assessee trust is running/managing Church in the name of 'Our Lady of Immaculate Conception Church' at Borivali. The assessee provides food, educational aid and medical help to the poor and needy persons. The assessee filed its return of income on 31.10.2023. Due date for filing report in Form 10B was 30.09.2023. Further, due date for filing Form 10B as per Circular No. 16/2023 dated 19.09.2023 was extended up to 31.10.2023. The assessee filed Form 10B on 29.11.2023. Thus, there was delay of 29 days in filing Form 10B. In A.Y. 2023-24, the date for filing return of income was extended up to 30.11.2023. Thus, the assessee filed return of income in extended period. The assessing officer / Central Processing Centre (CPC) while processing the return of income not allowed application of income under section 11. The Id. AR of the assessee submits that there are series of decision by Tribunal and High Courts wherein it has been consistently held that filing of Form 10B is directory and delay in filing such for is liable to be condoned.

Even if such report in Form 10B is available at the time of assessment order, the benefit of section 11 be allowed to the assessee.

3. The Id. AR of the assessee further submits that in A.Y. 2023-24, the assessee filed application for condonation of delay 29 days before Id. CIT(E), however he refused to condone the delay. However, on filing Writ Petition (W.P.) before Hon'ble Jurisdictional High Court, such delay in filing Form 10B is allowed to the petitioner in W.P. (L) No. 14461 of 2025) vide order dated 02.09.2025, copy of which is filed on record. The Id. AR of the assessee submits that in a series of decision by various bench of Tribunal and High Courts held that the tax authorities must have justice-oriented approach rather than pedantic, and to condone the delay. To support his submission, the Id. AR of the assessee relied on the following decisions:

- Lokumal Dishinchand Charitable Trust vs ITO (ITA No. 1267/M/2025)
- Snehasadan vs ITO (Exemption) (ITA No. 2525/M/2025)
- The National Solidarity Centre Seva Niketan vs ITO (E) (ITA No. 3470/M/2025)
- The Nasik St. Xavier's Society vs CPC /ITO (ITA No. 1364/M/2025)
- Jan Seva Mandal vs CPC, ITD (ITA No. 3445/M/2025)
- R.C. Church of St. Josephs vs ITO (Exemption) (ITA Nos. 1268 & 2512/M/2025)
- The National Sodality Centre vs CPC, ITO(E) (ITA No. 4153/M/2025)
- St. Gregorios Education and Medical Trust vs DCIT(E) (ITA No. 1432/M/2025)
- The Bombay St. Xaviers College Society vs ITO (E) (ITA No. 3584/M/2025)
- Mirae Asset Foundation vs PCIT (2025) 176 taxmann.com 345 (Bombay)
- St. Thomas High School vs CIT(E) (W.P. (L) No. 14483 of 2025)
- Sha Hurgowan Anandji Desai Charities vs CIT(E) and Ors. (W.P. No. 1903 of 2025)
- Karnataka Sangha vs CIT(E) (2025) 171 taxmann.com 137 (Bombay)
- Warkari Shikshan Sanstha vs CIT(E) (2025) 171 taxmann.com 269 (Bombay)

4. On the other hand, the learned Senior Departmental Representative (Sr. DR) for the revenue supported the order of lower authorities. The Id. Sr. DR for the revenue submits that Id. CIT(A) is already restored the appeal to assessing officer.
5. We have considered the rival submissions of both the parties and have gone through the orders of lower authorities carefully. We have also deliberated on various case laws relied by the Id. AR of the assessee. We find that there is very short dispute in the present appeal. Admittedly, there is delay of 29 days in filing Form 10B. Though, the same was filed along with the return of income. Return of income was filed within extended period allowed by CBDT. We find that in a series of decision, as relied by Id AR of assessee, various High Courts as well as Tribunals have taken view that when audit report / Form 10B was filed even at later stage and the same was available before assessing officer when return was processed, the assessee is entitled to exemption. Moreover, in the present case now, Hon'ble Jurisdiction High Court has already allowed delay in filing Form 10B. Thus, considering the facts of the case and keeping in view, various decision of High Courts and co-ordinate bench of Tribunal delay in filing form 10B in AY 2023-24 is also allowed and jurisdictional assessing officer (JAO) is directed to verify the fact and allow appropriate relief for application of income under section 11. The assessee is also directed to provide requisite details, if so desired by jurisdiction assessing officer. In the result, grounds of appeal raised by assessee are allowed.
6. In the result, the appeal of the assessee for AY 2023-24 is allowed.

ITA 4998/M/2025 (A.Y. 2024-25)

7. As recorded above the facts in this appeal is similar as of AY 2023-24, the assessee has raised similar grounds of appeal as raised in appeal for earlier year, which we have allowed. There is similar delay in filing Form-10B in this year. Considering our finding in appeal in earlier year on condoning the similar delay, the delay of xxx days in filing Form-10 is also allowed. Hence, the jurisdictional assessing officer (JAO) is directed to verify the fact and allow appropriate relief to the assessee for application of income under section 11 as per direction in AY 2023-24. In the result, the grounds of appeal in this year are also allowed.

8. In the result, both the appeals of the assessee are allowed.

Order was pronounced in the open Court on 18/09/2025 at the time of hearing.

Sd/-

**ARUN KHODPIA
ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated:18/09/2025

Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai