

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' SM-A ' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No. 240/Hyd/2025**
(निर्धारण वर्ष / Assessment Year: 2021-22)

Global University Foundation Hyderabad PAN:AAICG0020F (Appellant)	Vs.	Income Tax Officer (Exemption) Ward-1 Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by:	CA Suvibha Nolka	
राजस्व द्वारा / Revenue by::	Shri Sankar Pandi, P, Sr.AR	
सुनवाई की तारीख / Date of hearing:	11/09/2025	
घोषणा की तारीख / Pronouncement:	26/09/2025	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

This appeal by the assessee is directed against the order dated 14/07/2023 of the learned CIT (A)-NFAC Delhi, for the A.Y.2021-22.

2. There is a delay of 506 days in filing the present appeal. The assessee has filed a petition for condonation of delay which is supported by an affidavit of the Director of the assessee foundation. The learned Counsel for the assessee has submitted that the assessee was not served with the impugned order dated 14/07/2023 passed by the learned CIT (A) and therefore, due to the non-communication of the impugned order, the assessee

could not file the appeal within the period of limitation. He has referred to the screen shot of the email of the assessee and submitted that after passing the said order, the assessee never received any communication from the Department, particularly regarding the impugned order passed by the learned CIT (A). The learned Counsel for the assessee has pointed out that only on receipt of the assessment order for the A.Y 2023-24 dated 24/12/2024, the consequential appeal was filed on 16/01/2025, the assessee was appraised of the order of the learned CIT (A) for the A.Y under consideration. Thus, the learned Counsel for the assessee has submitted that the delay in filing the appeal is neither willful nor deliberate but due to the reasons beyond the control of the assessee. Immediately after discovering the impugned order on the I.T Portal, the assessee promptly took steps to file the present appeal. Thus, he has pleaded that the delay of 506 days in filing the present appeal may be condoned and the appeal of the assessee be admitted for deciding on merits.

3. On the other hand, the learned DR has submitted that the assessee has participated in the assessment proceedings for the A.Y 2023-24 but did not file the appeal against the impugned order passed by the learned CIT (A) for the A.Y 2021-22. Thus, he has contended that the assessee has failed to explain any sufficient or reasonable cause for an inordinate delay of 506 days in filing the appeal. Thus, the learned DR has vehemently opposed to the condonation of delay.

4. We have considered the rival contentions as well as the relevant material available on record. The assessee has explained

the cause of delay as non-communication of the impugned order to the assessee and only when the assessment order for the A.Y 2023-24 passed on 24/12/2024, the assessee filed appeal on 16/01/2025 and then came to know about the impugned order passed by the learned CIT (A). The assessee has also filed the screen short of the email inbox of the assessee for the month of July, 2023 and submitted that the impugned order was not received by the assessee through mail. Considering the facts and circumstances of the case and in the interest of justice, we are taking a lenient view while construing the sufficient cause for the delay in filing the present appeal. Accordingly, the delay of 506 days in filing the present appeal is condoned subject to cost of Rs.10,000/- to be paid to the Prime Ministers' National Relief Fund within a period of 30 days from the date of receipt of this order.

5. The assessee has raised the following grounds of appeal:

1. General ground

1.1 On the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC erred in passing the order under section 250 of the Income Tax Act, 1961 ('the Act') which is bad in law and liable to be quashed.

2. Grounds relating to order under section 250 of the Act

2.1 The Ld. CIT(A) erred in confirming the action of the Centralized Processing Centre ('CPC') of denying the exemption under section 11 r.w.s. 12 of the Act in the intimation u/s 143(1) merely on the ground that the Audit report in Form 10B was not e-filed one month prior to the return filing due date.

2.2 The Ld. CIT(A) erred in not appreciating that delayed filing of Form 10B is merely a procedural lapse and hence, the Appellant was eligible for exemption. The denial of exemption based purely on a procedural lapse is unjustified and contrary to the established intent of the law to promote charitable activities.

The grounds mentioned above are independent and without prejudice to the other grounds preferred by the Appellant. The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or, at the time of hearing of the appeal, so as to enable Income Tax Appellate Tribunal to decide the appeal according to law.

6. The solitary issue arises in the appeal of the assessee is whether the learned CIT (A) is justified in confirming the addition made by the CPC while processing the return of income u/s 143(1) of the Act denying exemption u/s 11 & 12 of the Act, due to delay in filing the audit report in Form-10B. The learned Counsel for the assessee has submitted that the report in Form-10B was filed on 15/03/2022 as placed at page No.91 to 94 of the paper book. He has also referred to the CBDT Circular No.1 of 2022 and submitted that due to the Covid-19 Pandemic, the CBDT extended the date of filing the audit report up to 15/03/2022. Therefore, the report was filed within the due date as extended by the CBDT vide circular No.1 dated 11/01/2022. The learned Counsel for the assessee has further submitted that it was a period of Covid-19 Pandemic and therefore, the audit report in Form 10B was filed within the period of limitation for filing the return of income as extended by the CBDT. He has also relied upon various case laws including the judgment of the Hon'ble jurisdictional High Court in the case of Global Organization for Development vs. CIT (Exemption) and Union of India in Writ Petition No.8950 of 024 dated 08/04/2024 and submitted that the benefit of section 11 and 12 cannot be denied merely because of the delay in filing Form-10B.

7. On the other hand, the learned DR has submitted that after the amendment w.e.f.01/04/2022, the audit report in Form-10B is required to be filed one month before the due date of filing the return of income. He has relied upon the orders of the authorities below.

8. We have considered the rival submissions and carefully perused the material available on record. There is no dispute that the CBDT vide Circular No.01 of 2022 dated 11/01/2022 extended the due date of filing the return of income up to 15/03/2022 and the due date of furnishing the report up to 15/02/2022. The assessee filed the return of income on 15/03/2022 along with the audit report in Form 10B. Therefore, the report was filed along with the return of income was very much available with the CPC at the time of processing the return of income of the assessee u/s 143(1) of the Act on 25/11/2022. Once the report was available with the CPC at the time of processing the return and passing the order, then the minor delay due to the Covid pandemic in filing the report cannot be a ground for denial of the benefit of section 11 and 12 of the Act. The Hon'ble jurisdictional High Court in the case of Global Organization for Development vs. CIT (Exemption) (Supra) has considered an identical issue in para 10 to 16 as under:

“10. Keeping in view the aforesaid instructions of the CBDT, if now looking into the impugned order what is apparent is that the impugned order does not indicate anything in respect of the contents of the application under Section 119(2)(b) of the act filed by the petitioner seeking for condonation of delay. There is no discussion on the explanation so provided being provided in Column Nos.14 and 15 of the said application under Section 119 (2)(b) of the act. Once when the assessee provides for an explanation, it is incumbent upon the authorities concerned to consider the explanation and give a specific finding whether the explanation so provided is satisfactory or whether the explanation provides reasonable cause which prevented the petitioner in filing Form 10B within the stipulated period of time.

11. The judgment of this High Court in the case of M/s. Shilparam (supra) decided on 24.11.2023 dealing with the provisions of Section 119(2)(b) of the act in para Nos.17 to 22 held as under:

"17. Now if we look into the statutory provisions, what is reflected is that the provisions under Section 119(2)(b) has been enacted with a specific purpose empowering the authorities concerned to condone the delay on the part of the assessee in furnishing or in submitting of the returns or an appropriate application within a reasonable period of time. The said provision of law does not provide for any specific period of time within which the application for condonation of delay needs to be filed. The said provision has also been enacted to ensure that genuine hardship which an assessee may face can be avoided by condoning the delay if any that has occurred and an appropriate application seeking for condonation of delay is filed.

18. The High Court of Gujarat in the case of Sarvodaya Charitable Trust v. Income Tax Officer. (Exemption) [2021] 124 taxmann.com 75 (Gujarat) dealing with similar issue under the provisions of law in paragraph Nos. 31 and 32 held as under:

"31. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, the respondent No. 2 might be justified in denying the exemption under section 12 of The Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially 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.

32. We may also refer to the decision of this Court in CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment. This Court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income-tax Officer or before the appellate authority by assigning sufficient cause."

19. The High Court of Gujarat further in the case of COMMISSIONER OF INCOME-TAX v. GUJARAT OIL AND ALLIED INDUSTRIES [1993] 201 ITR 325 (Guj) held as under:

"In our view, the aforesaid reasoning of the Allahabad High Court and the Patna High Court would squarely apply to the facts of the present case. The provision about furnishing of the auditors' report along with the return has to be treated as a procedural provision, directory in nature, and its substantial compliance should suffice, meaning thereby that such report should be made available by the assessee to the

Assessing Officer latest when the question of framing of assessment is taken up by the Income-tax Officer and when he applies his mind to the claim of the assessee and if by that time, the assessee has put his house in order and has furnished the report of the auditor for supporting the return, he can be said to have satisfied the requirement of section 80J(6A) of the Act.

20. A similar view is available from the High Court of Punjab and Haryana in the case of COMMISSIONER OF INCOME TAX v. SHAHZEDANAND CHARITY TRUST 228 ITR 292(P&H), where again the Division bench of High Court of Punjab and Haryana dealing with similar facts and circumstances of the case referring to the circular of the Income Tax Department itself held as under:

"The provisions of section 80J(6A) and section 12A of the Act are pari material. The ratio of the law laid down in CIT v. Jaideep Industries [1989] 180 ITR 81111 (P&H) would have been applicable to the facts of the present case as well had the Central Board of Direct Taxes not issued the circular dated February 9, 1978, reproduced in the earlier part of the judgment. As per the circular it is not mandatory under Section 12A(b) to file the audit report along with the return of income. Normally, a charitable or religious trust or institution is expected to file the auditor's report along with the return but in cases where for reasons beyond the control of the assessee some delay has occurred in filing the said report, the Income-tax Officer, for reasons to be recorded, has been authorized to condone the delay in furnishing the auditor's report and accept the same at a belated stage. It has been clarified that the exemption available to the trust under section 11 may not be denied merely on account of delay in furnishing the auditor's report. The word "shall" occurring in section 12A cannot, under the circumstances, be read as a "must" making it mandatory for the trust to furnish the auditor's report along with the filing of the return. If for certain unavoidable circumstances, the assessee is unable to furnish the auditor's report along with return then the same can be furnished at a later date with the permission of the Assessing Officer who may permit the assessee to do so after recording his reasons for so doing. Counsel appearing for the Revenue then argued that as per the circular, the auditor's report could only be furnished up to the stage of framing of assessment as the power to condone the delay for accepting the auditor's report at a later date has only been given to the Income-tax Officer and not thereafter, i.e., at the appellate stage. We find no merit in this submission. The Central Board of Direct 15 Taxes by issuing the circular dated February 9, 1978, has treated the provisions regarding furnishing of the auditor's report along with the return to be procedural and, there-fore, directory in nature. By showing sufficient cause, the auditor's report could be produced at any later stage either before the Income-tax Officer or before the appellate authority."

21. Coming to the decisions relied upon by the learned counsel for the respondent-Department, those decisions were rendered under entirely different contextual background and thus in both the cases it was not a situation where the income tax return was filed and the

audit report also stood uploaded more than 2.5 years much before the Assessing Officer had passed the assessment order. Therefore, the said judgments cannot be applied in a strait jacket manner to the facts of the present case.

22. For the aforesaid reasons, we are inclined to allow the writ petition setting aside the impugned order dated 31.07.2023. As a result, the consequential order passed subsequent to the rejection of the application under Section 119(2)(b) of the Act would also get automatically quashed and the application of the petitioner for condonation of delay stands allowed. Wherefore the respondent No. 3 would be required to pass an appropriate consequential order in accordance with law."

12. It is informed that there is no further challenge to the department.

13. Given the aforesaid facts and circumstances of the case and also taking into consideration the view of this very High Court in the case of M/s. Shilparam (supra) under similar factual backdrop coupled with the fact that the impugned order under Ex.P1 does not discuss in any manner, the explanation so provided by the petitioner which prevented them for filing Form 10B within the stipulated time. Further, the impugned order, except for the references for judicial precedents is totally silent as to whether the petitioner did submit Form 10B and whether they did give letter dated 18.12.2023 seeking for condonation of delay under Section 119(2)(b) of the act in submitting Form 10B.

14. Therefore, we are of the considered opinion that the impugned order, as in the case of M/s. Shilparam (supra) decided by the Division Bench of this Court would also not be sustainable and the same deserves to be set aside.

15. We are particularly surprised at the action on the part of the 1st respondent in not even considering the letter dated 18.12.2023 seeking condonation of delay for the Assessment Year 2020-21, where the delay was only of meager 3 days. We are surprised more particularly for the reasons 2020-21 was the period when the entire universe was under the influence of the Covid-19 pandemic. In the given circumstances, if the power which otherwise is conferred upon the Commissioner of Income Tax for condonation of delay of 365 days is not entertained in a more pragmatic manner, there could not have been a better 17 case available with the department for condoning the said delay. This further forces this Bench to draw an inference that the impugned order has been passed in a mechanical manner and without proper application of mind and in the process, they have also not considered the explanation provided.

16. For all the said reasons, the order dated 12.01.2024 Annexure P1 is ordered to be set aside, the delay on the part of the petitioner in submitting Form 10B is ordered to be condoned and the matter stands remitted back to the 1st respondent, who in turn is directed to pass appropriate orders on merits.”

9. Accordingly, in the facts and circumstances of the case and by following the judgement of the Hon'ble jurisdictional High Court, we set aside the impugned order of the learned CIT (A) and allow the claim of the assessee u/s 11 & 12 of the Act.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 26th September, 2025.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(VIJAY PAL RAO) VICE-PRESIDENT
--	---

Hyderabad, dated 26th September, 2025.

Vinodan/sps

Copy to:

S.No	Addresses
1	M/s. Global University Foundation, Plot No.303F, Road No.25, Jubilee Hills, Hyderabad 500033
2	Income Tax Officer (Exemption) Ward 1(1)_ Aayakar Bhavan, Basheerbagh, Hyderabad 500004
3	Pr. CIT – Exemption, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order