

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 3704/MUM/2025
Assessment Year: 2020-21**

Smt. Dakuben Saremalji Sancheti
(Nodal) Charitable Trust,
C/o G.P. Mehta & Co. CAS, 807,
Tulsiani Chambers, Nariman
Point,
Mumbai-400021.

PAN NO. AAATD 7192 E
Appellant

ITO (Exemption) WD 2(2),
MTNL Building, Pedder Road,
Mumbai-400026.

Vs.

Respondent

Assessee by : Mr. Bhavik Chheda, Adv. a/w
Mr. G.P. Mehta, CA
Revenue by : Mr. Annavaram Kosuri, Sr. DR

Date of Hearing : 03/11/2025
Date of pronouncement : 26/11/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 03.03.2025 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2020-21, raising following grounds:

- 1. The orders passed by the learned lower authorities are bad in law and bad in facts.*



2. *The learned lower authorities have grossly erred in upholding the validity of the Intimation issued u/s 143(1) of the I.T. Act, 1961, even though no intimation, (notice) as provided by the, 1st & 2nd Proviso below Sec. 143 (1) of the I.T. Act, 1961, was issued*
3. *The Intimation issued u/s 143(1) of the I. T. Act, 1961, is ab-initio void, inasmuch as, impugned adjustment Rs. 1,20,11,455/- without issuing an intimation is contrary to the mandatory provisions of law.*
4. *The learned lower authorities have grossly erred in not considering the prevalent circumstances emerging out of Covid restrictions and have further erred in adding a sum of Rs.1,20,11,455/- to the returned income.*
5. *The learned lower authorities have grossly erred in not considering, prior to making of impugned addition of Rs.1,20,11,455/- that the appellant was prevented by a reasonable and sufficient cause in filing return of income belatedly.*
6. *Having regard to the facts of the case, provisions of law and judicial propositions, impugned adjustment to returned income is wholly unwarranted & uncalled for.*

2. We have heard the learned representatives of the parties and have carefully perused the material available on record. The essential facts, briefly stated, are that the present appeal arises out of the second round of proceedings before the Ld. CIT(A). In the first round, the matter had been restored to the file of the CIT(A) by the Tribunal vide order dated 31.05.2023 in ITA No. 3202/2022 with a direction for fresh adjudication.

2.1 In the course of the rehearing, the Ld. CIT(A) issued several notices, as duly recorded in paragraph 4 of the impugned order. However, save for a solitary communication dated 26.12.2024, the assessee did not furnish the information requisitioned. The Ld. CIT(A) specifically called upon the assessee to produce evidence



regarding any application made before the Commissioner of Income-tax (Exemption) seeking condonation of delay in filing Form No. 10B. The assessee failed to respond to this requirement. In the absence of any order condoning the delay in filing the mandatory audit report, the Ld. CIT(A) proceeded to dismiss the appeal, primarily on account of non-compliance. The relevant extracts of the order of the Ld. CIT(A) have already been reproduced hereinabove. The relevant finding of the Ld. CIT(A) is reproduced as under:

“4. DISCUSSION, REASON & DECISION:

The matter was set aside to the undersigned by the ITAT Order vide ITA No. 3202 of 2022 dated 31/05/2023. The ITAT remanded the issue to the file of CIT(A) for its fresh adjudication.

During this appellate proceeding, hearing notices were issued on 01/11/2023, 04/04/2024, 24/06/2024, 04/10/2024, 08/11/2024, 17/12/2024, 09/01/2025 and 28/01/2025 respectively for submission in support of grounds taken by the appellant. In response to these notices, the appellant responded only once on 26/12/2024 stating as under:

“The appellant Smt. DAKUBEN SAREMALJI SANCHETI (NADOL) CHERITABLE trust is in receipt of notice dated 17/12/2024 bearing DIN: ITBA/NFAC/F/APL_4/2024-25/1071288525(1) fixing the date of hearing on 26/12/2024 in respect of appeal no: NFAC/2019-20/10296220 FPR ASST. YEAR: 2020-21. In this connection we have to submit that the appellant has not received any communication from the Hon'ble CIT (exemption) in regard to condonation of delay in filing audit report in form 10b and notice of accumulation in form 10. The central board of direct taxes vide circular no: 11/2024 dated 01/10/2024 have delegated power of condonation of delay to various authorities. Appellants application for condonation of delay is pending and a favorable consideration of application is expected for the assessment year 2020-21. The due date for filing return of income and audit reports was extended upto 15/02/2021 on account of covid.



Even after 15/02/2021 government restrictions for transportation / movement of general public continued. Hence, appellant staff could not attend the office and do the needful. Considering all the surrounding circumstances hon'ble supreme court in the case of cognizance for extension of limitation 441 ITR 0722 extended the due date upto 28/02/2022. In case of appellant the audit report in 10B was filed on 25/03/2021 and form 10 also filed on 25/03/2021. Return of income was filed on 27/03/2021. Thus, all the statutory compliances were made well before the time line set by the hon'ble supreme court. In view of the above stated facts, we request your honor to kindly grant us some time to peruse the condonation application before the hon'ble Commissioner of Income Tax (exemption) and oblige.."

However, this office issued a letter dated 09/01/2025 and also a reminder for the same on 28/01/2025 for copy of application made to the CIT(Exemption) which is as follows:

"As per your submission dated 26.12.2024, you have claimed that you had applied for condonation in respect of delay in filing Audit Report in form 10B. You are requested to furnish the copy of it to this office."

But, the appellant has failed to comply with the notices. Hence, on being non-compliant to the notices issued and in absence of proper submission, the claim of the appellant is rejected.

4.2 The Hon'ble ITAT in ITA No. 1025-1027/Chandi/2005 for the A.Y. 2002-03 in the case of M/s Chhabra Land and Housing Ltd. after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattachargee, 118 ITR 461 (SC) held that the appeal does not mean merely filing, of the appeal but effectively pursuing it.

4.3 As per Tax Payer's Charter, the Income Tax Department expects from taxpayers

1. Tax payer is expected to be aware of his compliance obligations under tax law and seek help of department if needed.

2. Tax payer is expected to make submission as per tax law in timely manner.

4.4 In the result, the appeal of the appellant is hereby "dismissed."



3. Before us, the assessee has placed on record an affidavit sworn by the trustee of the assessee-trust, explaining that due to lack of computer literacy as well as medical constraints, the trustee was unable to respond to the repeated notices issued by the first appellate authority. It has further been brought to our notice that subsequent to the passing of the impugned order dated 03.03.2025, the Ld. Commissioner of Income-tax (Exemption), by order dated 06.03.2025, has rejected the assessee's application seeking condonation of delay in filing Form No. 10B, and that the assessee has preferred an appeal against the said rejection, which remains pending adjudication.

3.1 In the totality of the circumstances, and having regard to the principles of natural justice, we are of the considered view that the ends of substantial justice would be best served if the matter is restored to the file of the Ld. CIT(A) for a fresh decision. Since the adjudication of the assessee's appeal before the CIT(A) is inextricably linked with the outcome of the pending appeal against the order of the Ld. Commissioner of Income-tax (Exemption) rejecting the condonation request, we direct the Ld. CIT(A) to dispose of the appeal afresh after the final determination of the said condonation proceedings.

3.2 Accordingly, the impugned order is set aside, and the matter is remanded to the Ld. CIT(A) with the aforesaid directions. The



assessee shall ensure full cooperation and timely compliance before the appellate authority.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 26/11/2025.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 26/11/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai