

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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 5721/Mum/2025
Assessment Year : 2014-15

MIG Cricket Club, MIG Colony, MIG Cricket Club, Ramkrishna Paramhans Marg, Bandra East, Mumbai-400051. PAN : AAATM4779J	vs.	DCIT(E)-2, MTNL Building, Cumballa Hill, Mumbai-400026.
(Appellant)		(Respondent)

For Assessee :	Shri Anil Sathe
For Revenue :	Shri Annavaran Kosuri, Sr.DR

Date of Hearing :	27-11-2025
Date of Pronouncement :	28-11-2025

ORDER

PER VIKRAM SINGH YADAV, A.M :

This is an appeal filed by the assessee against the order of the Learned Addl/JCIT(A)-1, Bengaluru, dated 17-01-2025, pertaining to Assessment Year (AY) 2014-15.

2. At the outset, it is noted that there is a delay of 168 days in filing the appeal as pointed out by the Registry. After hearing both the parties and perusing the facts placed on record, we find that there was reasonable

cause for the delay in filing the present appeal and hence, the delay is hereby condoned and appeal is admitted for adjudication.

3. During the course of hearing, the Id AR submitted that the assessee-club filed a belated return of income on 31-03-2016 on the basis of provisional accounts claiming exemption u/s. 11 of the Income Tax Act, 1961 ('the Act'). At the time of furnishing of return of income, the audit of accounts of the club was not complete and consequently, the return was filed without the audit report in Form-10B. The audit was completed on 13-12-2016 and the audit report in Form-10B was issued. Thereafter, on 28-12-2016, the CPC treated the return so filed as 'invalid' and thereafter on 29-03-2017, the return of income was processed, denying the claim of exemption u 11 of the Act, vide intimation u/s. 143(1) of the Act.

4. Thereafter, the assessee carried the matter in appeal before the Ld.CIT(A) and a copy of the audit report in Form-10B was furnished. The Ld.CIT(A), however, confirmed the denial of exemption u/s. 11 of the Act and did not take into consideration the audit report in Form-10B for the reason that the assessee has not filed a condonation application for delay in filing of the audit report before the competent authority. Against the said order, the assessee is in appeal before us.

5. In the aforesaid factual matrix, the Ld.AR submitted that since the audit report in Form 10-B has been duly furnished before the Ld.CIT(A) during the appellate proceedings, the audit report in Form-10B should have been considered and the matter could have been remitted back to the file of the AO to examine the audit report so furnished and decide the claim of exemption as so claimed by the assessee-club u/s. 11 and 12 of the Act. It was submitted that merely for the reason that the assessee has

not moved a condonation application before the competent authority, the Ld.CIT(A) has failed to take into consideration the audit report so furnished.

6. It was submitted that it is a settled position that where the audit report has been submitted during the appellate proceedings, the claim of exemption u/s. 11 of the Act cannot be denied to the assessee and in this regard, reliance was placed on the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Xavier Kelavani Mandal (P.) Ltd., [2014] 41 taxmann.com 184 (Gujarat), wherein the Hon'ble High Court has held as under:

*"4. The question whether it is permissible to the assessee to produce the audit report at the appellate stage, has already been answered by this court in CIT v. Gujarat Oil & Allied Industries Ltd. (1993] 201 ITR 325 (Guj.) wherein **it is held that the provision regarding furnishing of audit report along with the return has to be treated as a procedural provision. 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 before completion of the assessment. The Punjab and Haryana High Court in CIT v. Shahzadanand Charity Trust [1997] 228 ITR 292/[1998] 96 Taxman 494 has reiterated the same principle holding 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 showing a sufficient cause. This decision of Punjab & Haryana High Court has been relied on by the Tribunal.*

5. In the above view, the Tribunal is eminently justified both in law and on facts in observing and holding as under-

"In this case, it is not in dispute that the audit report in prescribed form was obtained prior to filing of the return on 20/12/2006; therefore, there was no reason for the assessee to keep the audit report with it in order to loose the exemption. The assessee in the earlier as well as in the subsequent assessment years filed the audit report and got the exemption. The conduct of the assessee in earlier year and subsequent years would prove that due to the facts stated above there was delay in filing the audit report and the contention of the assessee was supported by the affidavit of Mohamad Iqbal Vohra (PB-4). The learned CIT(A) on proper appreciation of the facts and material on record in the light of the decisions of the Hon'ble Punjab & Haryana High Court and

the Hon'ble Calcutta High Court rightly directed the AO to accept the audit report of the assessee and grant exemption u/s 11 of the IT Act."

7. Further reliance was also placed on the decision of the Hon'ble Gujarat High Court in the case of CIT(Exemptions) vs. Laxmanarayan Dev Shrishan Seva Khendra [2024] 167 taxmann.com 548 (Gujarat), wherein the relevant findings are contained in para 7, which reads as under:

*"7. Reference to the aforesaid decision has no connection whatsoever remotely to the facts of the present case and therefore, in the facts of the present case, the Tribunal has rightly followed the decision of this Court in case of Sarvodaya Charitable Trust v. ITO (Exemption) in Application No.6097 of 2020 decided on 09 December, 2020/[2021] 125 taxmann.com 75/278 Taxman 148 (Gujarat) as well as the decision in case of Social Security Scheme of GICEA (supra) to uphold the decision of the CIT (Appeals), wherein **this Court has held that the approach of the authority in such type of cases should be equitable, balancing and judicious. In the facts of the case, when the assessee has already filed the audit report in Form 10B electronically on 27.02.2021 during pendency of appellate proceedings along with copy of audited financial statements, delay in filing the said form is rightly condoned by CIT(A) and the Tribunal.**"*

8. It was accordingly submitted that the limited prayer on behalf of the assessee is that the audit report so submitted be considered and the matter may be remitted to the file of the AO for necessary verification and claim of exemption u/s 11 and 12 be decided as per law.

9. The Ld. DR has been heard, who has relied on the findings of the Ld.CIT(A).

10. We have heard the rival contentions and perused the material available on record. The Co-ordinate Bench of the Tribunal in a recent decision (speaking through one of us) in the case of St. Francis Xavier Church Trust vs ITO (ITA No. 5883/Mum/2025 dated 25-11-2025) has held as under:

“7. We have heard the Ld.DR and perused the material available on record. Admittedly, for the impugned assessment year i.e, AY. 2024-25, due date for filing of the return of income u/s 139(1) was 31st October, 2024, which was extended to 15th November, 2024 and before the extended due date, the assessee has e-filed its return of income on 13th November, 2024. Further, it is also an admitted fact that the assessee has e-filed the audit report in Form-10BB on 04-11-2024 well before the filing of the return of income i.e., on 13-11-2024. The return of income was processed by the CPC, Bengaluru and order u/s. 143(1) of the Act was issued on 28-01-2025 and, therefore, at the time of processing of return of income, Form-10BB was very much available on record.

8. It is also evident from the record that given the extended due date for e-filing of return of income u/s 139(1) of 15-11-2024, the extended due date for filing the audit report in Form-10BB was 15-10-2024 and given that the assessee has filed the audit report on 04-11-2024, there is slight delay by 19 days in filing such audit report.

9. We find that though time lines have been specified for furnishing such audit reports, at the same time, as can be seen in the instant case, the time lines have been extended by the CBDT given the circumstances prevailing at the relevant point in time. Further, the matter relating to condonation of delay in filing such audit reports has been dealt by the CBDT from time to time and necessary instructions have been issued to the competent authority for condoning such delay. In this regard, reference can be drawn to the CBDT Circular No. 16/2024, dt. 18-11-2024, wherein it has been provided that the CBDT in exercise of its powers conferred u/s. 119(2)(b) of the Act authorizes,

the Pr. Commissioners of Income Tax (Pr.CsIT) / Commissioners of Income Tax (CsIT) to admit and deal with applications for condonation of delay in filing Form No. 9A/10/10B/10BB for AY. 2018-19 and subsequent assessment years where there is a delay of upto 365 days. It has been further provided that the Pr. Chief Commissioners of Income Tax (Pr.CCsIT)/ Chief Commissioner of Income Tax (CCsIT)/ Director Generals of Income Tax (DGsIT) to admit and deal with applications for condonation of delay in filing Form No. 9A/10/10B/10BB for AY.2018-19 and subsequent assessment years where there is a delay of more than 365 days. It has been provided that the Pr.CCsIT/ CCsIT/ Pr. CsIT/CsIT while entertaining such applications for condonation of delay in filing Form No. 9A/10/10B/10BB, shall satisfy themselves that the applicant was prevented by reasonable cause from filing such Forms before the expiry of the time allowed and the case is of genuine hardship on merits.

10. *We therefore, find that one needs to read these timelines which needs to be complied with but at the same time, where there is delay in complying with the timelines, one needs to see whether there is reasonable cause for such delay and where there is substantial compliance in terms of conduct of the audit, issuance of audit report and the contents of the audit report are not in dispute, the delay in furnishing or uploading the audit report should be condoned and same cannot be basis for denial of claim of exemption. In other words, the rigours of the timelines have to be seen as directory in nature and not mandatory in nature given the fact that CBDT has itself extended the due dates from time to time and further, powers have been delegated to the Competent authority to condone such delays.*

11. In the instant case, the assessee may not have approached the competent authority for seeking the condonation of delay u/s 119, where, however, where the assessee has approached the Ld.CIT(A) by way of filing an appeal against non-consideration of the audit report in Form 10BB by CPC, the ld CIT(A) in exercise of his appellate powers u/s 251 was well within his rights to condone the delay and consider the audit report so filed by the assessee. The Courts and Co-ordinate Benches have also consistently held that filing of such forms is only a procedural requirement and failure to file the audit report along with the return of income cannot be treated as a mandatory requirement for the purposes of claim of exemption u/s 11 and 12 and even if such form has been filed at a later stage, the assessee will still be entitled to claim of exemption and the delay has been condoned. In this regard, we refer to the decision of the Co-ordinate Ahmedabad Bench in the case of *Health Foundation and Research Centre vs. ACIT* [2025] 175 taxmann.com 447 (Ahmedabad – Trib.), wherein it was held as under:

“13. On the substantive issue of belated filing of Form No. 10B, we note that the Hon'ble Gujarat High Court in *Association of Indian Panelboard Manufacturers (supra)* has categorically held that where Form 10B was belatedly filed but audit was completed in time, the denial of exemption solely on that ground is not justified. The Hon'ble Court emphasized that the requirement of filing the audit report along with return is directory and not mandatory, and that the claim of exemption under section 11 should not be denied when there is substantial compliance with the law. Similarly, in *Anjana Foundation case (supra)* the Hon'ble Court reiterated that the purpose of requiring Form 10B is to ensure that the conditions of sections 11 and 12 are fulfilled, and if the audit is completed in time, mere technical delay in uploading the form should not defeat the substantive right of the assessee to exemption. The CBDT Circular No. 2/2020 dated 03.01.2020 also supports this view it clarifies that the Commissioners of Income-tax are authorised to condone delay in filing Form No. 10B under section 119(2)(b), subject to satisfaction of reasonable cause. While the assessee may not have approached the CIT for condonation under that route, the principle underlying the circular is equally relevant that the delay in uploading the form, if not attributable to malafide intent and the audit is completed in time, ought not to

disentitle a trust from exemption. The co-ordinate benches have consistently followed this legal position that exemption under section 11 cannot be denied merely due to delay in filing Form 10B when the audit was admittedly completed prior to the finalisation of assessment.

14. In the present case, the audit was completed on 29.07.2019 and the audit report was signed on 27.07.2019 well before the conclusion of the assessment proceedings. The explanation for delay in e-filing the report is procedural and technical. In absence of any adverse finding by the AO on the merits of the exemption, and in light of the legal and factual matrix, we find no justification in denying exemption under section 11 solely on account of such delay.

15. We are, therefore, of the considered view that both the delay in filing Form 10B and the delay of 63 days in filing appeal before the CIT(A) deserve to be condoned in the interest of substantial justice. The CIT(A) ought to have admitted the appeal and adjudicated the grounds on merits.

16. In view of the foregoing discussion, we set aside the impugned order of the CIT(A) dated 28.09.2023 and condone the delay of 63 days in filing the appeal before the CIT(A). Further, applying the ratio laid down by the Hon'ble Gujarat High Court and co-ordinate benches of the Tribunal, and keeping in view CBDT Circular No. 2/2020, we also condone the delay in filing Form No. 10B and direct the Assessing Officer to grant the benefit of exemption under sections 11 and 12 in accordance with law.

17. Accordingly, the matter is restored to the file of the Assessing Officer with a direction to recompute the income of the assessee after granting exemption under section II and treating the corpus donations as capital receipts, and allowing the 15% statutory deduction under section 11(1)(a) as claimed in accordance with the law.”

12. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, considering the fact that there is mere delay of 19 days in uploading of the audit report which has been uploaded well before the filing of the return of income and available on record at the processing of return of income and in absence of any adverse material on record or any malafide alleged by the Revenue, we hereby condone the delay in filing of the audit report in Form 10BB and direct the AO to consider the audit report and decide the claim of exemption

u/s 11 and 12 in accordance with law after providing reasonable opportunity to the assessee.”

11. The decisions of the Hon'ble Gujarat High Court also lay down a similar proposition. Respectfully following the same, in the instant case, the audit report in Form 10-B has been furnished by the assessee during the appellate proceedings before the Ld.CIT(A) and is thus part of the record. The assessee has explained the reasons for the delay in furnishing of the audit report due to delay in completion of the audit which has not been disputed by the Revenue. In light of the same, the delay in filing the audit report is hereby condoned and we hereby direct the AO to consider the audit report and decide the claim of exemption u/s 11 and 12 in accordance with law after providing reasonable opportunity to the assessee.

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

Order pronounced in the open court on 28-11-2025

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER

Sd/-
[VIKRAM SINGH YADAV]
ACCOUNTANT MEMBER

Mumbai,
Dated: 28-11-2025

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, ITAT, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai