

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "E" Bench, Mumbai.

Before Smt. Beena Pillai (JM) &
Shri Omkareshwar Chidara (AM)

ITA No. 4187/MUM/2025 (Assessment Year : 2023-24)

St. Thomas Church 1, Church Road, Goregaon-E Mumbai-400 063.	Vs.	ITO(E), Ward 2(3) 6 th Floor, MTNL Bldg, Peddar Road Mumbai-400 026.
PAN : AAATT4878R		
Appellant		Respondent

Assessee by	:	Ms. Vasanti Patel & Shri M.A. Gohel
Revenue by	:	Shri Hemanshu Joshi
Date of Hearing	:	09/09/2025
Date of pronouncement	:	03/12/2025

O R D E R

Per Omkareshwar Chidara (AM) :-

The appellant Trust has contested that the benefits under section 11 of the Income Tax Act were denied to them by CPC under section 143(1) of the Act due to the reason that the Trust filed Audit Report in Form 10BB with a delay of 23 days. The denial of benefits under section 11 of the Act resulted in the disallowance of accumulation benefit of 15% of income, surplus claimed as "Application of Income" and capital expenditure claimed as "Application of Income". Apart from the above disallowances, an addition of Rs. 10,58,000/- was also made by the CPC as deemed income under section 11(3) of the Act, without even calling for explanation. The Ld. CIT(A) had confirmed all the additions without adjudicating on the main issue of whether such adjustments can be done under section 143(1) of the Act and that too without giving an opportunity to the appellant.

2. The Ld. AR of the appellant has pointed out before the ITAT that Ld. CIT(A) should have first adjudicated the issue of whether such adjustments are permissible under section 143(1) of the Act, as all the issues are

debatable and on merits too, there are several decisions in favour of the appellant Trust. The Ld. AR of the appellant has filed a time line chart before ITAT which is reproduced below :-

B. Details of Filing Audit Report in Form No. 10BB

- | | |
|--|---------------------------------|
| 1. Due Date of Filing Form No. 10BB | 30 th September 2023 |
| 2. Extended Due Date of Filing Form No. 10BB
(as per circular no. 16/2023 dated 18/09/2023) | 31 st November 2023 |
| 3. Date of Filing of Form No. 10BB | (Delay of 29 days) |

C. Details of Filing Return of Income (ITR 7)

- | | |
|---|--------------------------------|
| 4. Due Date of Filing Return of Income | 31 st October 2023 |
| 5. Extended Due Date of Filing Return of Income
(as per circular no. 16/2023 dated 18/09/2023) | 30 th November 2023 |
| 6. Date of Filing Return of Income. | 30 th November 2023 |

3. In similar circumstances, the Ld. AR had submitted that Hon'ble Coordinate Bench in appellant's own case condoned small delay for A.Y. 2022-23 and remitted the issue back to Jurisdictional AO with the following observations:-

8. Respectfully following the decisions of the coordinate benches cited hereinbefore, we hold that firstly the impugned adjustment could not have been made without providing the mandatory opportunity to the assessee u/s. 143(1) of the Act. Moreover on merits also, the assessee's case is covered by the numerous decisions of the coordinate benches some which have been cited hereinabove and therefore, respectfully following the same, we hereby restore the matter to the Jurisdictional Assessing Officer for considering the Form 10B filed by the assessee and to decide the issue on merits after giving due opportunity to the assessee.

4. The Ld. DR relied on the order of Ld. CIT(A) and argued that the additions be upheld.

5. Heard both sides. In view of the fact that the Coordinate Bench has already taken a decision in the earlier year in appellant's own case to remit the issue back to jurisdictional AO (JAO) to adjudicate all these issues, for this year also, the issue is remitted back to JAO to do the

same. The Ld. JAO is directed to give an opportunity to the appellant Trust and pass the order afresh after taking into account all the submissions made by appellant Trust.

6. The appeal of appellant is allowed for statistical purposes.

Order pronounced in the open Court on 03/12/2025.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

PS

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai