

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA**  
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER**  
**AND**  
**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**  
आयकर अपील सं/ITA No.2160/KOL/2025

(निर्धारण वर्ष / Assessment Year : 2023-2024)

<b>Madhu Devi Saraf Educational Trust,</b> 4 <sup>th</sup> Floor, Room No.405, AB-41, Shakespeare Sarani, Near Shakespeare Sarani PS, Kolkata-700017	Vs	<b>DCIT, Central Circle-3(3), Kolkata</b>
<b>PAN No. :AAATM 4465 B</b>		

(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारित की ओर से / Assessee by	:	Shri P.R.Kothari, AR
राजस्व की ओर से / Revenue by	:	Shri Altaf Hussain, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	28/01/2026
घोषणा की तारीख / Date of Pronouncement	:	28/01/2026

**आदेश / O R D E R**

**Per George Mathan, JM:**

This is an appeal filed by the assessee against the order dated 29.08.2025, passed by the Id. CIT(A), Kolkata-21, for the assessment year 2023-2024.

2. It was submitted by the Ld.AR that the assessee had filed its return of income along with the necessary form 10B. The Form 10B was originally filed on 04/10/2023. The due date for the filing the return was 31/10/2023. It was submission that the form filed on 04/10/2023 was a wrong form and consequently the AO had denied the assessee the benefit of the exemption u/s.11 & 12 of the Act. It was submission that on 23/01/2025 correct form has also been filed in the course of assessment and the assessment was completed u/s.143(3) of the Act on 31/03/2025 without considering the correct form filed on 23/01/2025. It was submission that the stand taken by

the AO was the correct form filed is delayed and therefore the condonation of delay was not available. It was the prayer that the AO may be directed to consider the correct form filed on 23/01/2025 and to complete the assessment.

3. In reply, the Ld. Sr. DR submitted that the assessee having not filed the condonation of delay before the appropriate authority. The said form filed on 23/01/2025 is not liable to be considered.

4. We have considered the rival submissions. It is an undisputed fact that the form 10B had been filed on 04/10/2023. Admittedly, this form is a wrong form which was filed. The correct has been filed before the AO in the course of assessment. The Hon'ble Gujarat High Court in the case of Association of Indian Panelboard Manufacturer, reported in 482 ITR 54 (Gujarat) has held that filing of form is a procedural issue. The relevant observations of the Hon'ble High Court in para 5.5 to 6.1 are as follows :-

**5.5** *It is to be observed in the present case that the Form D-the audit report, though was not filed with the return of income, the same was available with the Assessing Officer when he processed the return of income under section 143(1) of the Act. The conditions for claiming exemption under section 11 was satisfied. Although the requirement of furnishing report was mandatory, filing thereof is a procedural aspect. Even though the Form 10B was filed at a later stage, when it was part of the record of the Assessing Officer in course of the processing of the return of income, the Assessing Officer could not have denied the exemption claimed by the assessee under sections 11(1) and 11(2) on the ground that the audit report was not filed.*

**5.6** *The tribunal further committed an error in appreciating the import of section 119 2(b) of the Act inasmuch as the application contemplated thereunder is only additional remedy for the assessee which could not be said to be compulsorily resorted to by the assessee. The circular No. 7/18 dated 20-12-2018 issued under section 119 of the Act could not be, therefore said to have taken away the appellate remedy.*

**5.7** *The tribunal misdirected itself in yet another way when it observed that The Finance Act, 2015 with effect from 1-4-2016, that is from assessment year 2016-17 changed the legal position. There is no such change which could be said to have altered the legal position. The only change is with regard to compulsory filing of audit report in Form 10B in electronically form which is made mandatory under Rule 12 (2) of the Income-tax Rules, 1962 but there is no change with regard to the substantive law about filing of audit report as stated above.*

**6.** *The moot aspect thus centres around to the requirement of the availability of the audit report when the assessment was undertaken by the Assessing Officer even though the same may not have been filed alongwith the return of income. Filing of audit report is held to be substantive requirement but not the mode and stage of filing, which is procedural. Once the audit report in Form 12B is filed to be available with the Assessing Officer, before assessment proceedings take place, the requirement of law is satisfied. In that view, the Income Tax Tribunal was not justified in dismissing the appeal of the assessee.*

**6.1** *The appellant assessee has to be held to be eligible and entitled to exemptions under section 11(1) and 11(2) of the Act and the alleged ground of non-filing of audit report alongwith return of income which was at the best procedural omission, could never to an impediment in law in claiming the exemption.*

5. As it is noticed that the filing of the correct form is only procedural issue and its correct form was available before the AO in the course of scrutiny assessment u/s.143(3) of the Act, therefore, the AO is directed to consider the correct form filed on 23/01/2025 and complete the assessment considering the said form in place of the wrong form filed originally on 04/10/2023. With these directions, the issues in the appeal are restored to the file of the AO for readjudication after granting the assessee adequate opportunity of being heard.

6. In the result, appeal of the assessee partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 28/01/2026.

Sd/-  
**(RAJESH KUMAR)**

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-  
**(GEORGE MATHAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**कोलकाता** Kolkata; दिनांक Dated 28/01/2026

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR,  
ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

Income Tax Appellate Tribunal, Kolkata