

**IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA 'DB' BENCH AT KOLKATA**

[Virtual Court]

Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 428/PAT/2025
Assessment Year: 2018-19**

Shashi Krishna Educational Avam Welfare Society	Vs.	ITO Exemption, Patna
(Appellant)		(Respondent)
PAN: AAEAS1921K		

Appearances:

Assessee represented by : Pankaj Jyoti, CA.

Department represented by : Md. A H Chowdhury, CIT (DR).

Date of concluding the hearing : 05-January-2026

Date of pronouncing the order : 29-January-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Addl/JCIT(A)- 6, Kolkata [hereinafter referred to as Ld. 'Addl/JCIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2018-19 dated 19.08.2025.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

"1. That the order passed by the Learned CIT(A) is bad in law and unsustainable on facts.

2. That the Learned CIT(A) erred in upholding denial of exemption u/s 11 ignoring that the appellant is duly registered u/s 12A and had furnished the Audit Report in Form 10B before completion of assessment.

3. That the Learned CIT(A) failed to appreciate that delay in filing Form 10B is a procedural/technical lapse and the same stands condonable in view of various CBDT Circulars and judicial pronouncements (including CIT v. Xavier's Kelavam Mandal Pvt. Ltd. [Taxmann], Trustees of Tulsidas Gopalji



Charitable Trust v. CIT 1994 207 ITR 368 Bom.), wherein it has been held that exemption cannot be denied merely due to late filing of audit report when substantive conditions are fulfilled.

4. That the Learned CIT(A) erred in holding that the entire gross receipts are taxable without allowing expenditure, whereas it is settled law that only surplus of income over expenditure is taxable even if exemption is denied (*CIT v. Society for Promotion of Education, Adventure Sport and Conservation of Environment (2016) 382 ITR 6 (SC)*).

5. That the authorities below failed to appreciate that the appellant had in fact applied Rs. 1,06,33,000/- towards revenue expenditure, further applied Rs. 13,50,900/- towards capital expenditure (excluding borrowed funds), and set apart Rs. 7,92,441/- (within the 15% permissible limit u/s U(l)(a)) for charitable purposes, and therefore the conditions of section 11 were duly complied with.

6. That the demand of Rs. 53,13,260/- is unjustified, arbitrary, and deserves to be quashed.

7. That the appellant craves leave to add, alter or withdraw any ground of appeal at the time of hearing.”

3. Brief facts of the case are that the assessee is an AOP and had filed the return of income for AY 2018-19 on 11.09.2018 showing ‘NIL’ income. The return was first processed u/s 143(1) of the Act making certain adjustments/raising tax payable over and above the returned income/tax payable. Against the said Intimation, the assessee filed a rectification request which was rejected by the CPC vide its order u/s 154 of the Act dated 02.01.2020. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who vide, order dated 19.08.2025, dismissed the appeal of the assessee by holding as under:

“5.1 I have carefully gone through the Intimation u/s 143(1), the grounds of appeal and submission made by the appellant in this regard. Briefly stating facts of the case is that the appellant filed return of income which was processed u/s 143(1) by CPC making certain adjustments over and above the returned income. The only issue involved in this case is that the appellant which is an AOP had claimed exemption u/s 11 of the I.T. Act against its income which was disallowed in the Intimation u/s 143(1).

5.2 All the grounds of appeal raised by the appellant are against denying exemption u/s 11 of the I.T. Act and also against taxing the entire receipts



disallowing expenses incurred. Facts involved in the issue is that the appellant filed return of income disclosing gross receipts of Rs. 1,27,76,341/-. As per the provisions of sec. 12A(1)(b) of the Act (prevalent for the relevant year), to be eligible for exemption u/s 11, the appellant was required to file audit report in Form 10B along with the return of income. In the present case, the appellant filed return of income on 11.09.2018 but e-filed Form 10B only on 04.03.2019 vide acknowledgement no. - 428954601040319. Since due date of filing return was 30.09.2018, CPC denied claim of exemption u/s 11 while processing the return u/s 143(1). Requirement to file Form 10B along with return of income as stated above is a statutory requirement mandated by the I.T. Act. CBDT vide circulars issued from time to time had instructed that if there is delay in filing of such Form, the same should be got condoned by the concerned jurisdictional Commissioner of Income Tax u/s 119(2)(b) of the Act. In the present case, there is no evidence on record that the appellant filed any such condonation petition before the Commissioner. CPC was therefore justified in disallowing the exemption u/s 11 as claimed in return. This authority has no jurisdiction to condone the delay in filing Form 10B.

5.3 As regard appellant's appeal against taxing the entire receipts instead of taxing the income over expenditure, it is stated that facts involved in the issue is that the appellant had disclosed gross receipts of Rs. 1,27,76,341/- in the ITR and claimed expenses of Rs. 1,19,83,900/- (on revenue as well as capital account). Since exemption u/s 11 was denied, AO, CPC taxed the entire receipts of Rs. 1,27,76,341/- at maximum marginal rate. On the other hand, the appellant claimed that even if exemption u/s 11 is denied, only the income over expenditure should be taxed and not the entire receipts. In this regard, I would like to highlight the heading of chapter III of Income Tax Act. It is "Incomes which do not form part of total income.". Both sections 10 and 11 are included within this chapter. Moreover, first line of section 10(23C) starts with the words - "any income received by any person on behalf of...". Intention of the legislature is clear. If the conditions of sec. 10(23C) are satisfied, then the entire income or receipts of the Institute or the Organisation will be exempt. Vice-versa if the conditions are not satisfied then the entire income or receipts shall be taxed. Similar is the case with the provisions of sec. 11, which starts with - "income derived from property held under trust.....". Here I would also like to highlight the distinction between Chapter III and Chapter VIA of the Act. Chapter III as already stated above is regarding 'exemption of incomes' whereas Chapter VIA is regarding 'deductions in respect of certain payments / incomes. In Chapter VIA, all the sections are related to deductions against income/receipts of an assessee. The difference is clear. Chapter III does not mention anything about expenses incurred against income whereas Chapter VIA is solely in respect of expenses incurred against income. In this regard, Comptroller and



Accountant General's (C&AG) report no. 9 of 2019, Compliance Audit of Union Govt., Dept of Revenue, Direct taxes, report submitted to Govt, of India on 04.07.2019 may be referred. At Chapter 6-follow up audit of exemptions to charitable trusts and institutions and para-6.5, C&AG has made the following observation:-

6.5 Allowance of expenditure and accumulation where exemption was denied

Section 11 of the Act provides for exemption of income derived from the property held under trust if applied or accumulated for charitable or religious purpose in accordance with the Act. Further, Section 164(2) provides that in case exemption is denied under section 11, such income of the trust shall be charged to tax at maximum marginal rate. For the Trusts and Institutions registered under section 12A, provisions of sections 11, 12 and 13 are only applicable for determining income. These sections do not have provision for deduction of expenditure, but allow entire income as exempt, provided provisions of the relevant sections are followed. Audit noticed in 12 cases in Maharashtra and Karnataka that ITD denied exemptions under section 11, but allowed deductions for expenditure to the extent of Rs. 322.42 crore involving tax effect of Rs. 108.29 crore. One such case is illustrated below:

6.5.1 In CIT (E), Mumbai charge, the scrutiny assessment of a trust for AY 2014-15 was completed in December 2016. The AO has denied the exemption under section 11. Audit scrutiny revealed that the expenditure of Rs.70.82 crore was allowed by the AO while computing the total income. Since there is no provision for allowing expenses from the disallowed income, the entire income should have been charged to tax. The omission resulted in under assessment of income of Rs. 70.82 crore involving short levy of tax of Rs.24.07 crore. In fact, the ITD itself, in case of another assessee (AY 2014-15), in an assessment completed under section 143(3) in December 2016, denied exemption under section 11 and did not allow any expenses while computing the total income. The reply of the Ministry was awaited."

AO, CPC therefore was justified in not considering the expenses and taxing the entire receipts. In result, appeal is therefore dismissed."

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival contentions were heard and the submissions made have been examined. The Ld. AR submitted that though the audit report was filed late on Form No. 10B, however the same was available at the time of processing of the return of income and therefore, the same ought to have been considered and the exemption claimed should have been allowed as filing of Form No. 10B is procedural in nature. The Ld. AR relied upon the decision of the Hon'ble Bombay High Court in the case of **Trustees of Tulsidas Gopalji Charitable & Chaleshwar Temple Trust vs. Commissioner of Income-tax [1994] 207 ITR 368 (Bombay)/[1994] 118 CTR 305 (Bombay)[16-09-1993]**. On the other hand, the Ld. DR relied upon the order of the Ld. Addl/JCIT(A) and requested that the same may be upheld.

6. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. Addl/JCIT(A). The Ld. Addl/JCIT(A) dismissed the appeal by holding that:

“5.2 All the grounds of appeal raised by the appellant are against denying exemption u/s 11 of the I.T. Act and also against taxing the entire receipts disallowing expenses incurred. Facts involved in the issue is that the appellant filed return of income disclosing gross receipts of Rs.1,27,76,341/-. As per the provisions of sec. 12A(1)(b) of the Act (prevalent for the relevant year), to be eligible for exemption u/s 11, the appellant was required to file audit report in Form 10B along with the return of income. In the present case, the appellant filed return of income on 11.09.2018 but efiled Form 10B only on 04.03.2019 vide acknowledgement no. - 428954601040319. Since due date of filing return was 30.09.2018, CPC denied claim of exemption u/s 11 while processing the return u/s 143(1). Requirement to file Form 10B along with return of income as stated above is a statutory requirement mandated by the I.T. Act. CBDT vide circulars issued from time to time had instructed that if there is delay in filing of such Form, the same should be got condoned by the concerned jurisdictional Commissioner of Income Tax u/s 119(2)(b) of the Act. In the present case, there is no evidence on record that the appellant filed any such condonation petition before the Commissioner. CPC was therefore justified in disallowing the



exemption u/s 11 as claimed in return. This authority has no jurisdiction to condone the delay in filing Form 10B.

*5.3 As regard appellant's appeal against taxing the entire receipts instead of taxing the income over expenditure, it is stated that facts involved in the issue is that the appellant had disclosed gross receipts of Rs.1,27,76,341/- in the ITR and claimed expenses of Rs.1,19,83,900/- (on revenue as well as capital account). Since exemption u/s 11 was denied, AO, CPC taxed the entire receipts of Rs.1,27,76,341/- at maximum marginal rate. On the other hand, the appellant claimed that even if exemption u/s 11 is denied, only the income over expenditure should be taxed and not the entire receipts. In this regard, I would like to highlight the heading of chapter III of Income Tax Act. It is "Incomes which do not form part of total income.". Both sections 10 and 11 are included within this chapter. Moreover, first line of section 10(23C) starts with the words – "any income received by any person on behalf of...". Intention of the legislature is clear. If the conditions of sec. 10(23C) are satisfied, then the entire income or receipts of the Institute or the Organisation will be exempt. Viceversa if the conditions are not satisfied then the entire income or receipts shall be taxed. Similar is the case with the provisions of sec. 11, which starts with – "income derived from property held under trust....". Here I would also like to highlight the distinction between Chapter III and Chapter VIA of the Act. Chapter III as already stated above is regarding 'exemption of incomes' whereas Chapter VIA is regarding 'deductions in respect of certain payments / incomes'. In Chapter VIA, all the sections are related to deductions against income / receipts of an assessee. The difference is clear. Chapter III does not mention anything about expenses incurred against income whereas Chapter VIA is solely in respect of expenses incurred against income. In this regard, **Comptroller and Accountant General's (C&AG) report no. 9 of 2019, Compliance Audit of Union Govt., Dept of Revenue, Direct taxes, report submitted to Govt. of India on 04.07.2019** may be referred..."*

6.1 Thus, according to the Ld. CIT(A) the Ld. AO was justified in not considering the expenses and taxing the entire receipts.

7. A perusal of the record shows that Form No.10B was not uploaded within the due date, which is claimed to be unintentional on the part of the assessee. However, it is noted that the same was available before the Ld. Assessing Officer at the time of processing of the updated return of income on 02.01.2020 and was uploaded by the Chartered Accountant on 04.03.2019. The filing of Form No. 10B has been held



to be a procedural requirement and directive in nature and not mandatory as has been held by the Ld. CIT(Appeals). It would be appropriate to refer to the decision in the case of **Commissioner of Income Tax Exemptions Kolkata vs. M/s. Indian Sugar Mills Association in ITAT/270/2023 IA No: GS/1/2023, GA/2/2023** vide order dated 10.01.2024 of the Hon'ble High Court of Calcutta wherein it has been held that the filing of the auditor's report along with the return of income has to be treated as a procedural provision and therefore, directory in nature. The relevant extract from the order is as under:

“The short question falls for consideration in the instant case is whether the Principal Commissioner of Income Tax (Appeals), NFAC was justified in allowing the appeal filed by the assessee thereby condoning the delay in filing the Form 10B of the Act. The learned Tribunal after going through the facts of the case took note of the latter circular issued by the Board in Circular No. 16 of 2022 dated 19-07-2022 issued under Section 119(2)(b) by which the powers delegated to the Principal Chief Commissioner of Income Tax/Commissioner of Income Tax to condone the delay in filing Form 10B beyond 365 days up to 3 years from the assessment year 2018-19 or for subsequent year. Applying the said circular the learned Tribunal affirmed the order passed by the CIT (Appeals) in grounds before us in this appeal.

The revenue has not dealt with the said circular nor anything has been brought on record to show that Circular No. 16 of 2022 dated 19-07-2022 cannot be applied to the case on hand. The Commissioner of Income Tax (Exemptions) while rejecting the application for condonation of delay by order dated 17-08-2020 has referred to the Circular No. 2 of 2020 dated 3.1.2020 which admittedly gives power to condone the delay in filing Form 10B up to a period of 365 days. The CIT (Appeals), NFAC also took note of a decision of the High Court of Gujarat in Commissioner of Income Tax Vs Gujarat Oil and Allied Industries reported in 1993 ITR (201) 325 wherein it was held that the filing of the auditor's report along with return of income has to be treated as procedural provision and therefore, directory in nature. Thus we find that there is no error committed by the learned Tribunal in dismissing the appeal filed by the revenue.

Accordingly, the appeal is dismissed. Substantial questions of law are answered against the revenue.”



8. It was also submitted before us by the Ld. AR that Form No. 10B was filed belatedly but was available at the time of processing of the updated return of income and, therefore, the claim of exemption should not have been denied. It was also submitted that the denial of exemption cannot be permitted while processing the return under section 143(1) as the same is not part of the *prima facie* adjustment but the same can only be denied in the course of the assessment under section 143(3) of the Act. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. Addl/JCIT(A) as well as the intimation of the Ld. AO and the remand the matter to the Ld. AO for considering the claim of the assessee and allow the exemption claimed in accordance with law as the audit report on Form No. 10B was available at the time of processing of the return of income and, therefore, the claim of exemption u/s 11 of the Act had to be allowed and the same cannot be disallowed while processing the return under section 143(1) of the Act. Needless to say, the assessee shall be given a reasonable opportunity of being heard to make any further submission it wants to make in support of its grounds of appeal and shall not seek unnecessary adjournments. Accordingly, all the grounds taken by the assessee in the appeal are partly allowed for statistical purposes.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 29th January, 2026.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 29.01.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

- 1. Shashi Krishna Educational Avam Welfare Society, 186, Patliputra Colony, Patna, Bihar, 800013.**
- 2. ITO Exemption, Patna.**
3. Addl/JCIT(A)-6, Kolkata.
4. CIT-
5. CIT(DR), Patna Benches, Patna.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata