

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'C' BENCH AT KOLKATA**

**Before**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 2807/KOL/2025  
Assessment Year: 2021-22**

Nikhil Banga Kalyan Samity	Vs.	ITO, Ward-1(1), Exempt, Kolkata
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN: AAATN5052H</b>		

**Appearances:**

**Assessee represented by** : Avijit Dey, AR.

**Department represented by** : Sallong Yaden, Addl. CIT, Sr DR.

Date of concluding the hearing : 04-February-2026

Date of pronouncing the order : 11-February-2026

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the Assessee is against the order of the Addl/JCIT(A)- 6, Mumbai [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 2021-22 dated 10.11.2025.

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

*"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered that the rectification order u/s 154 was passed suo-moto disallowing the exemption claimed u/s 11 by the assessee is erroneous and bad in law.*

*2. (a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have considered that exemption claimed u/s. 11 cannot be denied on the ground of delay in filing Form 108.*

*(b) For that the Ld. CIT(A) ought to have considered that delay in filing of Form 10B cannot be a ground for denying the legitimate exemption under section 11(2) of the Act, when all the conditions precedent for allowing such exemption have been fulfilled by the appellant.*



3. *The appellant craves leave to add, alter or delete all or any of the grounds of appeal at the time of hearing.*”

3. Brief facts of the case are that the assessee filed its return of income for AY 2021-22 declaring 'NIL' income which was accepted while processing the return u/s 143(1) of the Act. Subsequently, the Assessing Officer (hereinafter referred to as Ld. 'AO') rectified the said intimation vide order dated 07.03.2023 u/s 154 of the Act and determined the total income of the assessee at ₹85,60,540/- as against the 'NIL' income returned after disallowing the claim of exemption u/s 11 of the Act on account of delay in filing of Tax Audit Report in Form No. 10B. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. Addl/JCIT(A) who considered the facts of the case, the grounds of appeal and the submissions made by the assessee. The Ld. Addl/JCIT(A) reproduced the provisions of section 12A of the Act and relied upon the case of **CC vs. Dilip Kumar & Company [2018] 95 taxmann.com 327/69 GST 239** and **PCIT-III vs. M/s. Wipro Limited** in the **Civil Appeal No. 1449 of 2022** and dismissed the appeal of the assessee by holding as under:

*“6.2.5 It is evident that the appellant had not filed Form 10B one month prior to the due date for furnishing return u/s 139(1) in violation of Rule 12A(1)(b) of Income Tax Rules, 1962. It is a trite law that if a thing is said to be done in a particular manner, it shall be done in that manner and its performance in any other mode or fashion shall be of no consequence. Therefore, in application of the above decisions of the apex court and also the mandated provisions of the statute, the Assessing Officer has rightly disallowed the exemption claimed as per the provisions of section 143(1)(a)(ii). Accordingly, I am not inclined to interfere with the decision of the Assessing Officer. These grounds of appeal are therefore dismissed.*

*6.3 Ground 3: In this ground the appellant has raised the issue of violation of natural justice as prior opportunity was not provided before making the adjustment to the income. At the outset it may be mentioned that the Assessing Officer, CPC had issued a proposed adjustment letter vide letter dated 14.02.2023 before making adjustment to the income. Therefore, the*



*issue of not providing the opportunity of hearing before making the adjustment to the income is not correct. This ground of appeal is hence treated as dismissed.*

*7. In the result, the appeal stands dismissed.”*

4. Aggrieved with the order of the Ld. Addl/JCIT(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. 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 the failure to furnish such Form No. 10B one month prior to the due date for furnishing the return u/s 139(1) of the Act was in violation of Rule 12A(1)(b) of the IT Rules and, therefore, in view of the decisions of the Hon'ble Apex Court, the Ld. AO has rightly disallowed the exemption claimed as per the provisions of section 143(1)(a)(ii) of the Act and the Ld. Addl/JCIT(A) did not interfere with the decision of the Ld. AO.

7. A perusal of the record shows that Form No.10B was uploaded on 31.01.2022 with one day delay, which is claimed to be unintentional on the part of the assessee and accepted by the assessee. However, it is noted that the same was available before the Ld. Assessing Officer at



the time of processing of the return of income and was uploaded by the Chartered Accountant. 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 imperative 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 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.

9. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). In view of the decision of the Hon'ble jurisdictional High Court in the case of **M/s. Indian Sugar Mills Association** (supra), filing of Form No. 10B is procedural in nature and the claim of exemption could not be denied as the report was available at the time of processing of the return of income. Moreover, while processing the return of income the claim was allowed while the same has been withdrawn by invoking the provisions of section 154 of the Act. What can be adjusted in the intimation under section 143(1) is *prima facie* adjustments specified therein and the mere fact that the exemption allowed was withdrawn in the course of the rectification proceeding makes the issue debatable and beyond the purview of section 143(1) of the Act and the disallowance could not have been made u/s 154 of the Act as the same was allowed in the course of the initial processing of the return. Hence, after examining the facts of the case, we deem it appropriate to set aside the order of the Ld. Addl/JCIT(A) and remand the matter to the Ld. AO for allowing the claim of the assessee for the exemption claimed in



accordance with law as the audit report on Form No. 10B filed on 16.02.2022 was available at the time of processing of the return of income on 10.08.2022 and, therefore, the claim of exemption u/s 11 of the Act had to be allowed and the same cannot be denied 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.

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

**Order pronounced in the open Court on 11<sup>th</sup> February, 2026.**

*Sd/-*

**[George Mathan]**  
Judicial Member

*Sd/-*

**[Rakesh Mishra]**  
Accountant Member

Dated: 11.02.2026

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **Nikhil Banga Kalyan Samity, 29D, Bentick Street, Unit-A, B & C, 3<sup>rd</sup> Floor, Kolkata, West Bengal, 700001.**
2. **ITO, Ward-1(1), Exempt, Kolkata.**
3. Addl/JCIT(A)-6, Mumbai.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata