

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER

AND

SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं. /I.T.A. No. 723/Ahd/2025
(निर्धारण वर्ष / Assessment Year : 2020-21)

Shri Manav Vikas Foundation Chamaraj, Tl. Vadhavan Dist. Surendranagar, Surendranagar, Gujarat- 363040	बनाम / Vs.	ITO Ward-2, Exemp., Vejalpur, Ahmedabad
स्थायी लेखा सं. / जीआइआर सं. / PAN/GIR No. : AAOTS9539A		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mehul K. Patel, Advocate
प्रत्यर्थी की ओर से/Respondent by :	Smt. Kakoli Uttam Ghosh, Sr. DR

Date of Hearing	09/02/2026
Date of Pronouncement	23/02/2026

ORDER

PER ANNAPURNA GUPTA, AM:

The present appeal has been filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), ADDL/JCIT(A)-1, Visakhapatnam (hereinafter referred to as “CIT(A)”) dated 12.02.2025 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) and relates to Assessment Year (A.Y.) 2020-21.

2. At the outset, Ld. Counsel for the assessee stated that the solitary issue in the present appeal related to the denial of

exemption to the assessee u/s.11 of the Act on account of delayed filing of requisite Form 10B.

3. Drawing our attention to the facts of the case, he pointed out that the assessee is a public charitable trust duly registered under the provisions of the Bombay Trust Act, 1950, Section 12A and Section 80G of the Act, being engaged in the field of education and managing two schools for students from primary to higher secondary level. For the impugned assessment year i.e. A.Y. 2020-21, the assessee e-filed return of income on 13.02.2021, which was within the due date prescribed u/s.139(1) of the Act, declaring Nil income after claiming its entire income exempt on account of the same having been applied for charitable purposes during the year. The CPC(Central Processing Center) whilst processing the return u/s 143(1) of the Act, assessed the income of the assessee at its gross income of Rs.53,49,142/- denying the exemption claimed by the assessee u/s.11 of the Act for the reason that Form 10B ,which the assessee was expected to file within the due date prescribed u/s.44AB of the Act, had not been filed. Ld. Counsel for the assessee pointed out that the due date as per law for filing Form 10B for the impugned year was 15.01.2021 (as extended vide Notification No.93 of 2020 dated 31.12.2020). The intimation u/s.143(1) of the Act was made on 30.11.2021 and it was only when the said intimation was received by the assessee that the assessee became aware of the fact that filing of the Form 10B had been missed out and accordingly, duly uploaded the same on 26.12.2022. Thereafter, the assessee filed an appeal against the intimation made u/s.143(1) of the Act

rejecting the assessee's claim of exemption of income u/s.11 of the Act. Ld. CIT(A) dismissed the assessee's appeal noting that the assessee having failed to file Form 10B within the time prescribed as per law, it was not entitled to any deduction u/s.11 of the Act. The findings of the Ld. CIT(A) in this regard are at para 5.1 to 5.1.3 of the order as under:

"5.1 The main contention of the appellant is with regard to non-granting of exemption u/s. 11 and 12 to the trust on the ground that Form No. 10B was not filed timely. On this issue, the appellant submitted that through inadvertence and oversight it had failed to file the said Form 10B and it was only subsequently when the intimation was received that it was made aware of the fact that the filing of the said Form 10B has been missed out and following which the said Form 10B has since been duly uploaded on 26/12/2022. Further, the appellant submitted that the learned CPC whilst processing the return for the A.Y. under consideration has assessed the appellant at its gross income of Rs.53,49,142/- without appreciating the fact that the consequences of the delayed filing of Form 10B as provided for in section 12A(1)(b) is the denial of the benefit of section 11 which in the case of the appellant would be restricted to the claim u/s 11(1)(a) amounting Rs. 7,38,636/- and claim u/s 11(1)(d) being Capital expenditure amounting to Rs.3,02,379 since in the absence of being assessed u/s 11 the appellant would need to be assessed as an AOP and expenses for the objects of the Trust cannot be disallowed. Furthermore, the appellant also requested to keep the present appeal proceedings in abeyance till the disposal of condonation application filed u/s 119(2)(b) of the Act before the Pr. CIT(Exemptions). New Delhi. In this regard, kind attention is drawn to the provisions of section 12A of the Act wherein conditions for applicability of sections 11 and 12 of the Act are laid down. Mainly, attention is drawn to the provisions of section 124(1)(b) of the Act which are produced hereunder for ready reference:

Provisions of section 12A(1)(b) of the Act

"(b) where the total income of the trust or institution as computed under this Act without giving effect to the provisions of section 11 and section 12 exceeds the maximum amount which is not chargeable to income-tax in any previous year the accounts of the trust or institution for that year have been audited by an accountant as defined in the Explanation

below sub-section (2) of section 288 before the specified date referred to in section 44All and the person in receipt of the income furnishes by that date] the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed

5.1.1 As per the provisions of section 12A(1)(b) the appellant is supposed to file the Audit Report in Form No. 108 as per the rule 178 of the IT Rules before the date specified in section 44AB ie, one month prior to the due date for furnishing the return of income under sub-section (1) of section 139. The relevant provisions of section 44AB of the Act and Rule 17B of IT Rules are as under:

Provisions of section 44AB of the Act:

"Audit of accounts of certain profession. persons carrying on business or

44AB. Every person.-

(a) carrying on business shall if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year)

Provided that in the case of a person whose-

(a) aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash, does not exceed five per cent of the said amount, and

(b) aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year does not exceed five per cent of the said payment

this clause shall have effect as if for the words "one crore rupees" the words 10[ten] crore rupees" had been substituted, or

[Provided further that for the purposes of this clause, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.]

- (b) *carrying on profession shall, if his gross receipts in profession exceed fifty lakh rupees in any previous year or*
- (c) *carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 4488 or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year, or*
- (d) *carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under section 44ADA and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his profession and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year, or*
- (e) *carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,*

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed:

Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year.

Provided further that this section shall not apply to the person, who derives income of the nature referred to in section 448 or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later

Provided also that in a case where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of this section if

such person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section

Explanation For the purposes of this section-

(1) "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288,

(ii) "specified date", in relation to the accounts of the assessee of the previous year relevant to an assessment year, means 11[~~date~~ one month prior to the due date for furnishing the return of income under sub-section (1) of section 139.

Provisions of Rule 17B of IT Rules. X

"[Audit report in the case of charitable or religious trusts, etc.

17B. The report of audit of the accounts of a trust or institution which is required to be furnished under sub-clause (ii) of clause (b) of sub-section (1) of section 12A, shall be in-

(a) Form No. 108 where-

(I) the total income of such trust or institution, without giving effect to the provisions of sections 11 and 12 of the Act. exceeds rupees five crores during the previous year, or

(II) such trust or institution has received any foreign contribution during the previous year or

(III) such trust or institution has applied any part of its income outside India during the previous year,

(b) Form No. 1088 in other cases

Explanation For the purposes of sub-clause (II) of clause (a), the expression foreign contribution shall have the same meaning assigned to it in clause (h) of sub-section (1) of

section 2 of the Foreign Contribution (Regulation) Act, 2010 (42 of 2010). "

5.1.2 Further, as per the provision of Rule 12(2) of the IT Rules the Form No. 108 shall be furnished electronically. The relevant provisions of Rule 12(2) of IT Rules are as under:

Provisions of Rule 12(2) of the IT Rules:

"(2) The return of income required to be furnished in Form SAHAJ (ITR-1) or Form No. ITR-2 or Form No. ITR-3 or 24 [Form SUGAM (ITR-4)] or Form No. ITR-5 or Form No ITR-6 (or Form No. ITR-7) shall not be accompanied by a statement showing the computation of the tax payable on the basis of the return, or proof of the tax, if any, claimed to have been deducted or collected at source or the advance tax or tax on self-assessment, if any, claimed to have been paid or any document or copy of any account or form or report of audit required to be attached with the return of income under any of the provisions of the Act:]

Provided that where an assessee is required to furnish a report of audit specified under sub-clause (iv), (v), (vi) or (via) of clause (23C) of section 10, section 10A [, section 10AA), clause (b) of sub-section (1) of section 12A, section 44AB [, section 44DA, section 50B), section 80-IA, section 80-1B, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E, (section 115JB 25 section 115JC] or section 115VW] (or to give a notice under clause (a) of sub-section (2) of section 11] of the Act, he shall furnish the same electronically.]”

5.1.3 It is evident from the provisions of section 12A of the Act read with section 44AB of the Act along with rules 178 and 12 of the IT rules that the appellant is required to file the Audit Report in the Form No. 108 electronically one month prior to the due date for furnishing the return of income under sub-section (1) of section 139. In the instant case the appellant filed its return of income on 13.02.2021. However, it had filed the Form 108 electronically on 26.12.2022. The extended due date for filing of return of income for year under consideration is 15.02.2021, thus the appellant is supposed to file Form No. 108 electronically on or before 15.01.2021. However, the appellant has filed the Form No. 108 on 13.02.2022. Hence, the CPC is rightly denied the benefit of section 11 and 12 of the Act. Further, the proceedings u/s. 119(2)(b) of the

Act pending before the Pr.CIT(Exemptions), New Delhi and the appeal proceedings are independent proceedings and as such no need to keep the present appeal proceedings in abeyance. In view of the above, the grounds raised by the appellant on this issue are 'Dismissed.'

4. Aggrieved by the order of the Ld. CTI(A), the assessee has come up in appeal before us raising following grounds of appeal:

- “1. That the learned ADDL/JCIT(A)-1 NFAC Visakhapatnam has grievously erred in confirming the assessment of the returned income of Rs.NIL at a taxable income of Rs. 53,49,142/- whilst processing us 154 r.w.s 143(1) of the Act.*
- 2. That the learned ADDL/JCIT(A)-1 NFAC Visakhapatnam has grievously erred in confirming that the adjustment so done confirmed by the CPC is within the jurisdiction vested us 143(1) of the Act.*
- 3. That the learned ADDL/JCIT(A)-1 NFAC Visakhapatnam has grievously erred in failing to adjudicate on the contravention by the CPC of the provisions of the first proviso to sub-section 1 of section 143.*
- 4. That the learned ADDL/JCIT (A)-1 has grievously erred in not providing proper opportunity of being heard.*
- 5. That the appellant craves for leave to add, amend and or modify the grounds of appeal.”*

5. The contention of the Ld. Counsel for the assessee before us was that the denial of exemption u/s.11 of the Act to the assessee by the authorities below for delay in filing of Form 10B was against the consistent position of law in this regard, laid down by various decisions of the ITAT and also that of the Jurisdictional High Court holding that even belated filing of the Form 10B would entitle the assessee to claim of exemption u/s.11 of the Act. Our attention was drawn to the following decisions in this regard:

i. Parantap Charitable Trust vs. ITO in ITA No.1697/Ahd/2025, dated 08.01.2026

ii. Kanchanba Education Trust vs. Assistant Commissioner/DCIT in ITA No.1566/Ahd/2025, dated 11.12.2025.

5.1 He further pointed out that the ITAT in the case of Kanchanba Education Trust (supra) noted that the issue had been settled by the decision of the Hon'ble Supreme Court in the case of CIT(E) vs. Anjana Foundation [2025] 178 taxmann.com 658 (SC), wherein Hon'ble Supreme Court had dismissed the SLP against the order of the High Court holding that charitable purpose cannot be denied benefit of Section 11 of the Act solely for not filing audit report in Form 10B in time as it is only a procedural requirement. Our attention was also drawn to the decision of Hon'ble Gujarat High Court holding so in the case of Association of Indian Panel Board Manufacturer vs. DCIT [2023] 157 taxmann.com 550 (Gujarat) and Parul Mahila Pragati Mandal vs. Income-tax Officer (Exemption) [2025] 175 taxmann.com 922 (Gujarat).

6. Ld. DR though supported the order of the Ld. CIT(A), however, he was unable to controvert the proposition of law laid down by various judicial authorities that the filing of Form 10B was only a procedural requirement and the same even if filed during appellate proceeding would be sufficient compliance with the condition prescribed in law of filing Form 10B alongwith the

return of income, in the case of entities / persons claiming exemption u/s.11 of the Act.

7. In view of the above, since Ld. CIT(A) has denied the assessee's claim of exemption u/s.11 of the Act on account of delayed filing of form 10B ,the assessee we hold is entitled to claim exemption u/s.11 of the Act. The issue stands squarely covered in favour of the assessee by the order of the Jurisdictional High Court in the case of Association of Indian Panel Board Manufacturer vs. DCIT [2023] 157 taxmann.com 550 (Gujarat) and Parul Mahila Pragati Mandal vs. Income-tax Officer (Exemption) [2025] 175 taxmann.com 922 (Gujarat), which have been followed by the ITAT, Ahmedabad Benches in the case of Parantap Charitable Trust (supra) & Kanchanba Education Trust (supra) cited before us and also in view of the decision of Hon'ble Gujarat High Court in the case of Anjana Foundation (supra) ,SLP filed against which was dismissed by the Hon'ble Apex Court.

8. The ground of appeal raised by the assessee stand allowed.

9. In the result, the appeal of the assessee is allowed.

This Order pronounced on	23/02/2026
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Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Ahmedabad; Dated 23/02/2026
S. K. SINHA

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

True Copy

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad