

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "K (SMC)", MUMBAI

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

**ITA No.8306/Mum/2025
(Assessment year: 2023-24)**

Rotary Club Of Bombay Queens Necklace Charitable Trust B 41/45, Paragon Centre, Pandurang Budhkar Marg, Worli, Mumbai-400013 PAN: AAATR4200K	vs	ITO (Exem.) Ward 2(2), Mumbai Aayakar Bhawan, M.K. Road Mumbai-400020
APPELLANT		RESPONDENT

Assessee by : Shri Kishor Patel,
Respondent by : Shri Bhagirath Ramawat (SR DR)

Date of hearing : 10/02/2026
Date of pronouncement : 06/03/2026

ORDER

Per: Anikesh Banerjee (JM):

The instant appeal of the assessee filed against the order of the Ld. Commissioner of Income Tax Appeal ADDL/JCIT (A) Raipur, [for brevity 'the Ld. CIT(A)], order passed under section 250 of the Income Tax Act 1961 (for brevity 'the Act') for assessment year 2023-24, date of order 04.10.2025. The impugned

order emanated from the order of the CPC Bengaluru (for brevity the 'Ld. AO') order passed under section 143(1) of the Act date of order 18.11.2024

2. The brief facts of the case are that the assessee is a public trust registered under the Maharashtra Public Trusts Act, 1950. During the impugned assessment year, the assessee filed its return of income under section 139(1) of the Act. In terms of the statutory requirements, the assessee was also required to furnish the audit report in Form No. 10B within the prescribed due date. However, Form No. 10B was filed with a delay of 29 days beyond the stipulated due date. Consequently, the Ld. AO denied the assessee's claim for exemption under sections 11 and 12 of the Act. Aggrieved by the said disallowance, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) has set out the entire factual matrix relating to the assessee's appeal, which is reproduced hereunder:

"STATEMENT OF FACTS

6. The statement of facts filed by the appellant in Form 35 are as under:

"STATEMENT OF FACTS

"1. The Appellant is a Public Trust registered under the Maharashtra Public Trusts Act, 1950 and also under section 12AB of the I.T.Act, 1961. It is assessed in the status of Association of Persons (A.O.P. Trust). The Appellant is established for charitable purposes. The Appellant has claimed exemption under sections 11 & 12 of the I.T. Act, 1961.

2. The Appellant has e-filed Return of Income for the Assessment Year 2023 2024 on 29.11.2023 declaring Total Income of Rs. 8,750/- and claimed Tax Refund of Rs.1,01,089/-.

3. The Centralized Processing Centre - Income Tax Department, Bengaluru (herein after referred to as "CPC - ITD") has processed the Return of Income e-filed by the Appellant for the

Assessment Year 2023-24 by issuing an Intimation under section 143(1) of the Act, vide Intimation dated 18.11.2024 and assessed the Appellant on Total Income of Rs. 31,40,538/- against Taxable Income of Rs. 8,748/- by making huge additions by way of adjustments of Rs. 31,31,790/- by disallowing amount accumulated or set apart for application to charitable or religious purposes or for the stated objects of the trust to the extent it does not exceed 15 per cent of income derived from property held in trust under section 11(1)(a) of the Act amounting to Rs. 31,31,790/- on the ground that the Appellant has not e-filed the Form No.10B being Audit Report under section 12A(1)(b) of the Act within the due date as specified and raised a huge tax demand of Rs. 8,56,040/- after adjusting the Tax refund of Rs. 1,01,089/-.

4. The extended due date for e-filing of Form No. 10B for the Assessment Year 2023-24 was 31.10.2023 and the Appellant has e-filed Form No. 10B issued by the Chartered Accountant on 29.11.2023 vide acknowledgment no. 533536960291123 which is delayed by 29 days.

5. The extended due date for e-filing of Return of Income under section 139(1) of the Act for the Assessment Year 2023-24 was 30.11.2023 and the Appellant has e-filed the Return of Income in ITR-7 for the Assessment Year 2023-24 within the extended due date i.e. 30.11.2023 vide acknowledgement no. 533475680291123. The Form No. 10B was e-filed on 29.11.2023 before filing the Return of Income for the Assessment Year 2023-24 that was e-filed on 29.11.2023.

6. The CPC ITD issued an intimation for proposed adjustments under section 143(1)(a) of the Act vide DIN No. EFL/2324/G22/ITR000596100909 dated 17.12.2023 by proposing to disallow the incorrect claim made by the Appellant. The Appellant has disagreed to the said claim by e-filing the response on 09.01.2024.

7. Your Appellant submits that the additions made to the Total Income be deleted and suitable relief may be granted to your Appellant in fairness, equity and justice.”

But the appeal of the assessee was rejected by the Ld. CIT(A). Being dissatisfied, the assessee filed an appeal before us.

3. The Ld. AR argued and stated that the assessee has reasonable cause for filing the delay in form 10B. The said form was filed on 29.11.2023 which is delayed by 29 days and after that the return was filed u/sec. 139(1) for impugned assessment year dated 30.11.2023. So the said form was duly filed before the filing of return and the reason are duly narrated before the Ld. CIT(A) which is reproduced in the impugned appellate order **page no.12 to 13** and the said observations of the Ld. CIT(A) is also reproduced as below:

“Further the New Form 10B utility itself was first released on 24th August, 2023 and the Schema to file the Form was first released on 08th September, 2023. The New Form 10B required extensive compilation and verification of information to be reported and the time to compile and prepare the same was limited. Further, the accountants were not well versed with the statutory requirements and were unable to provide quickly and accurately the necessary information required to finalise the Audit Report in time. Thus there was a delay in finalizing the accounts of the Trust and finalizing the audit reports and signing of the financial statements for the financial year ending 31.03.2023 that resulted in the delay in filing Form No.108 for Assessment Year 2023 24 of the Appellant Trust. However, it may be kindly noted that the Form No.108 was e-filed on 29th November, 2023 before filing the Return of Income for the Assessment Year 2023 24 that was e-filed on or before the extended due date i.e. 30th November, 2023. It goes without saying that the said Audit Report in Form No. 10B, though delayed, was certainly available before the e-Return of Income was processed under Section 143(1) of the Act.

In view of the above the Appellant humbly submits that it has substantially complied with the provisions of Section 11 and 12 of the Act and the benefit should be allowed though there is a small procedural lapse of delay of 29 days in filing of Audit Report in Form No. 10B. It is submitted that the time lines prescribed under Section 11/12 of the Act are merely declaratory and not mandatory. Accordingly non-compliance/delayed compliance thereof cannot result in loss of exemption under Section 11 of the Act.

The Appellant has regularly e-filed Form No.10B and the Return of Income in ITR-7 in earlier years before the due date. Statement giving details of e-filing of Form No.10B and the Return of Income for last Three preceding assessment years and current assessment year along with copy of Acknowledgements as Paper-book Page No. 170 to 179.”

4. The Ld. AR advanced his argument and contended that the delay in filing form for 29 days. But during processing of the return u/sec. 143(1) of the Act the said form was duly available before the Ld. AO. The similar issue was duly adjudicated by the Hon'ble High Court of Bombay in case of **Kabeer Excellence Foundation vs CIT(E)** reported in **(2025) 1 TMI 1745 (Bom)** date of order 16.01.2026 the relevant observation of the Hon'ble Bombay High Court is reproduced as below:

“14. We also find that in somewhat similar circumstances, this Court had condoned the delay in filing Form No. 10B in the case of Mirae Asset Foundation V/S Principal Commissioner of Income-tax-6, Mumbai [Writ Petition No. 713 of 2025 decided on 7th July 2025]. Paragraph 5 of the said order is reproduced hereunder:-

“5. As far as the condonation of delay is concerned, we find that admittedly there was only 24 days delay in filing Form 10B. It is true that the application seeking condonation of delay was filed after about 9 months. However, we find that this delay is not such that should deny the Petitioner from filing Form 10B with a delay of 24 days. We find that if this delay is not condoned, there will be genuine hardship to the Petitioner, inasmuch as, the Petitioner would be denied the exemption otherwise claimed under the provisions of Section 11 of the IT Act and which is a substantial amount. In the view that we take, we are supported by a decision of the Hon'ble Gujarat High Court in the case of Sarvodaya Charitable Trust v. ITO (exemption) [2021] 125 taxmann.com 75/278 Taxman 148 (Gujarat). A Division Bench of the Gujarat High Court in Sarvodaya Charitable Trust (supra) took a view that in cases like the present one (delay in filing Form 10B), the approach of the Authorities ought to be equitable, balancing and judicious and availing

of exemption should not be denied merely on the bar of limitation. This is more so, when the legislature has conferred wide discretionary powers to condone the delay on the authorities concerned. The relevant portion of this decision reads thus:-

“31. Having given our due consideration to all the relevant aspects of the matter, we are of the view that the approach in the cases of the present type should be equitable, balancing and judicious. Technically, strictly and liberally speaking, the respondent no.2 might be justified in denying the exemption under section 12 of the Act by rejecting such condonation application, but an assessee, a public charitable trust past 30 years who substantially satisfies the condonation for availing such exemption, should not be denied the same merely on the bar of limitation especially when the legislature has conferred wide discretionary powers to condone such delay on the authorities concerned.

32. We may also refer to the decision of this Court in CIT v. Gujarat Oil and Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report with the return has to be treated as a procedural proviso. It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income but produced the same before the completion of the assessment. This Court took the view that the benefit of exemption should not be denied merely on account of delay in furnishing the same and it is permissible for the assessee to produce the audit report at a later stage either before the Income Tax Officer or before the appellate authority by assigning sufficient cause.”

15. In view of the above, we are of the considered opinion that the Petitioner has made out a case for condonation of delay. The impugned order dated 10.02.2025, passed by Respondent No. 1, is hereby quashed and set aside. Consequently, the delay in filing Form 10B for the A.Y. 2021-22 is also hereby condoned.

16. Now that the delay is condoned, the intimation issued under Section 143(1) of the Act dated 27.10.2022, is also quashed and set aside. The Assessing Officer is directed to give effect to this order and allow the exemption claimed by the Petitioner under Section 11 of the Act.

17. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.”

5. The Ld. AR respectfully relied on the order of Coordinate Bench of ITAT Mumbai ‘D’ Bench in **MIG Cricket Club vs DCIT, ITA No.5721/Mum/2025** date of order **28.11.2025** the relevant observations of the Coordinate Bench in para no.12 to 14 is reproduced as below:

“12. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, considering the fact that there is mere delay of 19 days in uploading of the audit report which has been uploaded well before the filing of the return of income and available on record at the processing of return of income and in absence of any adverse material on record or any mala fide alleged by the Revenue, we hereby condone the delay in filing of the audit report in Form 10BB and direct the AO to consider the audit report and decide the claim of exemption under ss. 11 and 12 in accordance with law after providing reasonable opportunity to the assessee.”

13. The decisions of the Hon'ble Gujarat High Court also lay down a similar proposition. Respectfully following the same, in the instant case, the audit report in Form 10-B has been furnished by the assessee during the appellate proceedings before the learned CIT(A) and is thus part of the record. The assessee has explained the reasons for the delay in furnishing of the audit report due to delay in completion of the audit which has not been disputed by the Revenue. In light of the same, the delay in filing the audit report is hereby condoned and we hereby direct the AO to consider the audit report and decide the claim of exemption under ss. 11 and 12 in accordance with law after providing reasonable opportunity to the assessee.

14. In the result, the appeal of the assessee is allowed for statistical purposes.”

6. The Ld. DR strongly opposed the condonation of delay in filing Form No. 10B. He submitted that filing of Form No. 10B within the prescribed due date is a mandatory requirement for claiming exemption under sections 11 and 12 of the Act. In response, the Ld. DR filed a written submission bearing No. Jt.CIT/(Sr.AR)ITAT/K-Bench/2025-26 dated 19/02/2026 and placed reliance on the judgments of the Hon'ble Supreme Court in the case of State of **Uttar Pradesh & Others vs. Babu Ram Upadhya, Civil Appeal No. 119 of 1959**, decided on **25.11.1960**, in **Nasiruddin and Ors. vs. Sitaram Agarwal in Civil Appeal No. 5077 of 1998** date of judgment **28/01/2003** and order of Hon'ble Bombay High Court in case of **Little Angels Education Society vs. UOI in WP No. 1061 of 2020** pronounced on **25/03/2021**. He further drew our attention to CBDT Circular No. 16 of 2024 dated 18.11.2024, wherein the Central Board of Direct Taxes (CBDT) directed condonation of delay under section 119(2)(b) of the Act for Assessment Year 2018–19 in respect of delay in filing Form No. 10B. However, it was pointed out that for the impugned assessment year, no specific circular has been issued by the CBDT granting condonation of delay. The Ld. DR further submitted that a petition seeking condonation of delay has already been filed before the learned Commissioner of Income Tax (Exemptions) [CIT(E)] and the same is still pending consideration.

The Ld. DR, therefore, supported the orders passed by the revenue authorities.

7. We have heard the rival submissions and perused the material available on record. The undisputed facts reveal that the assessee e-filed Form No. 10B on 29.11.2023, i.e., with a delay of 29 days beyond the extended due date of 31.10.2023. It is further not in dispute that the said audit report was filed prior to

the filing of the return of income under section 139(1), which was e-filed within the extended due date of 30.11.2023. Thus, at the time of processing of the return under section 143(1), the audit report in Form No. 10B was already available on record. The reasons for delay, as placed before the revenue authorities, indicate that the revised utility and schema for the new Form No. 10B were released only in late August and early September 2023, requiring extensive compilation and verification of information. The delay of 29 days has been reasonably explained and no mala fide intention or deliberate default has been alleged by the revenue. The Hon'ble Bombay High Court in **Kabeer Excellence Foundation** (supra) has held that the requirement of furnishing the audit report is procedural in nature and that substantial compliance would suffice. The Court observed that the benefit of exemption should not be denied merely on account of delay in furnishing the audit report, particularly when the same is made available before completion of assessment proceedings. Similarly, the Coordinate Bench of the Tribunal in **MIG Cricket Club** (supra) has condoned comparable delays where the audit report was filed prior to completion of assessment and no prejudice was caused to the revenue. In the present case, the delay is marginal, the audit report was filed before the return of income and was available during processing, and the assessee has otherwise complied with the substantive conditions for claiming exemption under sections 11 and 12 of the Act. Denial of exemption merely on account of such procedural lapse would defeat the object of the statute and result in undue hardship. The Ld. DR relied on the order of Hon'ble Apex Court & Hon'ble Bombay High Court is misplaced. In case of **Little Angels Education Society** (supra) the delay was more than 365 days whereas the delay for assessee's case was 29 days. Delay in compliance should not

automatically result in denial of substantive benefits, particularly where the requirement is procedural in nature & substantial compliance is achieved. Respectfully following the judicial precedents and considering the facts and circumstances of the case, we hold that the delay of 29 days in filing Form No. 10B deserves to be condoned. The impugned order of the Ld. CIT(A) is set aside and the Jurisdictional Assessing Officer (JAO) is directed to consider the audit report in Form No. 10B and allow the claim of exemption under sections 11 and 12 in accordance with law, after granting reasonable opportunity of being heard to the assessee.

In the result, the appeal of the assessee is allowed for statistical purpose.

8. In the result, the appeal of the assessee bearing **ITA No.8306/Mum/2025** is allowed for statistical purpose.

Order pronounced in the open court on 06th day of March 2026.

Sd/-

(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 06/03/2026
SAUMYASr.PS

Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, MUMBAI