

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH "SMC", JABALPUR**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.186/JAB/2024  
Assessment Year:2020-21

Rai Sahib Bhaiyalal Dubey Educational and Medical Charitable Trust, Jabalpur 201/15, Gorakhpur Road Ratan Colony, Jabalpur-482001. PAN:AAATR8316G	Vs.	ACIT-CPC, Bangaluru (Jurisdiction Officer-ITO Exemption Ward Jabalpur) 1 <sup>st</sup> Floor Prestige Alpha No.481, 48/2, Beratenaagrahara Begur Hosur Road, Uttarahalli, Hobli Bangaluru, (Annexe Building)-462001.
(Appellant)		(Respondent)
Appellant by	Shri Dhiraj Ghai, C.A.	
Respondent by	Shri Rahul Padha, JC-2	

**ORDER**

(A) This appeal vide I.T.A. No.186/JAB/2024 has been filed by the assessee for assessment year 2020-21 against impugned appellate order dated 23.10.2024 (DIN & Order No.ITBA/APL/S/250/2024-25/1069887964(1) of Ld. Addl/Joint Commissioner of Income Tax (Appeals) ["JCIT(A)" for short], the First Appellate Authority.

(B) The dispute in the present appeal started with the adjustment made during processing of assessee's return u/s 143(1) of the Income Tax Act, 1961 ("Act", for short) whereby intimation was issued and adjustment was made to assessee's income enhancing the assessee's income from returned income of Nil to Rs.17,41,999/-. The assessee's appeal against the aforesaid adjustment was dismissed by the Ld. CIT(A) vide impugned appellate order dated 23.10.2024. In the course of appellate proceedings in Income Tax

Appellate Tribunal ("ITAT"), a paper book containing the following particular was filed from the assessee's side: -

S. No	PARTICULARS
1	Copy of written submission filed before CIT(A) with enclosure
2	Copy of 12A certificate
3	Copy of Audited Balance sheet as on 31.03.2020
4	Copy of Chartered Accountant Certificate
5	Copy of the Hon'ble ITAT Lucknow Branch Lucknow order in the case Desh Bharti Public School Samiti vs The AO/DCIT CPC, Bangalore ITA No.09/Lkw/2022
6	Copy of the Hon'ble ITAT Patna DB Branch at Kolkata order in the case Shashi Krishna Deucational Avam Welfare Society vs ITO Exemption, Patna ITA. No.428/PAT/2025

(B.1) The aforesaid paper book contained copy of assessee's written submissions filed during the appellate proceedings before the Ld. CIT(A); which is reproduced below, for the ease of reference: -

*"In addition to verbal submissions advanced by the counsel, I would like to submit as under for your honors kind consideration.*

*1. In the first ground of appeal the assessee is contesting the assessee society has received intimation under section 143(1) by CPC vide DIN no CPC/2021/A7/164799645 of dated 30/11/2021 and assessing the income of Rs 17,41,999/- of the assessee society and demand of Rs 3,72,020 was determined.*

*1.1 OURS SUMBISSION;- That the assessee society has received intimation under section 143(1) by CPC vide DIN no CPC/2021/A7/164769645 dated 30.11.2021 assessing the income of Rs. 17,41,999/ of the assessee trust and demand of Rs. 3,72,020/- was determined therein on account of disallowance of expenses as claimed under section 11 of the income tax act. Copy of intimation under section143(1) as received is enclosed as page no 8 to 27 of this reply.*

*1.2 Assessee is a charitable institution and is registered under section 12A vide order dated 22.07.1999 and accordingly has claimed exemption under section 11 of the Income Tax Act. Copy of registration certificate under section is enclosed as page no 28 of this reply. In lieu of above said registration assessee trust has rightly claimed the deduction of Rs.17,41,99/- under section 11(2) and hence income of trust remains as NIL. The copy of computation of income of assessee is also enclosed as page number 29 of this reply. Henceforth it is requested that as assessee has correctly claimed the exemption under section 11A and AO has accepted same in next years intimation under section 143(1). Copy of intimation under section 143(1) of next years are enclosed as page number 30 to 34 of this reply, hence AO may kindly be directed to consider income of the assessee as NIL instead of Rs 17,41,999/-.*

*2. In the second ground of the appeal the assessee has contested the assessee society is a charitable institution and is registered under section 12A vide order dated F. No. CIT-I/JBP/TECH/80G/07/09-10 dated 17.12.2009 and has claimed exemption under section 11 of the Income Tax Act.*

*2.1 OUR SUBMISSION: In lieu of submission given in para 1.1 to 1.2 above it is proved that Id AO was not justified in considering the aggregate of income (referred to under section 11 and 12) at Rs.1,32,77,585/ when it was duly agreed by Id AO himself at page 18 of intimation under section 143(1) that the expenditures were to the tune of Rs 17,41,999/-. In the expenses were agreed to be in paralance with the return filled and CPC has not shown there disagreement on quantum of the expenses. At this stage when assessee is having due registration under section 11 and 12 making expenses allowable deduction against income the disallowance of genuine expenses are against as natural justice and law. Henceforth the income of the assessee may kindly be ordered to at NIL*

*3. In the third and fourth ground of appeal the assessee has contested that on the facts and in the circumstances of the case the Id AO was not justified in charging interest under section 234A, 234B of the Act and hence the assessee denies its liability to pay the demand of Rs. 3,72,020/-worked out by the Id AO.*

*3.1 OUR SUBMISSION:- In lieu of explanation given in para 1 to 2 above Id AO was not justified in charging interest under section 234A, 234B of the Act and hence the assessee denies its liability to pay the demand of Rs. 3,72,020/-worked out by the Id AO.*

*4) The assessment order under section 143(1) intimation dated 30.11.2021 is bad in law hence may kindly be cancelled.*

*4.1 OUR SUBMISSION:- The order passed by the AO under section 143(1) dated 30.11.2021 was passed without considering the fact that matter considered for making addition is disputable one and cannot be dealt under section 143(1) intimation. This proves the order was passed without application of mind and in mechanical fashion. Moreover, the same was also against natural justice and law contents order is bad in law and needs to be quashed. Similar opinion has been held by ITAT Ahmedabad wherein it has been held as under:-.*

*Case Name: City Manager Association Ahmedabad Municipal Corporation Vs DCIT (ITAT Ahmedabad) Appeal Number: ITA No.1345/Ahd/2019 Date of Judgement/Order: 03/06/2022 Related Assessment Year: 2016-17 Courts: All ITAT ITAT Ahmedabad Download Judgment/Order City Manager Association Ahmedabad Municipal Corporation Vs DCIT (ITAT Ahmedabad)*

*"Let us consider the scope of section 143(1) for making prima facie adjustment while processing return under section 143(1)(a) of the Act i.e. process of dealing with the return is an ex parte process. It is pertinent to observe that whenever any debatable issue is involved an explanation of the assessee is required, then on such issue, no prima facie adjustment in an ex parte proceedings can be made.*

*If facts are looked into, then it would reveal that both the issues were debatable one, where more than one opinion was possible. Adjustment under section 143(1)(a) is not permissible on both these aspects.*

*1. This appeal is filed by the assessee against order dated 18.6.2019 in appeal no. CIT(A)-9/10060/DCIT passed by the Ld. Commissioner of Income-tax (Appeals)-9. Ahmedabad [for short "Ld.CIT(A)] relating to the assessment year 2016-17.*

2. Brief facts of the case is that the assessee is a charitable trust registered under the Income tax Act, 1961 and enjoying benefits of section 11 and 80G of the Act. For the Asstt. Year 2016-17, the assessee has filed its return of income on 28.10.2016 declaring Rs.2,31,725/-, The return of income was processed under section 143(1) of the Act by intimation order dated 30.3.2018, wherein income of the assessee has been determined at Rs.26,95,625/- and demanded tax of Rs. 7,02,246/- BY THE Dy. Commissioner of Income-tax, CPC Centre, Bangalore. It is seen from the intimation that deduction of Rs.5,40,082/- claimed by the assessee has been reduced to Rs.2,51,182/-, Similarly deduction of Rs.21,75,000/-claimed under section 11(2) has also not allowed, resulting in increased total income of Rs.26,95,695/- as against the returned income of Rs.2,31,730/-.

3. Aggrieved against the same, the assessee filed an appeal before the CIT(A). The Id.CIT(A)dismissed the appeal filed by the assessee by following various case laws mentioned at page no.7 to 11 of the CIT(A)'s order. Aggrieved against the appellate order, the assessee is before us by raising the following grounds of appeal:

"1. The Learned Commissioner of Income Tax (Appeals) has erred in law as well as on the facts of the case of the Appellant by confirming the reduction of claim for deduction by allowing deduction of only Rs.2,51,182/- instead of deduction claimed of Rs.540,082/-, which is rightly and validly allowable u/s.11(1) of the I.T. Act, 1961 as per return of income filed by the Appellant. 2. The Learned Commissioner of Income Tax (Appeals) has erred in law as well as on the facts of the case by confirming disallowance of deduction of Rs.21,75,000/- claimed for amount accumulated w/s.11(2) of the I.T. Act, 1961." The Id. counsel for the assessee, in support of the grounds argued the case and pleaded to cancel the disallowances made by CPC, Bangalore. Per contra, the Id. DR supported the orders passed by the lower authorities.

4. While dictating this order, we noticed the Id.CIT(A) has made a pertinent observation, which reads as follows:

"4.8 It has also been brought to the notice of the undersigned that the same issue arose for consideration by the predecessor I the office for the Assessment Year 2015-16 and the appeal of the appellant was dismissed vide appellate order dated 15.08.2017. The appeal before the Hon'ble ITAT (registered as ITA No.2337/Ahd/2017) is reported to be pending as on the date of passing the appellate order. Therefore, to maintain the consistency of the stand taken by the predecessor in the office for A.Y.2015-16 on the identical issue, the appeal is required to be dismissed."

5. As per the above observation of the Id.CIT(A), the appeal of the assessee in ITA No.2337/Ahd/2017 for the A.Y 2015-16 was pending before the Tribunal when the CIT(A) assed the impugned order on 18.6.19. However, both the parties before us have not brought to our knowledge about the status of that case before the Tribunal. On verification about the status of the same, we found that the above appeal of the assessee was disposed of in favour of the assessee vide order dated 21.8.019 just two months after the passing of the impugned order by the Id.CIT(A). The relevant portion of Co-ordinate Bench's order reads as under: "5. Before us, the assessee raised two fold submissions. Firstly, on the strength of Hon'ble Kolkatta High Court in the case of CIT Vs. Natwarlal Chowdhury Charity Trust, 52 taxmann 330 (Kol) it is entitled for deduction at 15% of the alleged deemed income offered for taxation in this assessment year.

*In the second contentions, she contended that both the issues are debatable that cannot be adjudicated under section 143(1) of the Act.*

*6. On the other hand, the Id.DR relied upon the order of the Revenue authorities. He placed on record copy of ITAT's order in the case of the Trustees, The B.N. Gamadia Parsi Hunnarshala, 77 TTJ 274 (Mum-Trib.) We would like to reproduce brief order of the Hon'ble Kolkatta High Court in the case of CIT Vs. Natwarlal NCH Chowdhury Charity Trust (supra), which reads as under:*

*"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the assessee's right to accumulate 25% of the total income of the previous year extended to the deemed income under Section 11(3) of the Income-tax Act, 1961, added therein in the circumstances mentioned above?"*

*2. The facts found by the Tribunal as stated in the statement of case are as follows: The assessee-trust accumulated Rs.46,184 during the accounting years relevant to the assessment years 1973-74 to 1976-77. During the previous year relevant to the present assessment year, accumulated income ceased to be invested in fixed deposit with the Indian Bank and it was, therefore, deemed to be the income of the trust in the previous year in which it ceased to remain invested or deposited in terms of clause (b) of sub-section (3) of section 11 of the Income-tax Act, 1961. The Income-tax Officer was of the opinion that the assessee was not entitled to accumulate 25% of this deemed income because permitting it to do so would amount to a double benefit to the assessee. He, therefore, assessed the entire deemed income. 3. The Tribunal in agreeing with the decision of the Appellate Assistant Commissioner observed: The legal fiction contained in section 11(3) of the Income-tax Act, 1961, should be allowed to play to the fullest extent and there is no warrant to take a restricted view for denying the exemption which is specifically allowed by the statute. In fact, as per the law as stood from April 1, 1976, charitable trusts are permitted to accumulate up to 25% of their income without complying with any formalities or condition and such accumulation is not included in the total income. Therefore, we uphold the order of the Appellate Assistant Commissioner as it is quite justified in law and the assessee would be entitled to accumulate 25% of the total income of the previous year relevant to the assessment year 1978-79 inclusive of the deemed income under section 11 (3) of the Income-tax Act, 1961. 4. Moitra, appearing on behalf of the Revenue, has failed to show any infirmity in the order of the Tribunal. In fact, he has prayed merely for remand of the case as was done by the Andhra Pradesh High Court in the case of CIT v. Hyderabad Secunderabad Foodgrains Association Ltd. [1989] 175 ITR 574. The facts in that case were quite different and it was felt by the Andhra Pradesh High Court that it was necessary to remand the case. But, in the instant case, no argument at all has been advanced to show any infirmity in the order of the Tribunal." Since Mr. Moitra has failed to show us any infirmity in the order passed by the Tribunal, the question is answered in the affirmative and in favour of the assessee."*

*7. In the light of the above, let us consider the scope of section 154 for making prima facie adjustment while processing return under section 143(1)(a) of the Act i.e. process of dealing with the return is an ex parte process. It is pertinent to observe that whenever any debatable issue is involved an explanation of the assessee is required, then on such issue, no prima facie adjustment in an ex parte proceedings can be made. Reading of judgment of Hon'ble Kolkata High Court (supra), and if facts are looked into, then it would reveal that both the issues were debatable one, where more than one opinion was possible.*

*Adjustment under section 143(1)(a) is not permissible on both these aspects. Therefore, we allow appeal of the assessee, and delete both the disallowances."*

*8. In the light of the above, respectfully following the Co-ordinate Bench decision in the assessee's own case for the Asst. Year 2015-16, wherein the disallowances were being made under section 143(1) of the Act, and similar disallowance is also made for the present year viz. Asst. Year 2016-17, we hold that debatable issue should not be done in an intimation under section 143(1)(a) of the Act. Therefore, we allow the appeal of the assessee and delete both the disallowances.*

*9. In the result, the appeal filed by the assessee is allowed. Order pronounced in the Court on 3rd June, 2022 at Ahmedabad.*

*In lieu of the explanation and case laws referred it is requested that the intimation order under section 143(1) under relevance may kindly be quashed and in alternative the expenses of Rs. 17,41,999/- may kindly be allowed as expenses and NIL return as filled be accepted.*

*We hope you will find above in order and will be kind enough and will be kind enough to let us know if still any need further explanation in this regard."*

(B.2) The aforesaid paper book also contained certificate issued by Chartered Accountant which is reproduced below, for the ease of reference:-

*"On the basis of examination of books of account and records of Rai Sahib Bhaiyalal Dubey Educational and Medical Charitable Trust, I the undersigned do hereby certify that for Assessment Year 2020-21, while issuing form 10B, we as an auditor in Sl. No. 1 of the Annexure to Form 10B reported "Amount of Income of the previous year applied to charitable or religious purpose in India during the year" was mentioned to be Rs 1,13,23,157/-only.*

*2. Further, as an auditor preparing Auditors Report, we, also found that if 15% of total receipts are taken i.e. Rs 19,91,638/- (being 15% of total receipts of Rs. 1,32,77,585.25) as exempt under section 11, the income of the trust of Rs 19,54,427.80 was fully covered within the permissible 15% accumulation, leaving no taxable surplus of income over expenditure.*

*3. In lieu of para 1 & 2 above sum of Rs 17,41,999/- towards capital expenditure was not reported erroneously with non-capital (revenue) expenditure of Rs 1,13,23,157/- at Sl. No 1. If this capital expenditure of Rs 17,41,999/- is added to non-capital expenditure of Rs 1,13,23,157/- then also total comes to Rs 1,30,65,156/- only and balance of Rs 2,12,429/- representing surplus out of 15% of Rs 19,91,638/- also results in nil income chargeable to tax.*

*4. Non-Capital Expenditure of Rs 1,13,23,157/- if clubbed with 15% of total receipts of Rs 1,32,77,585.25 comes to Rs 1,33,14,795/-, henceforth excess of income over expenditure comes to Rs 37,209.75.*

*This certificate is issued at the specific request of the Trust, solely for the purpose of submission before the Hon'ble Income Tax Appellate Tribunal, Jabalpur Bench."*

(B.2.1) Moreover, the aforesaid paper book contained copy of order Lucknow Bench of ITAT in the case of Desh Bharti Public School Samiti vs The AO/DCIT, CPC, Bangalore (ITA. No.09/LKW/2022 order dated 05.04.2022. The decision of the Tribunal in this case is reproduced below: -

*"4. We have heard the rival parties and have gone through the material placed on record. We find that it is undisputed fact that assessee got registration u/s.12A of the Act w.e.f. 1.4.2013 vide order dated 2.9.2014, a copy of such registration certificate is placed in P.B. pg.24. It is also an undisputed fact that assessee in the earlier years has been claiming exemption u/s.10(23C) of the Act and which was being allowed by the department also as the receipt of the assessee in the earlier years were less than Rs.1.00 crore. During the year under consideration, the assessee got the registration u/s.12A of the Act on 2.9.2014 and filed the income tax return on 20.9.2014. Along with filing of return of income, the assessee also uploaded Form-10B which is audit report u/s. 12A(b) of the Act. However, in the return of income, the assessee claimed exempt income u/s.10(23C) instead of claiming the same u/s.12A of the Act. The CPC rejected the claim of the assessee u/s.10(23C) by holding that the assessee had not obtained necessary approval from the prescribed authority and the receipts of the assessee exceeded Rs.1.00 crore. The application for rectification u/s.154 was also rejected and on appeal before Id. CIT(A), the Id. CIT(A) also dismissed the appeal of the assessee by first holding that there was no mistake apparent from record and further held that there is lot of difference between the claim of exemption u/s.10(23C) and Section 11 of the Act. However, nowhere in the appellate order the Id. CIT(A) disputed the fact that assessee was not registered u/s.12A of the Act. The registration certificate granted by the department on 2.9.2014 is on record. Further the uploading of Form-10B which is a audit report u/s.12A(b) of the Act, proves that the mistake committed by assessee in claiming exemption u/s.10(23C) is inadvertent mistake as by committing such a mistake the assessee is not going to gain anything. Fact of the matter is that assessee is registered u/s.12A of the Act and is eligible for exemption u/s.11 of the Act. Therefore for inadvertent mistake the assessee cannot be penalized. Since the assessee has been claiming exemption u/s.10(23C) in the earlier years therefore during the year under consideration there is high probability that assessee again claimed exemption u/s.10(23C) by overlooking the fact that it had already got registration u/s.12A of the Act which in any case was available with the assessee before the filing of return of income. The mistake has occurred as a human error and should have been judicially considered. The CBDT vide Circular No.14 (XL35) dated 11.4.1955 in Para 3 has held as under:*

*"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed by law, officers should:—*

*a) Draw their attention to any refunds or reliefs to which they appear to be dearily entitled but which they have omitted to claim for some reason or other;*

*(b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."*

*5. In view of above facts and circumstances, we direct the Assessing Officer to allow the exemption to the assessee u/s.12A of the Act in accordance with law."*

(B.2.2) The aforesaid paper book also contained copy of order of ITAT in the case of Shashi Krishna Educational Avam Welfare Society vs ITO Exemption (ITA. No.428/PAT/2025 order dated 29.01.2026. The decision of the Tribunal in this case is reproduced below: -

*"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."*

(C) At the time of hearing, the Ld. Counsel for the assessee placed reliance on the contents of the aforesaid paper book referred to in foregoing paragraph (B) of this order. In particular, he drew attention of the Bench to certificate issued by the Chartered Accountant (referred to foregoing paragraph (B.2) of this order). After some deliberations, the representatives of both sides, the Ld. Authorized Representative for the assessee and the

Ld. Departmental Representative for Revenue were in agreement that the contents of the certificate issued by the Chartered Accountant, required verification at the end of the Assessing Officer for which purpose the issues in dispute in the present appeal should be remanded to the file of the Assessing Officer, with the direction to pass appropriate order in accordance with law. In view of the foregoing; in the facts and circumstances of the present case, the impugned appellate order dated 23.10.2024 of the Ld. CIT(A) is set aside and issues in dispute are remanded to the file of the Assessing Officer with the direction to pass appropriate order in accordance with law, after providing reasonable opportunity to the assessee.

(D) In the result, the appeal is partly allowed for statistical purposes.

(Order pronounced on 10/03/2026)

Sd/.  
**(ANADEE NATH MISSHRA)**  
Accountant Member

Dated: 10/03/2026  
Vijay Pal Singh, (Sr. PS)

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Jabalpur