

**IN THE INCOME TAX APPELLATE TRIBUNAL “K (SMC)” BENCH
MUMBAI**

**BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2466/MUM/2025
Assessment Year: 2016-17**

Sahyadri Adivasi Bahuvadh Seva Sangh Savarkar Road, Opp. S.T Johns High School. Thane (West), Mumbai - 400601 (PAN: AADTS9375D)	Vs.	Income Tax Officer, Exemption, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri Suhas P. Bora, CA
Revenue : Shri Bhagirath Ramawat, Sr. DR

Date of Hearing : 11.03.2026
Date of Pronouncement : 17.03.2026

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Addl./JCIT (A)-2, Surat, vide order no. ITBA/APL/S/250/2024-25/1072463266(1), dated 23.01.2025, passed against the assessment order by Income Tax Officer, Exemption Ward, Thane, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 25.12.2018, for Assessment Year 2016-17.

2. Grounds taken by assessee are reproduced as under:

1. *The Ld. CIT(A) has erred in confirming the action of the Ld. AO disallowing the exemption u/s 11(2) of the Act amounting to Rs. 20,00,000/- solely on the ground that the appellant has not filed form 10 after the due date of filing the return of income u/s 139(1) of the Act.*

2. *The Ld. CIT(A) has erred in disallowing the exemption claimed by the appellant u/s 11(2) of the Act amounting to Rs. 20,00,000/- without appreciating the following facts:*

a. The appellant had filed form 10 on 07.12.2017 suo moto without any willful default or intention to defraud.

b. The appellant had filed the application for condonation of delay u/s 119(2)(b) of the Act before the office of Commissioner of Income Tax, Pune on 19.04.2018.

c. The appellant had invested the amount set aside in the forms or modes specified in section 11(5) of the Act.

3. *The Ld. CIT(A) failed to appreciate that the CBDT Circular 07/2018 dated 20.12.2018 had clearly authorized the Commissioners of Income Tax to admit the belated applications in Form 9A and Form 10 for A.Y. 2016-17 where such forms are filed after the expiry of time allowed under the relevant provisions of the Act.*

3. There is a delay of 96 days noted by the Registry in filing the present appeal before the Tribunal, for which petition of condonation of delay along with affidavit is placed on record.

3.1. We have considered the petition for condonation of the said delay. Upon perusal of the same and hearing both sides, we deem it fit to condone the delay on the ground that there was sufficient cause for the said delay. Accordingly, we take up the matter for adjudication.

4. Brief facts of the case are that assessee is a trust which has been carrying on its charitable activities since last 35 years at Devbandh, Nashera in Mokhada Taluka of Thane District. The main objective of the

trust is social, economic and religious awakening among the *adivasi* community. Assessee filed its return of income on 17.10.2016. While completing the assessment, ld. Assessing officer disallowed Rs. 20,00,000/- claimed exempt u/s 11(2) of the Act. He also disallowed and added to the total income Rs. 2,50,737/- being 20% of Rs. 12,53,685/- claimed as application of funds.

5. On the issue relating to disallowance of exemption of Rs. 20,00,000/- claimed u/s 11(2) of the Act, assessee contended that it had inadvertently missed on filing Form 10 and had filed Form 10B twice. On realising the error committed by it, assessee subsequently filed Form 10 on 07.12.2017. This was explained to the ld. Assessing Officer along with the copy of Form 10 which was so filed. Assessee had also filed an application u/s. 119(2)(b) for condonation of delay with the office of the Commissioner of Income Tax, Pune relating to Form 10. However, this application before the ld. CIT remained pending till the time of completion of impugned assessment. Based on this application for condonation of delay, assessee had requested the ld. AO to grant the exemption of Rs. 20,00,000/- u/s 11(2). However, the ld. Assessing Officer did not allow the same on the grounds that assessee not filed Form 10 within due date of filing return of income.

6. Aggrieved, assessee went in appeal before the ld. CIT(A). Before him, the above factual position was reiterated. In para 5.1.2, ld. CIT(A) observed that assessee has not submitted copy of the order for disposal of the application filed for condonation of the stated delay relating to Form 10. He, by taking cognizance of CBDT Circular No.7/2018, dated 20.12.2018, regarding condonation of delay u/s.119(2)(b), in regard to filing of Form 10 and Form 9A, noted that it is the Commissioner of Income Tax who is authorised by CBDT to admit belated application for

Form 10 for Assessment Year 2016-17, i.e., the year under consideration, when such form is filed after the expiry of the prescribed time. He thus, concluded in para – 5.1.5, that it is only the Commissioner of Income Tax who is empowered to grant the condonation of the delay and not the office of CIT(A). Accordingly, on these observations, grounds raised by the assessee were held to be not sustainable and thus, addition made on this account was sustained.

7. Before us, ld. Counsel for the assessee made an application for admission of additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1962 (ITAT Rules) whereby order of ld. CIT(A) passed u/s.119(2)(b), dated 30.01.2026 condoning the delay which occurred while filing Form 10 by the assessee is placed on record for its admission. The root cause of the appeal before us is on account of addition made for want of Form 10 which was delayed in its filing. Ld. CIT(A) has dismissed the ground raised by the assessee on this account solely for want of order condoning the delay in filing Form 10 for which the authorised authority as per CBDT circular is Commissioner of Income Tax. In view of these observations of ld. CIT(A) and the factual position as emanating from the order of ld. Assessing Officer, the additional evidence furnished by the assessee is admitted.

7.1. Since ld. Assessing Officer has denied the claim made by the assessee of Rs. 20 lakhs u/s.11(2) on account of delay in filing of Form 10 by the assessee, the veracity of the claim remained to be verified for its allowance. Now that the order condoning the delay in filing Form 10 is placed on record, as passed by ld. CIT(A) u/s.119(2)(b), we find it appropriate to remit the matter back to ld. Jurisdictional Assessing Officer (JAO) for limited purpose of verification of the claim made by the assessee and allow the same in accordance to the provisions of the Act.

Accordingly, ground no.2 raised by the assessee is allowed for statistical purposes.

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

Order is pronounced in the open court on 17 March, 2026

Sd/-
(Pawan Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 17 March, 2026

MP, Sr.P.S.

Copy to:

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- 2 The Respondent
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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai