

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2570/Bang/2025
Assessment Year: 2022-23

CDO Jain Education Society CDO School Road CDO Jain English School Behind Sarvodaya Colony Gadag 582 103 Karnataka PAN NO : AAATC6144K	Vs.	ACIT CPC Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri R. Chandrashekhar, A.R.
Respondent by	:	Sri N. Balusamy, D.R.

Date of Hearing	:	17.02.2026
Date of Pronouncement	:	21.04.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of Id. Addl./JCIT (A)-6, Kolkata dated 10/09/2025 vide DIN & order no: ITBA/APL/S/250/2025-26/1080581236(1) passed u/s. 250 of the Income Tax Act, 1961 (in short “the Act”) for the AY 2022-23.

- 2.** The assessee has raised the following grounds of appeal: -
1. The order of the JCIT(A)-6, Kolkata, dated 10/09/2025, is contrary to the facts of the case and opposed to law and principles of natural justice.
 2. The JCIT(A) erred in confirming the denial of exemption u/s. 10(23C)(vi) merely due to delay in filing Form-10BB.

3. The delay in filing Form-10BB is procedural and does not affect the substantive claim of exemption.
4. The JCIT(A) ignored that Form-10B was filed in time and Form-10BB was filed later to rectify the procedural error.
5. The JCIT(A) failed to consider case laws: CIT vs G.M. Knitting Industries Pvt Ltd. (2015) 376 ITR 456 (SC), CIT v. Monarch Educational Society (2020) 113 taxmann.com 311 (Mad).
6. The JCIT(A) erred in not allowing deduction of legitimate expenditure of Rs.1,17,58,569 and taxed the gross receipts of Rs.1,56,07,598/-
7. The JCIT(A) erred in applying maximum marginal rate instead of the rate applicable to AOP registered under Karnataka Societies Registration Act, 1960 as per CBDT Circular No.320 dated 11/01/1982.
8. The JCIT(A) erred in confirming levy of interest under section 234A, 234B and 234C without appreciating that these are merely consequential in nature and not leviable when the income itself is exempt under section 10(23C).
9. The JCIT(A) erred in passing an ex parte order without granting sufficient opportunity of hearing.
10. The appellant craves leave to add, alter or amend any of the above grounds at the time of hearing.

3. The Brief facts of the case are that assessee is a Society and registered under the Karnataka Societies Registration Act, 1960 vide certificate of registration dated 25/10/1977 bearing registration no. 53/77-78. The assessee society was also registered under section 10(23C)(vi) of the Act by the Id. Commissioner of Income Tax, Bengaluru vide order no. CIT(E)/BLR/1023C/W-2(E)/2017-18 dated 28/09/2017 for the AY 2016-17 & onwards. Thereafter, the assessee society was also granted approval under clause (i) of first proviso to

clause (23C) of section 10 of the Act (for applicants covered under sub-clause (vi) of clause (23C) of section 10) on 04/04/2022 vide unique registration number (URN) AAATC6144KC20170 effective from AY 2022-23 to AY 2026-27. The assessee society filed its return of income on 03/11/2022 (extended due date being 07/11/2022) by declaring taxable income of Rs. NIL and claimed refund of Rs.81,880/- along with interest u/s. 244A thereon. However, due to oversight, the assessee society while filing the return had claimed exemption u/s. 11 of the Act instead of claiming exemption u/s.10(23C)(vi) of the Act. Further, the assessee society had also filed an audit report on 24/09/2022 in Form No.10B instead of filing the audit report in Form No.10BB. This procedural error led to the Centralized Processing Centre (CPC) denying the exemption claimed under Section 10(23C)(vi) of the Act while processing the return under Section 143(1) of the Act. The CPC while passing the intimation u/s. 143(1) of the Act on 31/03/2023 computed the total income at Rs.1,56,07,598/- and accordingly raised the total demand of Rs.62,49,410/- after giving TDS credit of Rs.81,878/-.

3.1 Upon realizing the mistake, the assessee promptly filed a rectification application before the CPC on 15/04/2023 by making necessary changes in the return. The assessee had also filed an audit report in correct Form No.10BB on 15/04/2023 vide acknowledgement no. 117209210150423. The assessee had also filed the delay condonation petition before the ld. CIT(E) on the same day i.e. on 15/04/2023 under the provisions contained in section 119(2)(b) of the Act which is still pending for the disposal. The CPC thereafter without considering the same, passed an order u/s. 154 of the Act on 13/05/2023 by computing the same taxable income of Rs.1,56,07,598/- and determined the net amount payable amounting to Rs.61,96,470/-.

4. Again, aggrieved by the rectification order passed by the CPC dated 13/05/2023, the assessee preferred an appeal before the Id. Addl. /JCIT(A)/CIT(A).

5. The Id. Addl./JCIT(A)-6, Kolkata dismissed the appeal of the assessee by presuming that as more than 2 years have already elapsed since filing of the condonation petition before Id.CIT(E) and accordingly held that delay was not condoned by the Id. CIT(E). Further, the Id. Addl./JCIT(A)-6, Kolkata held that since the exemption u/s. 10(23C)(vi) was denied, the CPC had rightly taxed the entire gross receipts of Rs.1,56,07,598/- at maximum marginal rate. Lastly, the Id. Addl./JCIT(A)-6, Kolkata held that as the Form No.10BB was only filed on 15/04/2023 instead of filing on or before 07/10/2022 and hence the claim of exemption u/s. 10(23C)(vi) of the Act was rightly denied as requirement to file the Form No.10BB within the specified due date is a statutory requirement mandated by the Act.

6. Again, aggrieved by the order of Id. Addl./JCIT(A)-6, Kolkata, the assessee has filed the present appeal before this Tribunal.

7. Before us, the Id. A.R. of the assessee vehemently submitted that while filing the return of income for the AY 2022-23, the assessee had inadvertently claimed exemption u/s. 11 of the Act instead of section 10(23C)(vi) of the Act. Further, due to recent changes in the audit form, the assessee inadvertently filed the audit report in Form No.10B instead of Form No.10BB. Further, the Id. A.R. of the assessee submitted that the assessee realizing its mistake immediately filed an application before the Id. CIT(E) u/s. 119(2)(b) of the Act for condoning the delay in filing the audit report and also filed the correct claim of exemption in the rectified return of income u/s. 154 of the Act and also filed the audit report in correct Form

No.10BB on 15/04/2023 and accordingly prayed that the order of the authorities below may be quashed.

8. The ld. D.R. on the other hand, vehemently submitted that as the assessee had already filed an application before the ld. CIT(E) for condoning the delay in filing the audit report as per provisions contained in section 119(2)(b) of the Act which is still pending for disposal, the case may be remitted back to the file of the AO with a direction to wait for the outcome of the order of ld. CIT(E).

9. We have heard the rival submissions and perused the material available on record. The assessee society is running educational institution & existing solely for educational purposes and not for the purposes of profit. As per the clause 3 of the Memorandum of Association, the object of the society are-(**a**) to further the noble cause of secular education and intellectual development of the general public without distinction as to caste, creed or religion. (**b**) to run primary, secondary and other schools, colleges and training institutions for the benefit of the public in general. (**c**) to maintain reading room and libraries for the use of all classes of students. (**d**) to award scholarships and free ships and other benefits and amenities to poor and deserving students. (**e**) to do any or all other things necessary for the carrying out of the above objects. The assessee society is running the English medium school at Gadag-582103 in the state of Karnataka. It is an undisputed fact that the assessee society filed its return of income for the AY for 2022-23 within the due date. It is also an undisputed fact that the assessee society also filed an audit report on or before the due date prescribed under the Act. We also cannot brush aside the fact that the assessee had been granted approval under clause (i) of first proviso to clause (23C) of section 10 vide order in Form No.10AC dated 04/04/2022 effective from AY 2022-23 to AY 2026-27 by the ld. PCIT/CIT. The

contention of the Id. A.R. of the assessee is that due to oversight the assessee filed its return of income by claiming exemption u/s. 11 of the Act instead of section 10(23C)(vi) of the Act and also the audit report in Form No.10B was filed instead of audit report in Form No.10BB. Before us, the Id. A.R. of the assessee contended that the assessee had also filed an application before the Id. CIT(E) on 15/04/2023 as per the provisions contained in section 119(2)(b) of the Act which is still pending for the disposal. On going through the order of Id. Addl./JCIT(A)-6, Kolkata, we noticed that the Id. Addl./JCIT(A)-6, Kolkata presumed that the delay was not condoned by the Id. CIT(E) as more than 2 years have already elapsed since filing of the said petition. On going through the rectification order passed by the CPC, we also noticed that the CPC had although accepted the claim of exemption u/s. 10(23C)(vi) of the Act, however determined the taxable income at Rs.1,56,07,598/- solely on the ground that audit report in Form No.10BB was filed only on 15/04/2023 whereas the claim of the assessee is that it had filed the audit report within due date however inadvertently in Form No.10B instead of Form No.10BB. Further, we are of the considered opinion that it is not the case of the revenue that the assessee society had ceased to be an approved institution. It is also not the case of the revenue that the accounts of the assessee have not been audited by the chartered accountant and audit report has not been obtained within the due date. It is also not the case of the revenue that no return of income was filed by the assessee within the due date. Thus, only on the procedural/technical lapse i.e. the Form No.10B was filed instead of Form No. 10BB, the exemption claimed u/s. 10(23C)(vi) of the Act has been denied to the assessee.

9.1 Thus, the sole issue for consideration before us is whether the exemption under Section 10(23C)(vi) of the Act should be allowed, condoning the procedural lapse of filing the incorrect audit report

form, especially when the substantive conditions for exemption are met. Undisputedly, the assessee society had also filed a condonation application before the Id. CIT(E) on 15/04/2023 as per the provisions contained in section 119(2)(b) of the Act which is still pending for the disposal. More surprisingly, the Id. Addl./JCIT(A)-6, Kolkata presumed that the delay was not condoned by the Id. CIT(E) as more than 2 years have already elapsed since filing of the said petition. We are of the considered opinion that the Income Tax Appellate Tribunal, as the final fact-finding authority, possesses wide appellate powers under Section 254(1) of the Act to 'pass such orders thereon as it thinks fit'. This power allows the Tribunal to look beyond mere technicalities and ensure that substantive justice is rendered. The principle that a genuine claim should not be denied merely due to a procedural or technical lapse, especially when the substantive conditions for claiming the benefit are fulfilled. In the present case the core issue revolves around the procedural lapse of filing Form 10B instead of Form 10BB for AY 2022-23. While the statutory requirement, as per Rule 16CC, was indeed to file Form 10BB, the assessee did get its accounts audited by a qualified accountant and furnished an audit report, albeit in the wrong form. This indicates an intention to comply with the audit requirement, and the error appears to be an inadvertent procedural mistake. We are of the considered opinion that genuine claims should not be denied due to inadvertent procedural errors, especially when the substantive conditions for exemption are met and the correct audit form is subsequently filed or available on record. In our view, the assessee society should not be penalized for an inadvertent procedural mistake when the accounts were duly audited by a chartered accountant and the audit report was also uploaded on or before the due dates and thus the intention to comply was evident.

9.2 We are of the considered opinion that the error is a procedural one, and the assessee has demonstrated its intention to comply by getting the accounts audited and subsequently filing the correct form. We are also of the considered opinion that the denial of exemption under Section 10(23C)(vi) to the assessee trust solely on the ground of inadvertently filing Form 10B instead of Form 10BB for AY 2022-23 is not justified. In holding so, we also take support & guidance from the judgment of the Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilisers Limited vs. Deputy Commissioner of Commercial Taxes and Ors. vide judgement dated 02/08/1991 reported in 1992 AIR 152, (1991) 55 ELT 437 in which it is observed as follows-

“The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.”

9.3. Further, the Hon'ble Supreme Court in the case of Sambhaji & Ors vs. Gangabai & Ors dated 20 November, 2008 reported in 2008 (17) SCC 117 , AIR 2008 SC (SUPP) 767 held as under: -

“11. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed.

12. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. A Procedural prescription is the

handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

9.4 The Apex Court in the case of CIT v. G.M. Knitting Industries (P.) Ltd. Reported in (2015) 376 ITR 456, also observed as under-

“In so far as it relates to the substantial question of law (1) is concerned, namely, whether the filing of audit report in Form 10CCB is mandatory, it is well settled by a number of judicial precedents that before the assessment is completed, the declaration could be filed. In fact, the said issue came to be decided by the Karnataka High Court in the case in CIT v. Ace Multitaxes Systems (P.) Ltd. (2009) [317 ITR 207](#) (Karn), wherein it was held that when a relief is sought for under section 80-IB of the Act, there is no obligation on the part of the assessee to file the return accompanied by the audit report, thereby, holding that the same is not mandatory. Therefore, it is clear that before the assessment is completed if such report is filed, no fault could be found against the assessee. That was also the view of the Delhi High Court in the case in CIT v. Contimeters Electricals (P.) Ltd. (2009) [317 ITR 249](#) (Delhi), wherein the Delhi High Court, by following the judgments of the Madras High Court in CIT v. A. N. Arunachalam (1994) [208 ITR 481](#) (Mad) and in CIT v. Jayant Patel (2001) [248 ITR 199](#) (Mad), held that the filing of audit report along with the return was not mandatory)- but directory and that if the audit report was filed at any time before the framing of the assessment, the requirement of the provisions of the Act should be held to have been met.*

That is also the consistent view of the other High Courts, including the High Court of Bombay in CIT v. Shivanand Electronics (1994) [209 ITR 63](#) (Bom), apart from the Gujarat High Court in Zenith Processing Mills v. CIT (1996) [219 ITR 721](#) (Guj) and the Punjab and Haryana High Court in CIT v. Mahalaxmi Rice Factory (2007) [294 ITR 631](#) (P&H).

The Calcutta High Court in the case in CIT v. Berger Paints (India) Ltd. (No. 2) has also concurred with the said view which was followed by the Tribunal in this case.

Mr. T. Ravikumar, the learned counsel for the appellant, is not able to produce any other judgment contrary to the above said views consistently taken.

In the light of the above, by virtue of hierarchy of judgments which are against the Revenue, the substantial question of law (1) would not arise at all for consideration.”

9.5 Further, the Hon'ble High Court of Gujarat in the case of Commissioner of Income-tax – IV v. Xavier Kelavani Mandal (P.) Ltd. reported in (Guj-HC) [2014] 221 Taxman 43 held as under-

“4. The question whether it is permissible to the assessee to produce the audit report at the appellate stage, has already been answered by this court in CITv. Gujarat Oil & Allied Industries Ltd. [1993] 201 ITR 325 (Guj.), wherein it is held that the provision regarding furnishing of audit report along with the return has to be treated as a procedural provision. 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 before completion of the assessment. The Punjab and Haryana High Court in CITv. Shahzadanand Charity Trust [1997] 228 ITR 292/[1998] 96 Taxman 494 has reiterated the same principle holding 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 showing a sufficient cause. This decision of Punjab & Haryana High Court has been relied on by the Tribunal.

5. In the above view, the Tribunal is eminently justified both in law and on facts in observing and holding as under:—

"In this case, it is not in dispute that the audit report in prescribed form was obtained prior to filing of the return on 20/12/2006; therefore, there was no reason for the assessee to keep the audit report with it in order to loose the exemption. The assessee in the earlier as well as in the subsequent assessment years filed the audit report and got the exemption. The conduct of the assessee in earlier year and subsequent years would prove that due to the facts stated above there was delay in filing the audit report and the contention of the assessee was supported by the affidavit of Mohmad Iqbal Vohra (PB-4). The learned CIT(A) on proper appreciation of the facts and material on record in the light of the decisions of the Hon'ble Punjab & Haryana High Court and the Hon'ble Calcutta High Court rightly directed the AO to accept the audit report of the assessee and grant exemption u/s. 11 of the IT Act."

9.6 Even otherwise, we are also of the considered opinion that as the assessee society is running educational institution & existing solely for educational purposes and not for the purposes of profit and the aggregate annual receipts of the institution is only 1,56,07,598/- i.e. way below of 5 crore rupees for the AY 2022-23, the income of the assessee is anyway exempt u/s 10(23C)(iiiad) of the Act.

9.7 We, therefore, set aside the order of the Id. ADDL/JCIT(A)-6 Kolkata and direct the AO to verify the substantive compliance of the assessee with all the conditions stipulated under Section 10(23C)(vi) of the Act. If the Assessing Officer is satisfied that the assessee has fulfilled all other substantive conditions for claiming the exemption,

the procedural lapse of filing the incorrect audit report form should be condoned, and the exemption under Section 10(23C)(vi) should be allowed & the demand as raised should be reduced to NIL.

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

Order pronounced in the open court on 21st Apr, 2026

Sd/-
(Prashant Maharishi)
Vice President

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 21st Apr, 2026.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.