

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 410/Ahd/2022  
Assessment Year 2017-18**

The ITO, Ward (Exemption), Vadodara  (Appellant)	Vs	Shri Laxmanarayan Dev Shrishan Seva Khendra, National Highway No. 8, Distt:- Kheda, Gujarat-387320  PAN: AAATS6610G (Respondent)
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**Assessee Represented: Shri Nitesh Thakkar, C.A.  
Revenue Represented: Shri Rakesh Jha, Sr.D.R.**

Date of hearing : 02-05-2023  
Date of pronouncement : 19-05-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the Appellate order dated 02.09.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "NFAC"), arising out of the Intimation order passed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2017-18.

2. The solitary issue involved in this appeal is late filing of Audit Report u/s. 12A(1)(b) in the prescribed Form 10B thereby denying the exemption u/s. 11 of the Act.

2.1. The brief facts of the case is that the assessee is a Public Charitable Trust engaged in various educational activities and running of Schools and Yogashram. The assessee trust is registered as a charitable organization u/s. 12AA of the Act with effect from 01.04.2004 and also approved for the purpose of Section 80G. The assessee filed its Return of Income for the Assessment Year 2017-18 on 11.10.2017 declaring NIL income. However the assessee not uploaded the Audit Report in Form 10B alongwith the Return of Income. The assessee was sent a communication from Computer Processing Centre, (CPC). However the assessee could not response to the above communication because of certain communication gaps. Therefore the CPC processed the Return u/s. 143(1) dated 24.03.2019 denying the benefit of exemption u/s. 11 to the assessee and demanded tax on of Rs.1,52,42,281/-.

2.2. It is thereafter filing of the appeal, the assessee uploaded electronically Form 10B on 27.02.2021. During the appellate proceedings, the assessee admitted that there has been a procedural delay in furnishing the Form 10B and the delay was on account of various technical issues.

2.3. The assessee relied upon Jurisdictional High Court Judgment in the case of CIT Vs Xavier Kelavani Mandal (P.) Ltd. wherein the Hon'ble Gujarat High Court has held that even if the Form No. 10B

is filed at a later stage, either before the A.O. or before the appellate authority; it would be a sufficient compliance with requirements of section 12A(1)(b) as these requirements are only directory in nature.

2.4. The assessee further relied upon judgments of the following High Courts:

1. *Sarvodaya Charitable Trust Vs ITO (Exemption) (2021) (125 taxmann.com 75) (Gujrat)*
2. *CIT Vs Rai Bahadur Bissesswarlal Motilala Halwasia Trust (1992) (195 ITR 825) (Calcutta)*
3. *CIT VS Hardeodas Agarwalla Trust (1992) (198 ITR 511) (Calcutta)*
4. *CIT VS Shahzedanand Charity Trust (1997) (228 ITR 292) (Punjab)*
5. *CIT Vs Andhra Pradesh State Road Transport Corporation (2006) (285 ITR 147) (AP)*
6. *Hiranandani Foundation Vs Joint DIT (2013) (359 ITR 29) (Bombay)*
7. *CIT Vs Devradhan Madhavlal Genda Trust (1998) (230 ITR 714) (MP)*

2.5. Thus the assessee pleaded based on various judicial pronouncements that it is a sufficient compliance with the procedure, if the Audit Report u/s. 12A(1)(b) is filed at any stage before the completion of assessment or even at the appellate stage. Thus the CPC cannot deny the exemption available u/s. 11 of the Act. The Ld. CIT(A) accepted the contention of the assessee and held that the assessee Trust is eligible to avail the exemption u/s. 11 of the Act as claimed in the Return of Income for the Assessment Year 2017-18, though the assessee has filed Form No. 10B at a later stage. However the Jurisdictional Assessing Officer (JAO) is directed to allow the claim of exemption u/s. 11 and

compute the total income and tax liability thereon accordingly and thus allow the assessee's appeal.

3. Aggrieved against this order, the Revenue is in appeal before us raising the following Grounds of Appeal:

1. *"Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) is justified in condoning the delay in late filling of form No.10B for filling of audit report by the assessee after the due date of filling".*

2. *"Whether, on the facts and in the circumstances of the case and in the law, the Ld.CIT(A) is justified in the allowing an amount of Rs.3,57,53,725/- claimed by the assessee as exemption u/s 11 of the act though the assessee has not filed the audit report in form no.10B before due date as prescribed / notified by CBDT."*

3. *"The appellant reserves right to add, to alter, to amend as to delete any of the grounds of appeal on or before final hearing of the appeal ".*

*This if further to certify that the tax effect involved in the present case is Rs. 1,25,14,225/- which is above the monitory limit specified in the CBDT's Circular no.17/2019 dated 08.08.2019.*

4. The Ld. Sr. D.R. Shri Rakesh Jha appearing for the assessee submitted when the assessee failed to file Audit Report in Form No. 10B alongwith the Return of Income, the assessee is not eligible to claim exemption u/s. 11 of the Act. Thus the Ld. CIT(A) erred in allowing the appeal in favour of the assessee.

5. Per contra, the Ld. A.R. Shri Nitesh Thakkar appearing for the assessee strongly supported the order passed by the Ld. CIT(A) and further relied upon Judgment of the Gujarat High Court in the case of Sarvodaya Charitable Trust Vs. ITO(Exemption) [2021] 125 taxmann.com 75 (Gujarat) and CIT Vs. Xavier Kelavani Mandal (P.) Ltd. [2014] 41 taxmann.com 184 (Gujarat) and Social Security Scheme of GICEA Vs. CIT(Exemptions) [2023] 147 taxmann.com

283 (Gujarat) wherein it is held that the assessee trust substantially satisfied conditions for availing exemption u/s. 11, it should not be denied exemption merely on bar of limitation especially when legislature had conferred wide discretionary powers to condone such delay in filing Audit Report in Form No. 10B. Thus the Ld. AR pleaded that the order passed by Ld. CIT(A) does not require any interference and Revenue appeal is to be dismissed.

6. We have given our thoughtful consideration and perused the materials available on record. The moot question whether it is permissible to the assessee to produce the audit report at the appellate stage is correct in law is been decided by the Jurisdictional High Court in the case of CIT Vs. Gujarat Oil & Allied Industries Ltd. [1993] 201 ITR 325 (Guj.) wherein it is held that the provisions 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. Thus the Hon'ble Court Held that the benefit of exemption should not be denied merely on account of delay in furnishing the same.

6.1. Similarly in the case of Social Security Scheme of GICEA (cited supra) the Hon'ble Jurisdictional High Court held as follows:

*5. ".....the only question which falls for consideration is whether respondent committed an error in passing the order by not condoning the delay in filing Form No. 10B along with the return filed. In the decision of this Court in Sarvodaya Charitable Trust (supra) this Court has observed that furnishing of audit report along with return filed is to be treated as a procedural requirement. It is though mandatory in nature the substantial compliance is required to be made. In the case of Sarvodaya Charitable Trust (supra) the assessee had produced the audit report after processing the return under section 143(1). This Court in the said order has observed that the approach of the authority in these type of cases should be equitable, balancing and judicious. Technically speaking, respondent No. 2*

*might be justified in denying the exemption under section 11 of the Act by rejecting such condonation application, but an assessee, which is a public charitable trust for past 30 years which substantially satisfies the conditions 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. Applying the said principle, the petition is allowed. The impugned order passed by respondent dated 12-3-2021 is quashed and aside. The impugned order of rectification under section 154 of the Act dated 25-1-2019 is also quashed and set aside. The application for condonation of delay filed by the petitioner before the respondent is allowed.*

*6. The respondent is now directed to process the return in accordance with law. It is noticed that no assessment is framed and only an intimation under section 143(1) of the Act was issued. No scrutiny could be carried out by the respondent since the audit report under section 10B was not on record. Learned advocate for the petitioner Mr. B.S. Soparkar fairly submitted that the issue of benefit of exemption may be examined by issuance of notice u/s 143(1)/143(2) and the petitioner shall not object to the said proceedings by taking the ground of limitations.*

6.2. Respectfully following the above judicial pronouncements by Jurisdictional High Court, we have no hesitation in confirming the order passed by Ld. CIT(A) who has directed the Jurisdictional Assessing Officer (JAO) to verify the Form No. 10B and allow the claim of exemption u/s. 11 and compute the total income. Thus the grounds raised by the Revenue is devoid of merits and the same is liable to be dismissed.

7. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 19-05-2023

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 19/05/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद